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Rabbis Marcus Mordecai Schwartz and Chaim Weiner

### **A New Responsum on the Sabbath**

*Approved on June 19, 2023 by a vote of 11 to five with five abstentions (11-5-5). Voting in favor: Rabbis Adam Baldachin, Pamela Barmash, Emily Barton, Elliot Dorff, Joshua Heller, Amy Levin, Joel Pitkowsky, Avram Israel Reisner, Mordecai Schwartz, Miriam T. Spitzer, Ariel Stofenmacher. Voting against: Jaymee Alpert, David J. Fine, Daniel Nevins, Micah Peltz, Ellen S. Wolintz-Fields. Abstaining: Suzanne Brody, Judith Hauptman, Barry Leff, Tracee Rosen, Robert Scheinberg.<sup>1</sup>*

#### **שאלה (Question)**

Is it permitted to drive an electric car on Shabbat?

#### **תשובה (Response)**

##### **ראשית דבר (Preamble)**

Before we begin a summary of our answer, we feel that it is important, for the sake of transparency, and to fully communicate the positive motivations that stand behind our approach, to indicate to some of the people whom we hope to support and who we think of as we write. A responsum is not a responsum without a questioner. We have both been asked on multiple occasions by people who are young in years (or merely young at heart) how they can begin developing a more devoted Shabbat observance than they had previously been accustomed to. A sticking point has always been the question of driving. We have both encountered Jews who are committed to egalitarian prayer and want to stop driving on Shabbat and yet feel resistance from parents, family, friends, or other members of their Conservative Movement affiliated congregations when they express this desire. A typical challenge might go: "But you must know that the Conservative Movement lets you drive on Shabbat!" In other words, they receive a response that their desire to stop driving on Shabbat is foolish and unnecessary.

We hope to support such people in their development and in their increasing observance, to show that it is no foolish thing, no act of overweening piety, to refrain from riding in a car on Shabbat. We put forth our opinion in the following paper that the most ideal form of Shabbat observance requires us to refrain from using a range of human technologies including the use of vehicles for travel. At the same time, we hope to demonstrate that there is also room for some leniency and further to make clear that while driving is, in our view, prohibited on Shabbat, it is not condemned as forbidden labour (melakhah) of the highest order. Instead, we view driving as a failure to fully rest (shevut) on Shabbat. In short, we hope to support anyone who desires to increase their Shabbat observance, and to help people grow towards a more devoted and tranquil vision of Shabbat.

We also hope the members of our communities will not hear our opinion as overly judgmental of their current Shabbat observance. We recognize that there are a range of ways

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The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. Individual rabbis, however, are authorized to interpret and apply halakhah for their communities.

that Jews in our communities observe mitzvot, and we want to support them in their process no matter how fully or how partially they currently observe.

One of our major aims is to support and include the more observant members of our community, a group that ironically sometimes feels marginalised and excluded within Conservative Movement communities and congregations. Some may think that we are attempting to exclude the less strictly-observant members of our communities. Nothing could be further from our aim. Instead, we hope to broaden the tent so that those Jews who wish for a traditionally practising yet egalitarian vision of Torah and mitzvot will feel that they have a home within our communities and our congregations.

We see our opinion as both progressive and traditional like the Jews we hope to support. We pray that we will be seen as inclusive of a group of Jews who have often come to feel that there is no place for them within our congregations and communities. Join us! We welcome you! Stay and help us build an egalitarian community fully committed to Torah and mitzvot!

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וּשְׁמַרְתֶּם מִצְוֹתַי וַעֲשִׂיתֶם אֹתָם אֲנִי ה' : וְלֹא תַחֲלִילוּ אֶת-שְׁמִי קְדוֹשִׁי וְנִקְדַּשְׁתִּי בְּתוֹךְ בְּנֵי יִשְׂרָאֵל אֲנִי ה' מְקַדְּשְׁכֶם::

## Summary

Briefly, we conclude that:

1. **Driving on Shabbat is Prohibited, whatever the power source.** Throughout its history, the Conservative Movement's institutions have considered driving an automobile on Shabbat for mere volitional/recreational purposes (such as driving to visit friends, or go to a party, or a museum, or the beach, etc.) as prohibited to all Jews as a desecration of Shabbat. This remains so, regardless of its manner of propulsion. Conservative Movement rulings have consistently held that a Jew may only drive on Shabbat to protect human life, health, or safety, or to perform certain greatly important mitzvot.
2. **Operating an electric vehicle is not a melakhah.<sup>2</sup>** It is a shevut. We define shevut as a positive commandment of the Torah (*mitzvat 'aseh*) as well as a Rabbinic prohibition (*issur de-rabbanan*). One who violates a shevut-level prohibition on Shabbat has both failed to live up to the Torah's commandment to rest on Shabbat as well as actively desecrating Shabbat on a Rabbinic level. However, they have not defied a "thou-shalt-not" commandment of the Torah. This understanding means that—in our opinion—driving an electric vehicle is considered a lesser violation of Shabbat than performance of actual melakhah.
3. **There are times when halakhah requires Jews to drive on Shabbat.** It is a mitzvah to operate a car on Shabbat to protect the life, health, or safety of any person.
4. **We encourage our more observant constituents to view driving to Synagogue on Shabbat by other less observant Jews as an act of Jewish religious loyalty, despite its prohibition.** The 1950 Jewish Law Committee paper entitled "A Responsum on the Sabbath" by Rabbis Morris Adler, Jacob Agus, and Theodore Friedman encouraged construing the decision of a very large percentage of North American Jews to drive to the synagogue on the Sabbath as an expression of Jewish faith and loyalty rather than as a wanton violation of Jewish law. Our understanding of that paper is that it was an attempt to revitalise the practice of Shabbat amongst Jews in the United States and Canada by stimulating the creation and development of Shabbat-observant communities. The paper's authors hoped to encourage more Jews to come to the synagogue on Shabbat, with the ultimate goal of greater Shabbat observance. We do not understand it as representing a blanket rabbinic dispensation (*heter*) for any Jew to drive on Shabbat. We support the intent of this paper, but not the popular understanding that it simply permits driving on Shabbat.<sup>3</sup>
5. **We encourage the invitation of less observant Jews to Shabbat-rich Jewish environments.** This includes Synagogues, Shabbat dinners, Hillels, and the like. We encourage such invitations even when we know those invited will violate Shabbat in order to get there. It is important to encourage those Jews who are not generally observant to come to synagogue however they come. We see no problem with any of our Rabbis actively encouraging Jews to come to participate in minyan on Shabbat, even if they know this means they will arrive by car or public transport. We further encourage all Shomer-Shabbat Jews, Rabbis or laity, to open their homes in

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<sup>2</sup> A melakhah is a discrete act of work that the Torah prohibits with a negative commandment ("thou-shalt-not") on Shabbat. Our definition of melakhah is intentional physical work performed on Shabbat (done in its standard way and for its common purpose) that endures in an altered material form. See section 3 below.

<sup>3</sup> Roberta Kwall nicely treats the responses to the paper at the time and later. See chapter five of *The Myth of the Cultural Jew: Culture and Law in Jewish Tradition*. Oxford University Press, 2015.

overnight, Shabbat-long hospitality to those people in the process of developing Shabbat observance.

6. **We encourage alternate means of transport as preferable to driving on Shabbat.** If one has decided to travel longer than walking-distance on Shabbat in violation of the prohibition on travel, we encourage the individual to find a way to reduce the desecration of Shabbat as much as they can. It is preferable to ride a bicycle, use public transport or use a ridesharing service to get to the synagogue on Shabbat than to arrive by operating an automobile oneself.
7. **We urge our constituents who drive on Shabbat, both rabbis and laypeople, to stop driving on Shabbat in favour of more rigorous Shabbat observance.** Ultimately, driving on Shabbat is forbidden. While understandable as a stage in one's personal journey towards greater observance, moving away from driving on Shabbat is part of the personal path one takes on the road to greater commitment to Torah and mitzvot.

We provide the above abstract for the benefit of the general reader. We do this in order to make our ruling as accessible as possible for non-specialists and laypeople. We will follow this with a general outline of the paper below. We have divided the paper into subsections that deal with the various halakhic issues that this question demands we address. The first eight of these sections are for any interested reader and provide a level of depth to clarify our argumentation and our halakhic thinking while engaging in a minimum of complex or theoretical discussions. To aid the reader, we have tried to retain a somewhat more accessible and inclusive tone in these sections. The last of these eight sections is a general conclusion including a final discussion of our seven rulings on this matter (*pisqei din*). Finally, after our conclusion, we have provided an appendix intended to provide a technical and theoretical undergirding for our rulings. These final four sections are intended for Rabbis, specialists, and scholars of halakhah. We do this to allow teachers of Torah easy and transparent resort to our underlying assumptions, values, and halakhic criteria.

## OUTLINE

Our paper is organised into the following subsections:

1. **Approaching the Question:** A discussion of the changing circumstances that stand behind the need for a renewed halakhic discussion of driving and riding on Shabbat in general and doing so in electric cars in particular.
2. **The Meaning of Shabbat:** Our understanding of the religious narrative that underlies this central institution of Torah and Mitzvot, and why it compels us so powerfully.
3. **Melakhah:** a description of the Torah's prohibition on performing the productive tasks known as "melakhah." What is melakhah, and how do we define its limits?
  - a. **Introduction:** What is melakhah?
  - b. **Those Who Consider Using Electricity melakhah:** A view of our question from the perspective of those halakhic decisors who view initiating the use of electric and electronic devices on Shabbat as melakhah.
  - c. **Those Who Do Not Consider Using Electricity melakhah:** Our contention that if we adopt the opinion that such uses of electricity are a shevut rather than a melakhah, this considerably alters the implications for our question.
  - d. **Considerations of melakhah:** what actions related to the operation of an automobile might be actual melakhah rather than shevut.
  - e. **Working around the Prohibition of melakhah:** Sometimes an activity which is usually a melakhah is necessary on Shabbat. How the halakhic system has developed to enable essential activities on Shabbat.

4. **Shevut:** An analysis of the positive commandment of the Torah to rest on Shabbat, known as “shevut.” Our argument that this halakhic category is simultaneously widely misunderstood and central to our conception of the question before us. Shevut is both a positive commandment of the Torah (*mitzvah ‘aseh*) and a Rabbinic prohibition (*issur de-rabbanan*). A shevut-level prohibition on Shabbat represents the nullification of the Torah’s mandate for Shabbat rest. It also presents a Rabbinic-level Shabbat violation. We also discuss some of the key activities that are referenced in the context of driving on Shabbat.
  - a. **Introduction:** Here we present the theoretical underpinnings and development of the shevut category and explain why we claim that it is the proper category for comprehending the prohibition of riding/driving on Shabbat. This includes a discussion of how the Mishnah and the Talmud define shevut in various ways and how the concept evolved during the period that these two sources were composed.
  - b. **Shevut in the Rishonim:** How the great Rabbis of the Middle Ages developed a new, hybrid understanding of shevut, understanding it as both a Torah-level commandment and as a Rabbinic prohibition.
  - c. **Uvdan De-ḥol (lit: a weekday act):** This Shabbat prohibition requires us to withdraw from activities associated with our work during the week. It has been frequently mentioned as a reason for forbidding driving on Shabbat.
  - d. **Amirah la-Nokhri (lit: instructing a non-Jew):** A Jew may not tell a non-Jew to do forbidden acts on Shabbat for them on Shabbat. This is relevant when asking someone to drive you somewhere on Shabbat. We will also discuss this in a broader context in section 6.
  - e. **Travel:** How do we understand the prohibition on travelling on Shabbat? What are its origins, development, and relevance in our contemporary context? This will include: First, a discussion of a range of modern and contemporary motive technologies such as steam, internal combustion, and electricity. Second, we will discuss the 1950 Responsum on Shabbat briefly here. Third, we evaluate the use of public and quasi-public transportation on Shabbat. Finally, we consider human-powered devices such as bicycles, velomobiles, and the like.
  - f. **Circumstances When it is Possible to be Lenient about shevut:** Our overview of circumstances when the shevut prohibitions on driving can be set aside.
  - g. **Considerations of shevut.** Applying what we have seen up to now to the question of driving an electric car on Shabbat.
5. **Oneg Shabbat:** Our understanding of the halakhic principles midrashically drawn from Isaiah 58:13 (וְקָרָאתָ לַשַּׁבָּת עֵנֶה—If you call the sabbath a delight...) We discuss the obligation to find pleasure on the Sabbath day and its implications for our question.
6. **Asking or Encouraging Others to do a forbidden activity on Shabbat:** Here we will discuss the circumstances under which one can ask a non-Jew to perform melakhah on one’s behalf. We will also discuss the prohibition on leading another Jew into transgression and its relevance for our discussion.
7. **I Need to Travel on Shabbat – What Should I Do?** A hierarchy of prohibitions. If one chooses to violate the shevut-level ban on travel on Shabbat, what is the least bad way of doing it?
8. **Conclusion - Pisqei Din**

We follow this with a more technically oriented appendix. This is directed towards a more learned audience, and we hope that this section of the paper will give access to the “source code” for our reasoning and decision making. Halakhic rulings should be justified on the basis of their grounding in the legal sources of the Rabbinic tradition, the internal coherence of their argumentation, and strength of their reasoning. The inclusion of this section is designed to allow others to more easily critique, evaluate, adopt or reject, and teach our work. In the appendix, we discuss the the Biblical background of Shabbat prohibitions, the competing narratives of shevut and melakhah in the written text of the Torah, and show how they affected legal narratives and reasoning in later Rabbinic literature as they inform our definition of prohibited labour in this paper.

## Body

### 1. *Approaching the Question*

Our question is one of a range of halachic questions that contemporary Jews are asking as the result of the fast pace of technological change that characterises our society. Though the electric car is actually a product of the 19th century, we regard it as a new technology in the 21st century because of recent growing adoption and development of the technology.<sup>4</sup> It is among a range of changes that we experience as a result of the search for sustainable technological solutions as we move away from the unsustainable ones developed during the industrial revolution of the 19th and 20th centuries. It is one of many disruptive technologies that have within them the potential to undermine traditional halakhic structures and at the same time offer the possibility of enabling new ways to engage with tradition. They force us to re-examine key principles of the mitzvot and halakhah and to reimagine how these principles are to be applied to our new and changing reality.

Change is a basic fact of life. Adapting to change is an important feature of halakhah. This has certainly been the case among Conservative Rabbis, laity, and institutions who have seen the twinning of tradition and change as a defining feature. Yet, we live in a world in which we often feel that the pace and the scope of change have been unparalleled. Many feel a loss of control and an associated loss of stability in the face of such rapid technological changes in the ways that we work, pay our bills, communicate with each other, travel and live everyday life. The challenges posed by developing technologies are both a continuation of processes that halakhah has faced in the past and reflect a new, unprecedented reality. Addressing these challenges requires both an analysis of previous halachic rulings, and a reimagining of Shabbat for a markedly changed world.

To sharpen the challenge: one can now easily imagine a coming world in which people no longer do any physical ‘work’ in the traditional sense— where lights turn themselves on, home heating adjusts itself automatically to the outside world, where food cooks itself and cars drive themselves without any close human intervention. What is the meaning of a day of rest in a world in which an increasing number of people no longer perform physical work? With uncanny foresight, The Mishneh Torah imagined the existence of an idle class of Jews to whom this difficulty already applied.<sup>5</sup> Maimonides located the

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<sup>4</sup> Massimo Guarnieri. "Looking back to electric cars". *IEEE HISTory of Electro - Technology CONFerence: The Origins of Electrotechnologies*, 2012. 1–6

<sup>5</sup> Hilkhot Shabbat 24:13. To be fair, the Maimonides probably thought this class already existed in the time of the Talmud.

origins of the prohibitions on excessive travel, moving certain items on Shabbat, and speaking about certain subjects in the need for a recognizable day of rest for all:

ועוד מפני שמקצת העם אינם בעלי אִמְנִיּוֹת אֶלָּא בְּטֵלִין כָּל יְמֵיהֶן כְּגוֹן הַטְּיָלִין וְיוֹשְׁבֵי קַרְנוֹת שְׁכָל יְמֵיהֶן הוּן שׁוֹבְתִים מִמְּלָאכָה וְאִם יִהְיֶה מִתָּר לְהֵלֵךְ וּלְדַבֵּר וּלְטַלְטֵל כְּשֶׁאֵר הַיָּמִים נִמְצָא שְׁלֹא שָׁבַת שְׁבִיתָה הַנִּכְרָת. לְפִיכָּה שְׁבִיתָה מְדַבְּרִים אֵלּוּ הִיא שְׁבִיתָה הַשְּׁנִיָּה בְּכָל אָדָם.

And furthermore, because there is a minority of the folk who have no craft, but stand idle all their days, such as gadabouts and corner-loiterers—who rest (shovetim) from labour (melakhah) all their days—were we to permit them to travel, speak, and move their property about as they do on other days, the result would be that this minority would not discernibly rest. Therefore resting (shevitah) from these things [i.e., travelling or walking with exertion, speaking of non-shabbat appropriate things, and arranging their movable properties without limit] is a rest that falls equally on every person.

In other words, Maimonides saw the solution to the problem of a discernible day of rest for those Jews who do no melakhah for all seven days of the week in the shevut prohibitions. We have adopted this method of reimagining Shabbat as well.

Further complicating the matter is the long-standing problem of Jews—even committed, empowered Jews—abandoning the observance of Shabbat. For the last 500 years or so, we have experienced the simultaneous crises of diminishing Rabbinic authority and increasing Jewish alienation from Torah and Mitzvot. Despite claims to the contrary from some circles, the liberal and progressive movements of Judaism did not move Jews away from Shabbat (or any other traditional practice)—most Jews had already left Shabbat behind. The Reformers, Neologs, Positive-Historicists, and Conservators of the 19th century were trying to draw Jews back to Torah-inspired practices and observances by reimagining the Mitzvot for their age—an age in which the majority of Jews no longer saw Torah as having any relevance or hold on their behaviour or life choices.

We see their response to the crises as having been the correct one. Modernity—despite all its attendant ills—redefines humanity as endowed with freedom and autonomy, defining its own set of diverse identities and world-views. This is a great gift from our Creator. The revelation of modern thought has filled humanity’s hands with dignity, liberty, and abundance. This fundamental progress, though blemished by the violent disruption and resistance it engendered, retains its validity nonetheless. However, It is incumbent upon us as lovers of Torah and as servants of Heaven to refine traditional Rabbinic understandings of the mitzvot with an eye towards the concerns of contemporary Jews. In this paper, our attempt is to do precisely that for Shabbat: to clarify our foundational narratives of Shabbat observance, and better articulate the requirements of Shabbat halakhah. It is our obligation to do this demanding work so that Shabbat does not become a trifling thing for us, so that it will instead remain our life and the length of our days.

## 2. *The Meaning of Shabbat*

Shabbat is a foundation of our faith. The idea appears in the first chapter of Genesis as the pinnacle of God's creation of the world. It is one of the Ten Commandments, given to the children of Israel as part of the revelation on Mount Sinai. It is repeated in fourteen separate passages in the Torah and in every one of its books. It occupies an entire tractate in the Mishnah and the Talmud. It is hard to imagine a life of mitzvot that doesn't have the seventh day as a day of rest at its heart.

Shabbat is first and foremost a day of rest. The earliest Rabbis elaborated on the idea of Shabbat, drawing from subtle references in the Torah and developing a very great number of halakhot. They described these as ‘mountains suspended by hairs,’<sup>6</sup> deriving them from all-but-hidden clues they found in the Torah. As we shall see, our Sages defined Shabbat-proscribed labours with pronounced detail. From the details they created narratives of work and rest that allowed them to develop and refine the day and make it a time for the elevation of the human spirit. This subtle point—Shabbat as a time to raise up the human heart—long remained an implicit understanding of Shabbat.

However, since the 19th century a growing consensus among modern Rabbis has pointed to Shabbat as a day that we refrain from attempting to master our environment.<sup>7</sup> The acts that we take our rest from are the very acts that grant us control of our world during the week. Refraining from such work allows us to relinquish control and mastery for the space of a day and see our humble place in it. The ironic result is uplifting in the end, convincing us of both our temporary nature as humans, on the one hand, and our eternity as beings connected with the oneness of all things, on the other. As Abraham Joshua Heschel puts it:

The meaning of the Sabbath is to celebrate time rather than space. Six days a week we live under the tyranny of things of space; on the Sabbath we try to become attuned to holiness in time. It is a day on which we are called upon to share in what is eternal in time, to turn from the results of creation to the mystery of creation; from the world of creation to the creation of the world.<sup>8</sup>

It goes without saying that novel technology and its increasing dominance over our lives makes Shabbat’s demand to spend time in retreat from travail of monumental importance to all of us living in the contemporary world.

Despite this consensus, and its religious importance to contemporary society, this idea plays no legal role in this paper. This conception of Shabbat prohibition—that we refrain from interfering with the material world to focus on things of more disembodied value—is a contemporary homiletic creation and does not occur in any classical Rabbinic source. We agree with Rabbi Daniel Nevins that this non-formalistic criterion cannot—in the last analysis—be used in our halakhic decision making.<sup>9</sup>

It is not that narrative plays no role in our analysis. On the contrary! We make extensive use of narratives as drivers of halakhah in this paper. However, some narratives are legal while others are homiletic. Each has their role. The homiletic element is deeply important in imparting *perceived* power to Shabbat in each generation. Note that Genesis 2 is never quoted in any legal context in the Talmud. However, custom has made it the central Biblical text of Shabbat, a year-after-year recitation every night of Shabbat before kiddush. Shabbat is eternal, but our homiletic creativity maintains the power it holds for our people in each age. In our day, when we are so distant from nature, and technology is so endemic to our lives, no Shabbat discourse is complete without this profound extra-halakhic allegory: The day of rest does prevent people from exercising “mastery” over their environment at least one day out of seven. Yet, that is its *effect* in a contemporary technological context (rather than its appositional causation, or original root in the ancient Jewish world). Humanity’s arrogation to

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<sup>6</sup> M.Hagigah 1:8

<sup>7</sup> See for instance, Samsom Raphael Hirsch, *Horeb*, London, Soncino Press, 1962, 64. Chaim Biberfeld, *Menuhah Nekhonah*, (Jerusalem, 1978) 16, Mordecai Kalpan, *Judaism as a Civilization* Philadelphia, Jewish Publication Society, 1994, 444. Abraham Joshua Heschel, *The Sabbath*, Farrar Straus Giroux; Illustrated edition 2005, 16. Joel Roth, “melakhah U’shevut: A Theoretical Framework,” *Conservative Judaism* (Spring 1982) See also Daniel Nevins, *The Use of Electrical and Electronic Devices on Shabbat*, CJLS 2012, 37 and n. 166.

<sup>8</sup> Heschel, *The Sabbath*, 37.

<sup>9</sup> Nevins, *The Use of Electrical and Electronic Devices on Shabbat*, CJLS 2012, 38-39.

itself of undue mastery over nature was not a pressing concern in the days before industrial society, at least not in the way it is today (literally and not just metaphorically), at the dawn of the Anthropocene era. We must not make the mistake of issuing legal rulings on the basis of homiletic meditations and speculations, especially ones that have only gained significance within the last few hundred years.

We will turn now to those halakhot hanging like mountains from hairs and attempt to gain an understanding of the meaning of the details of the Sabbath of our Sages. While there are different ways to conceptualise the rabbinic treatment of Shabbat, it is easiest to understand the regulations as falling into three main categories:

1. Melakhah: The prohibition against doing any work - לֹא-תַעֲשֶׂה כָּל-מְלָאכָה (Ex 20:10, Deut 5:14)
2. Shevut: The obligation to rest - וּבַיּוֹם הַשְּׁבִיעִי תִשְׁכָּח (Ex. 23:12, 34:21)
3. Oneg Shabbat: The obligation to find pleasure on the Sabbath day - וְקִרְאתָ לְשִׁבְתְּ לְעֵנָּה (Isa. 58:13)

We shall take up each of these subjects in turn, refining, clarifying, and better articulating our understanding of them and what they demand of us.

### 3. *Melakhah*

#### a. *Introduction*

We usually characterise Shabbat by pointing to the prohibition of doing work (Heb: מְלָאכָה—melakhah, literally “craft” or “task”).<sup>10</sup> Mishnah Shabbat 7:2 enumerates 39 different forms of work that it considers “generative” categories of prohibition (avot melakhah). By “generative” (av) the Mishnah seems to mean that different labours that one does for the same general purpose are equally forbidden. The Mishnah likely means that many more than 39 labours are prohibited by the Torah, but all forms of forbidden work have the same 39 purposes or goals and no more.<sup>11</sup> For example, digging and ploughing both have the same goal: to prepare the ground for sowing seed. Therefore both are prohibited equally, even though M.Shabbat 7:2 only mentions one.<sup>12</sup> These equally Torah-prohibited acts of work are termed by both Talmudim as “akin” to the generative categories (toldah, pl: toldot).<sup>13</sup> But note well that according to the Bavli both categories are melakhah and equally forbidden by the Torah.<sup>14</sup>

The Yerushalmi records that the sons of Rabbi Hiyya the Great spent six months on this chapter of the Mishnah and found six toldot for every av: 234 melakhot forbidden on Shabbat; it also records that Rabbi Yohannan and Reish Lakish spent three-and-a-half years and found 39 toldot for each of the 39 avot: 1,521 melakhot the Torah forbids on Shabbat!<sup>15</sup>

<sup>10</sup> The prohibition against melakhah on Shabbat appears explicitly in five Torah passages (Ex. 20:8-11, 31:12-17, 35:1-3; Lev. 23:3; Deut. 5:12-15) and is implied in a sixth (Gen. 2:1-3). The Torah does not clearly define melakhah, but the context of creation in Gen 2, along with the tabernacle construction contexts in Ex. 35 seem to imply that the Torah means to mark off physical, creative labor as prohibited.

<sup>11</sup> See T.Shabbat 10:13 and B.Shabbat 73b; see also the Ba'al Turim's creative solution to escape the unending listing of halakhot that this should theoretically require, Tur 301.

<sup>12</sup> See B. Shabbat 73b, Mishneh Torah, Hilkhot Shabbat 7:2.

<sup>13</sup> This usage of toldot is drawn and adapted from from M.Makhshirin 6:4-5. There the term is confined to the purity context of that tractate. In that context it means something like “sub-category.”

<sup>14</sup> B.Shabbat 96b:

אמאי קרי לה האי אב ואמאי קרי לה האי תולדה? - נפקא מינה: דאי עביד שתי אבות בהדי הדדי, אי נמי שתי תולדות בהדי הדדי - מיחייב תרתי, ואי עביד אב ותולדה דידיה - לא מיחייב אלא חדא

<sup>15</sup> Y.Shabbat 7:1.

These exaggerated numbers teach us one thing: *The Torah forbids many more than 39 labours*. The avot are each a category of labour into which many labours fit. As we shall see, the categories were created after the fact, primarily for heuristic reasons. They tell us little of the origin or general conceptual definition of melakhah.

An Av melakhah is also a measure for extent of liability. M. Shabbat 7:1 says: "הַעוֹשֶׂה מְלָאכֹת הַרְבֵּה מֵעֵין מְלָאכָה אַחַת, אֵינוֹ חַיֵּב אֶלָּא תְּשׂוּאת אַחַת"

“One who performs many labours belonging to the same category is obligated for only one sin-offering.” If one is unaware of a category of labour, ploughing for instance, and dug a hole and then ploughed a furrow on the same Shabbat, one is only liable for a single sin offering since both acts belong to a single category. While this may seem unimportant now, it will be helpful in determining ‘how forbidden’ a certain type of activity is when weighing different options later in our analysis.

We do not rely on the 39 category list of M. Shabbat 7:2 for our definition of melakhah. Instead we rely on a long established practical definition of melakhah. The dominant legal narrative of melakhah first appears in M. Shabbat 12:1. That passage posits that any work that establishes a new physical form or substance on Shabbat is melakhah:<sup>16</sup>

הַבּוֹנֶה, כִּמְהָ יִבְנֶה וְיִהְיֶה חַיֵּב, הַבּוֹנֶה כֹּל שֶׁהוּא, וְהַמְסַמֵּת, וְהַמְכֶה בַּפְּטִישׁ וּבַמַּעְצָד, הַקּוֹדֵחַ כֹּל שֶׁהוּא, חַיֵּב. זֶה הַפְּלִל, כֹּל הָעוֹשֶׂה מְלָאכָה וּמְלָאכָתוֹ מְתַקְנֶמֶת בְּשַׁבָּת, חַיֵּב. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אָמַר, אִף הַמְכֶה בְּקַרְנָס עַל הַסֶּדֶן בְּשַׁעַת מְלָאכָה, חַיֵּב, מִפְּנֵי שֶׁהוּא כֹמֵתֵקוֹן מְלָאכָה:

One who builds: how much must he build to be liable? He who builds any amount, and he who chisels, and he who strikes with a hammer (*makeh be-fatish*) or with an axe, and he who bores [a hole] of any size, is liable. This is the general principle: whoever does work and their work endures on Shabbat, they are liable. Rabban Shimon ben Gamaliel says: even one who strikes with a hammer on the anvil at the completion of his work is liable, because he is as one who improves his work.

This mishnah initially appears in the context of the discussion of the amount of work beyond which one may be held liable for building a structure on Shabbat. However, it is clear that the definition of melakhah is not limited to this specific context.

The mention of more than one type of melakhah (building, chiseling, striking with a hammer or an axe, and boring a hole) means by definition that the Mishnah speaks of a range of melakhah that this principle applies to. It might be argued that melakhah listed here are all subcategories of building, however that would demote the category of the final hammer blow (*makeh be-fatish*) from its status as an Av melakhah in M. Shabbat 7:2 to that of a toldah here in 12:1. If we were to go down that road, we would have to say that 7:2 and 12:1 have differing conceptions of the entire system of melakhah. It would be possible to posit this theory were we studying the Mishnah for the Mishnah’s own sake (*le-shemah*).<sup>17</sup> But in the context of our present halakhic deliberations, claiming that the Mishnah is a text without a unified halakhic weltanschauung would be disruptive to the point of unsustainability.

To maintain the halakhic unity of the Mishnah within Tractate Shabbat we are required to adopt a broader understanding of the passage: this definition of melakhah, which limits negatively Torah-forbidden labour to work that achieves an enduring form on Shabbat, applies to *all* work, and not just the work of building and

<sup>16</sup> Whether the change has to be visible or merely a palpable improvement is a subject of dispute in the Mishnah.

<sup>17</sup> Indeed this seems to have been Hanoch Albeck’s view. See his *Introduction to the Mishnah*, Jerusalem, Devir, 1959, 101-103.

construction. As Rashi puts it *ad locum*, “this refers to the individual who does [any] work.”<sup>18</sup> That is to say, any work which results in physical change and reaches its enduring form on Shabbat is considered a melakhah.<sup>19</sup> Rabbeinu Nisim clarifies Rashi’s meaning further in his commentary on *Hilkhhot Rav Alfasi ad locum*, claiming that the mishnah means to refer to *any* individual who does such work—that is work generally, without reference to a specific category.

This is not Rabban Shimon ben Gamaliel’s model, however. He sees the improvement of the tools and preparation of the field of labour (the work space) as akin to melakhah, since that allows the work to go forth more smoothly. Rav Alfasi seems to rule in his favour, whereas the Mishneh Torah and the rest of the later codes do not.<sup>20</sup> Though they rule that it is not melakhah, they would undoubtedly still claim it is prohibited—in other words, prohibited as a shevut.

There are two more criteria an act must meet to be defined as melakhah

1. Skilled labor—מלאכת מחשבת. This divides into two categories:

- a. The work must be done as craftsman would do it: מלאכת אומנות אסרה תורה (כלאחר יד or שינוי) then the worker has escaped full liability, and the act is a shevut and not a melakhah.<sup>21</sup> We will discuss this in more detail in the next section
- b. Work must be done with intent to qualify as melakhah: דָּבַר שֶׁאֵין מְתַכְנֵין מִיָּתֵר. If one does a melakhah without intent, so long as a reasonable person would say that the act one took would not inevitably result in an enduring consequence (פסיק רישא), the act is permitted. It is not even a shevut.<sup>22</sup>

The Bavli records a dispute between Rabbi Yehudah and Rabbi Shimon about whether the intent must be to perform the act for the general purpose the act is done (צְרִיכָה לְגוּפָה) or for any other (perhaps unusual) purpose to qualify as melakhah.<sup>23</sup> For example, according to Rabbi Shimon, one who digs a hole on Shabbat only because they need its dirt has violated a shevut prohibition, rather than a melakhah. For Rabbi Yehudah this is a melakhah. The later halakhic tradition generally sides with Rabbi Shimon.

2. Destruction—מקלקל

<sup>18</sup> בשבת - אעושה מלאכה קאי

<sup>19</sup> שיש מתקיימת כיוצא בו ואין מוסיף עליה—רש"י

<sup>20</sup> Rif, Shabbat 37a. The Mishneh Torah omits Rabban Shimon ben Gamaliel’s position at Shabbat 9:13 and 10:12. Once may be a coincidence. Twice is more powerful evidence than a typical argument *ex silentio*.

<sup>21</sup> See Rashi, B.Betzah 13b.

<sup>22</sup> The locus classicus is B.Beitzah 23a. See also Shabbat 24a, 29b, 46b, 133a; Pesahim 101a; Ketubot 6b; Nazir 42a; Menahot 41b. For principle of inevitably enduring consequence—פסיק רישא, see B.Shabbat 75a, 103a, 117a, 137a; Sukkah 33b; Beitzah 37a. Furthermore, if the inevitable consequences that would result from the performance of the act are unfavourable to the worker then the principle is subsumed and the work is permitted. See Tur/Shulhan Arukh 320:18. For the codes on both subjects generally see Tur/Shulhan Arukh 337:1; Mishneh Torah, Shabbat 1:5.

<sup>23</sup> B.Shabbat 73b. See also Shabbat 42a, 94b, 105b, 107b, 121b; Beitzah 8a; Hagigah 10a; Sanhedrin 85a; Zevachim 92a; Keritot 20b.

In the same passage in the Bavli we discover that Rabbi Yehuda would exempt the one who dug the hole since it was a destructive act. Destructive acts are not melakhah, they are shevut.<sup>24</sup>

In sum, this is the model of melakhah that we are most sympathetic to. We are not the only ones. This definition of melakhah—“actions which result in durable physical change”—is established CJLS precedent.<sup>25</sup> It is true that we do not have a principle of *stare decisis* in halakhah and are not bound to rule in concord with previously established legal opinion.<sup>26</sup> However, it is our attempt to establish here that the Rabbinic sources do in fact bear out Rabbi Daniel Nevin’s reading most strongly. We claim that the model most faithful to the classical sources of Rabbinic Law is this definition of melakhah:

***Any intentional physical work on Shabbat that endures in an altered material form is forbidden as melakhah, so long as one does that work in its standard way and for its common purpose.<sup>27</sup> Any forbidden work that achieves less than this is not melakhah.<sup>28</sup> It is shevut.<sup>29</sup>***

Any result of work that does not abide in an altered material form cannot, by our definition, be melakhah, and we do not construe that work as the violation of a negative prohibition of the Torah. At most, we argue later in this paper, it represents the nullification of a positive commandment of the Torah (*mitzvat ‘aseh*) and the violation of a Rabbinic prohibition (*issur de-rabbanan*).

#### **b. Those who consider using electricity as a melakhah.**

Rabbi Daniel Nevins in a responsum of the CJLS, *The Use of Electrical and Electronic Devices on Shabbat* provides an introduction to the prohibitions of electricity on Shabbat as he grapples with the question of whether using electricity is permitted on Shabbat and whether using electricity falls into one of the 39 generative categories of forbidden labour. We will not repeat his analysis here, but rather, summarise some of the key conclusions that have an impact on our discussion. Nevins speaks of those in the Jewish community, including a number of Orthodox Poskim and many Shabbat-observant people, who consider the use of electricity to be a form of melakhah on Shabbat. It is less clear exactly what form of melakhah they think it is. Nevins analyses several different suggestions

<sup>24</sup> Rashi ad locum. Note that destruction is the opposite of melakhah:

ואין כאן משום בנין בבית דקלקול הוא

<sup>25</sup> Nevins, *Electricity and Shabbat*, 54. See Mishneh Torah, Shabbat, 9:13.

<sup>26</sup> See Menachem Elon, *Jewish Law: History, Sources, Principles*. Philadelphia, JPS, 1994, Vol. II, 978-986. Though halakhah is clearly deeply dependent on case law much like Anglo-American and commonwealth common law systems, Elon points out that precedents are always contingent and may be overturned with relative ease by undermining their reasoning. We would also argue that the Bavli does represent a sort of binding *legibus* for us, and ultimately constrains halakhists just as statutes (at least theoretically) constrain judges in continental civil law systems (and in Quebec provincial law and Louisiana state law in our North American context). The meaning of the Bavli is nonetheless hotly contested and deeply ambiguous, which is why nearly every responsum regardless of denomination or school of thought must go through the work of establishing just what the relevant classical Rabbinic sources mean. In the end, halakhah seems a bit of a hybrid: precedential cases do have weight rather than just legislated law as in common law systems, but precedent is not finally binding on judges and there is a written corpus (the Bavli) which is constraining, as in civil law systems.

<sup>27</sup> This includes moving objects of even minimal value from one halakhically defined domain to another on Shabbat.

<sup>28</sup> This definition is also the most widely accepted precedent amongst all scholars of Jewish Law. For instance see Tur/Shulhan ‘Arukh 340. See also the Be’er Heitev S.V. המתקיים, who collects the rulings of the aharonim in a single place.

<sup>29</sup> See Mishneh Torah, Shabbat 9:13, for example: וְכָל שְׂאִיִן מִלְאֲכָתוֹ מִתְקַיֵּם בְּשֶׁבֶת פְּטוּר

and rejects them all. He quotes Rabbi Joel Roth, who sees the use of electricity as being forbidden because it is a form of exercising mastery over nature - which he (Roth) proposes as the fundamental prohibition of melakhah.<sup>30</sup>

Though we, like Nevins, reject Roth's formulation, we still think it is worthy of discussion because of the enormous influence his ruling has exerted on halachically observant but theologically heterodox Jews both in and outside our movement. At its most popular level, it seems that they who understand the use of electricity as a melakhah, do so because they construe the use of electricity "as if" it were a form of lighting fire on Shabbat.<sup>31</sup> Although it is clear that electricity isn't fire, and doesn't meet the strict Rabbinic criteria for fire, those who regard it as such do so because they intuitively feel that electricity has, in our society, assumed the role fire played in the past. Throughout much of history, fire was the main form of energy that powered life; providing light, heat, and driving the economy. In our world, electricity has taken over those functions. In reinterpreting halakhah for our changing world, many observant Jews choose to regard electricity as fire in recognition of its central role in contemporary human life.

That doesn't mean that one cannot use electricity on Shabbat. Indeed, fire itself has always been used on Shabbat in appropriate ways. Things could be set in motion in advance: Candles were lit before Shabbat to provide light, pots were left on the fire and in ovens to complete cooking and to keep warm, heating was lit by non-Jewish staff.<sup>32</sup> But the Torah proscribed the direct use and control of fire. It is clear that if one considers the use of electricity to be a melakhah in its own right, then driving on Shabbat (powered by any means), which demands constant real-time control of an electric vehicle through the use of electronics and regulating an electric motor, must be viewed as forbidden by the Torah at the highest level. There is no more discussion to be had if one has made an unremitting commitment to this position. Needless to say, we do not share this view.

### *c. Those who do not consider using electricity to be a melakhah*

After reviewing the sources that argue that the use of electricity is a melakhah, and rejecting them, Rabbi Nevins proceeds to look at the implications of the suggestion that the use of electricity isn't a melakhah. Nevins argues however, that even so, using electricity isn't necessarily permitted. Instead, we are forced to analyse the operation of the individual electrical appliance. If it performs an act that is melakhah, then operation of the device is melakhah. Even if using electricity isn't in itself a form of work, it can be used to do things that are forbidden. In evaluating whether a certain activity is permissible or not, one needs to look at the end result of that activity. For example, turning on an electric oven may not be a melakhah, but cooking is a melakhah and is forbidden. Therefore, it is forbidden to cook in an electric oven, just as it is forbidden to cook in any other manner. Ultimately, even if we conclude that using electricity isn't a melakhah, there are many forms of technology that remain forbidden on Shabbat as forms of work.

However, our reading of Nevins suggests it is sometimes best (depending on the function of the device) to address the proscribed use of electricity on Shabbat through the rubric of shevut rather than melakhah. He writes:

The positive commandment of shvut, to rest on Shabbat, demands a day of differentiation in which one avoids commerce, the creation of loud sounds and anything which would replicate the atmosphere of the work week. Electrical

<sup>30</sup> See section two, "The Meaning of Shabbat" above.

<sup>31</sup> Ironically, this "as-if" treatment is actually one of Maimonides' definitions of shevut. See section 4.b. below.

<sup>32</sup> see n. 43 below.

appliances like fans, lighting fixtures and magnetic key cards and fobs may be used without violating either the law or the spirit of Shabbat. However, even if some electronic communication devices are not forbidden as a form of melakhah, the tranquility of Shabbat may be compromised by such activities. Rabbinical teachings indicate that Shabbat should be dedicated to prayer, Torah study, meals and rest, not to weekday concerns. We ought to anchor our day in physical environments such as the synagogue and Shabbat dinner table that reinforce the holy nature of the day and allow the spiritual potential of the day to be realized.<sup>33</sup>

This conclusion is in line with our thinking (though we may quibble with him over the claim that creating light does not violate the spirit of Shabbat based on our reading of M. Shabbat 2:5 and M. Beitzah 4:7—see below). When an act is obviously work that falls outside of Shabbat-appropriate behaviour—but is not technically melakhah—shevut is the category that makes sure that the idea of Shabbat as a day of rest is not forgotten. Indeed, the idea that we suggested above, that observant Jews treat electricity as akin to fire on Shabbat because electricity has replaced fire as the main source of energy that propels our society, is in our view better understood under the rubric of shevut: a prohibition that ensures the sustainability of Shabbat despite a far-reaching technological change that has the potential to utterly disrupt the spirit of Shabbat as a day of rest.

Though as we have already said, we agree with Rabbi Nevin's general approach (and do trust Sabbath observant people to decide what activities are consonant with their Shabbat tranquillity, as he suggests), we would like to err on the side of refraining from the use of electricity and encourage our communities to plan and prepare their Shabbat residences so that can avoid such use as much as possible (including refraining from switching electric lights on and off). Given this, we do feel that it is important to briefly explain why we see driving an electric vehicle as a shevut (which may reveal a point of difference between Nevins' position and ours).

*We claim that closing a circuit is itself a shevut violation.*<sup>34</sup> This rests on the widely-accepted understanding that electrical energy flows around a conductor rather than through it. When one closes a circuit, one creates an electromagnetic field around a wire. The electrical energy that performs the work does not flow through the wire, but instead through the field around it.<sup>35</sup> The closing of an electrical circuit is a shevut for this reason: as we saw above,

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<sup>33</sup> p. 55

<sup>34</sup> If one has a pressing, legitimate need to use an electrical appliance that does not itself perform melakhah, one may do so in a mildly unusual way, such as triggering the switch with the back of the hand (כלאחר ידו). See Tur/SA OH 586 "דשבות דשבות במקום מצוה שרי"

<sup>35</sup> This requires a bit of a technical explanation: Contrary to popular belief, the electrons in a wire don't flow fast at all, and indeed they mostly stay close to where they started. The electrical energy uses these electrons like stepping stones across a pond, leaping from electron to electron. The energy moves very fast. Electromagnetic waves flowing along the line of electrons in the conductor transmit the energy at close to the speed of light. The size of the wire and its specific electrical properties affect the exact speed, but usually it's around 90 per cent of the speed of light – about 186,000 miles/sec. While the current flows, as mentioned, the wire is surrounded by a magnetic field. This field is the electrical energy itself. In the same vein, if a pair of conductors is connected to a generator or a battery, the two conductors will be charged oppositely. The resulting invisible electrostatic field is itself the electrical energy that takes the load. Electromagnetic fields reside in the spaces around wires, cords and other conductors. These fields contain the flow of electrical energy that powers the work done by electrical appliances and other machines. At the end of the day, electricity, radio waves, and light are all the same sort of energy—they are all forms of electromagnetic force. Light and radio waves don't travel through wires, and neither does electrical energy.

the Bavli's analysis of M.Shabbat 12:1 (103a) argues that preparing and improving the field of labour for work to be done. The example under discussion is *make qurnas 'al ha-seden*—taking a dry mallet-blow on an anvil. This is not strictly melakhah, since no work-piece comes under the mallet's force, but is still forbidden. Our claim is that creating an electromagnetic field around a conductor to allow energy to perform forbidden work is the same sort of preparation and improvement of a field of labour as the dry mallet blow—work that has no enduring outcome, but that prepares the field of labour for such work to be done. It is, in other words, a failure to rest due to its quality as a preparation to do potentially forbidden labour—both the violation of a Rabbinic prohibition and the nullification of a positive commandment.

Further, among differences between electric and internal combustion cars is this: an electric car also *produces* electricity. Whenever the brakes are applied, an electric generator is engaged to capture the lost kinetic energy and recharge the battery to extend its range. Generating electricity may be forbidden as shevut (even without the perhaps melakhah-level use of fire to produce steam to turn a turbine at an electrical plant), but at the grid level the concerns about generation are overridden by *pikuah nefesh* (saving life) because that electricity must be generated for hospitals, police stations, defence forces, etc.<sup>36</sup> But in a private car, the generation of electricity is solely for the use of that car and is prohibited as shevut.

Finally, as can be seen from both M.Shabbat 2:5<sup>37</sup> and M.Beitzah 4:7, though the creation of light without ash is not melakhah, the Mishnah clearly and consistently regards it as a shevut. Though Rabbi Nevin claims that classical sources do not treat bioluminescence as a source of forbidden light, this in fact may be the form of light that one is prohibited from creating using water in M.Beitzah 4:7:

אין מוציאין את האור לא מן העצים ולא מן האבנים ולא מן העפר ולא מן המים.

One may not create *ha-ur/ha-or* [either flame or light depending on the vocalisation] either from wood, or from stones, or from dirt, or from water.

This is a Yom Tov context, when all prohibited uses of fire are considered shevut.<sup>38</sup> Though the classical commentators all follow Maimonides ad locum in suggesting that the Mishnah refers to a water lens used to refocus sunlight, this is still an example of using light without flame to create more light (with the newly created medium of flame). Neither Talmud explains how the Mishnah imagines the process of creating light or flame from water. As we have said, electricity, radio waves, and light are all the same sort of energy. We expand on our understanding of the category of shevut and its implication for our question in the following section of this responsum.

#### 4. *Shevut*

##### a. *Introduction: Defining Shevut*

As we turn to a discussion of shevut, we must note that the terms "shevut" and "melakhah," unlike the English words "rest" and "work," are complementary rather than oppositional. They are a coupled pair and the definition of each of these two words depends upon the meaning of the other. While "melakhah" represents the negative side of the commandment to rest on Shabbat, "shevut" represents the positive side. In other words, melakhah is the sort of work one refrains from on Shabbat, while shevut encompasses the

<sup>36</sup> See Rabbi Levi Yitzchak Halperin (*Teshuvot Ma'aseh Chosheiv* 1:31) and Rabbi Yisrael Rozen (*Techumin* 16:36-50).

<sup>37</sup> ורבי יוסי פוטר בכלן חוץ מן הפתילה מפני שהוא עושה פחם

<sup>38</sup> B.Beitzah 28b

positive act of resting. A difficulty here is that the manner in which one positively ceases or rests from an act is to stop doing it. As such, shevut demands that we avoid behaviours which interfere with the act of resting on Shabbat. Because of this demand, rather than seeing shevut as a positive commandment, we often seem to jump to the facile conclusion that it is merely another (perhaps lesser) sort of Shabbat prohibition. Indeed, we shall see that the Bavli conceptualises the positive encouragement to refrain from particular acts (i.e., shevut) as a series of rabbinic prohibitions.

We are not the first to claim that the category of melakhah represents negative Shabbat restrictions and shevut the positive ones. Maimonides and Nachmanides both attempted to explain shevut as the positive commandment to rest on Shabbat, while simultaneously maintaining the more recent Babylonian amoraic understanding of shevut as a rabbinic prohibition.

***b. Shevut in the Rishonim (Maimonides and Nachmanides)***

Here is Maimonides' definition of shevut:

The Torah states (Exodus 23:12), "you shall rest." You must cease even behaviors that are not melakhah. And the things that the Sages forbade for the sake of rest (shevut) are numerous. Some of them are prohibited because they are akin to melakhah, and some of them are prohibited as a circumscription to prevent encroachment on prohibitions punishable by stoning (Mishneh Torah, Hilkhot Shabbat 21:1).

The more learned members of Maimonides' audience would have expected him to define *shevut* as nothing more than a rabbinic prohibition. Alfasi puts forth this view in his treatment of B. Beitza 36b. Alfasi presents the Bavli's claims that shevut is a rabbinic decree and then quotes a Yerushalmi sugya that clapping is only prohibited on Shabbat when it arises from anger. However, he omits the Yerushalmi's discussion of shevut, even though it precedes the clapping sugya in the same halakhah. That sugya roots shevut in the positive commandment to rest. Given the currency and authority of the *Hilkhot Rav Alfasi* in Maimonides' place and time, it's easy to understand the widespread view that shevut was nothing more than a rabbinic prohibition. However, Maimonides grounds the practice of shevut in the Torah's positive commandment to rest. This is not unusual for Maimonides, as Menachem Elon points out,<sup>39</sup> Maimonides often grounds rabbinic rules in scripture. However, in this case doing so results in a contradiction with the Bavli's claim that shevut is not a Torah-level law.<sup>40</sup> Instead, Maimonides is quite explicit that *shevut* has its starting point in scripture: "The Torah states (Exodus 23:12), "you shall rest (*tishbot*)."

This brings us to a second point: Maimonides puts forth a hybrid system in which shevut begins in the Torah, but ends up as a prohibition of the Sages. This is a new, foundational redrafting of the theory underpinning shevut. However, Maimonides does not make this new idea of whole cloth. It is a harmonisation prompted by the multiple, differing rabbinic paradigms regarding the nature of shevut that he inherited.

Third, Maimonides makes it clear that there is a deep connection between melakhah and shevut. However, he maintains a somewhat ambiguous stance, not clarifying the exact relationship between the two. As Vidal de Tolosa (1283-1360) the author of the *Maggid Mishnah* explained ad locum:

<sup>39</sup> Vol. II, Part III, 980-997, Hebrew.

<sup>40</sup> B. Beitza 36b is the most explicit on this point. Nonetheless, many passages in the Bavli tally with this understanding. These include—but are not limited to—B. Shabbat 8b, 97a, 114b, 150a; 'Eruvin 30b, 32b, 34b, 98a, 103a, 105a; Beitza 33b.

Our master's intention is [to say] that the Torah prohibited the explicitly forbidden tasks (*melakhot*) in detail, in accordance with the general method in which they have been explicated along with their measures. However, a person could still toil at things that are not *melakhot* all day long. Therefore the Torah said, "rest." This is also as Nahmanides has written in his commentary to the Torah. So the Sages advanced and forbade many things. Or, perhaps our master's intent is that the rabbinic requirements to rest (*shevutin*) have support from the Torah: "You shall rest." This is the theory of the passages in the *Mekhilta*.

De Tolosa's multiple explanations point to the idiosyncrasy of this passage in the Mishneh Torah. The strangeness of this passage is the result of *shevut*'s origins as a biblical commandment (as we shall see in Nachmanides' commentary on the Torah), and its conversion to a rabbinic prohibition in the Bavli.

Nachmanides's approach to the problem is clarifying and makes the dynamics of *shevut* come to life before our eyes. He writes:

...It appears to me that the meaning of the midrash [interpreting the phrase "*Shabbaton*"] is that we are commanded on Yom Tov to rest from those activities that technically do not qualify as *melakhah*. We should not be disturbed all day to measure our grain, to weigh our fruit and possessions, to fill our vessels with wine, to move our wares, and even building stones, from house to house and place to place, and if located in a walled city, load up our donkeys, and even wine, grapes, figs and all packages could indeed be delivered on a festival; and the marketplace would be filled with ongoing commerce, and the shops would be open and money changers tables strewn with coins, and the workers would arise for their duties and establish their daily wages, like the rest of the week, and so on. These and similar activities, whether on Yom Tov or even Shabbat itself, all these activities do not technically constitute *melakhah*. Therefore, the Torah commands us "*Shabbaton*" — that these should be days of rest and cessation of work, and not days of labor and toil. And this is a good and beautiful interpretation.<sup>41</sup>

Nachmanides puts forth the theory that work and rest are—by definition—performative categories: The form that each category takes in practice defines the nature and character of human toil or leisure, rather than any prior fixed nature or character that toil or leisure may have possessed determining the form of their practice. What exhausts us, or refreshes us, is largely a function of whether we conceive of it as work or as rest. One could engage in hard physical activity for a long time, and feel refreshed by it, if one thinks of it as rest, and yet be exhausted by several hours of doing little more than talking, if one conceives of it as work.

This is to some degree subjective and temperamental, but he seems to argue that it is the shared communal perception of acts of work or rest that imbue them with their toilsome or leisure character. In his imagined religious context, the result of the performative quality of work and rest is such that the ambience of Shabbat is the result of human action and behaviour, and only in that action and behaviour is Shabbat recognizable and distinct from other days of the week. As the halakhic conception of work and rest (i.e., *melakhah* and *shevut*) change, inevitably, the quality of that ambience may change. By being conscious of the changes in conception of these acts this midrashic interpretation of "*shabbaton*" arms us with sensitivity to perceive which acts are less than *melakhah* but still violate the aesthetics of the day.

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<sup>41</sup> Commentary on the Torah, Lev. 23:24

### c. *Uvdan De-ḥol (weekaday acts)*

For instance, the term 'uvdan de-ḥol'—'weekday activities' – resides among the Bavli's shevut prohibitions, although it is ill-defined and seems to signify a plethora of different things. The Mishnah in tractate Shabbat states:

רבי אליעזר אומר: תולין את המשמרת ביום טוב, ונותנין לתלויה בשבת. וחקמים אומרים: אין תולין את המשמרת ביום טוב, ואין נותנין לתלויה בשבת, אכל נותנין לתלויה ביום טוב.

Rabbi Eliezer says: One may install a strainer on a festival ... but the Sages say: One may not install a strainer on a Festival, and one may not place wine for filtering through a previously installed strainer on Shabbat (M.Shabbat 20:1)

In explaining the prohibition of installing/using the strainer on Shabbat, Abaye says:

מדרבנן היא, שלא יעשה כדרך שהוא עושה בחול.

It is a rabbinic prohibition, so that one will not act on Shabbat in the manner that he acts during the week. (B.Shabbat 138a)

This reasoning, that we have to distance ourselves from the things we do during the week can be found, as we saw above, in Nachmanides' understanding of shevut. He writes that "We should not be disturbed all day to measure our grain...and the shops would be open and money changers tables strewn with coins...*like the rest of the week.*" Maimonides is more specific in his understanding, restricting this category to activities that lead to prohibited labour, though at first glance he seems just as expansive. After listing various activities that are forbidden because of shevut, he adds:

לש דברים שהן אסורין בשבת אף על פי שאינם דומין למלאכה ואינם מביאין לידי מלאכה. ומפני מה נאסרו משום שניאמר (ישעיה נח יג) "אם תשיב משבת רגלך עשות חפציה ביום קדשי" ונאמר "וכבדתו מעשות דרכיה ממצוא חפצה ודבר דבר". לפיכך אסור לאדם להלך בחפציו בשבת ואפילו לדבר בהן כגון שידבר עם שתפו מה ימכר למחר או מה יקנה או היאך יבנה בית זה ויבאי זה סחורה ללך למקום פלוני. כל זה וכיוצא בו אסור שניאמר ודבר דבר דבור אסור הרהור גמור:

Some acts are forbidden on the Sabbath even though they neither resemble nor lead to prohibited work. Why then were they forbidden? Because it is written: "If you refrain from following your business on the Sabbath, on my holy day... If you honour it, not following your wonted ways, not pursuing your business, nor speaking of it" (Isaiah 58:13). Hence, one is forbidden to go anywhere on the Sabbath in connection with his business, or even to talk about it. Thus, one must not discuss with his partner what to sell on the next day, or what to buy, or how to build a certain house, or what merchandise to take to such-and-such a place. All this, and the like, is forbidden, for it is written "nor speaking of it." That is to say, speaking of business on the Sabbath is forbidden; thinking of it, however, is permitted.<sup>42</sup>

He goes on to list many activities that are forbidden because they aren't in the spirit of Shabbat. But in a subsequent responsum<sup>43</sup>, he further clarifies the matter.

<sup>42</sup> Mishnah Torah 24:1

<sup>43</sup> Teshuvot Ha-Rambam 306

ולא אמרינן בכי הני שלא יעשה כדרך שהוא עושה בחול, אם כן לא יאכל כדרך שהוא אוכל בחול, ולא יסב כדרך שהוא מיסב בחול. זה דבר ברור הוא למבין, שאין אתה מוצא לעולם דברים שאסרו חכמים משום שלא יעשה כדרך שהוא עושה בחול, אלא דברים שאפשר שירגילו למלאכה.

And we are not saying in this that he should not do [any kind of activity] that he does during the week, meaning he should not eat since he also eats in the week, nor should he dine in the way he dines in the week. It is clear that you never find things that the sages have forbidden just because he does them during the week. Rather, it refers to things that habituate us to doing melakhah...

However, the dividing line between an ordinary activity that we happen to do on Shabbat and 'a weekday activity' which is not in the spirit of Shabbat is ambiguous, leading to differences between authorities in defining this prohibition. Maimonides' standard here is helpful, allowing us once again to see the dynamic at play between melakhah and shevut. Though shevut is a category in and of itself, one of our major concerns should be a sensitivity to the potential for habituation to doing actual prohibited labour. The mere act of getting into a car can create a mental situation in which a person is habituated to doing melakhah because of their weekday (rather than Shabbat-focused) frame of mind. In other words, we refrain from certain acts to change our mentality from its normal workaday routine in order to create an ongoing awareness within our minds that creative, physical labour is prohibited on this day. Refusing to mount an animal, enter a car, or employ any conveyance for artificial transportation accomplishes this goal admirably.

#### *d. Amirah la-Nokhri (lit: instructing a non-Jew)*

Another specific kind of shevut prohibition relevant to travel on Shabbat (for instance, when booking a cab or requesting a ride-share to synagogue) is amirah la-nokhri (instructing a non-Jew). Not only is it forbidden to perform melakhah on Shabbat – it is also forbidden to ask someone else, even a non-Jew, to do it for you.<sup>44</sup> Maimonides rules:<sup>45</sup>

אסור לומר לנכרי לעשות לנו מלאכה בשבת אע"פ שאינו מצווה על השבת ואע"פ שאמר לו מקודם השבת ואע"פ שאינו צריך לאותה מלאכה אלא לאחר השבת.

It is forbidden to instruct a Non-Jew to do work on Shabbat, even though they are not obligated to observe the Shabbat, even if we give them the instruction before Shabbat commences, and even if they will only benefit from that labour after Shabbat is over.

This is a Rabbinic prohibition, and its intention is to prevent a person from vicariously carrying out their normal work on Shabbat. Amirah la-nokhri applies in circumstances where one has specifically asked for the work to be carried out on Shabbat. But if one did not specify when the work is to be carried out, it is permitted to hand over the work even on the eve of Shabbat. This is the case even if the craftsman chose to carry out the work on Shabbat,

<sup>44</sup> One of the classical sources of the prohibition on asking others to perform melakhah on one's behalf is B. Shabbat 150a. The earliest Rabbinic source of this prohibition seems to be M. Shabbat 16:8. There is also a very extended and lively conversation in the rabbinic sources on this topic and its extent. The reader is referred to the discussions in the Tosefta, Yerushalmi, and Bavli ad locum.

<sup>45</sup> Hilchot Shabbat 6:1

for it was his own choice to work on Shabbat and a non-Jew is under no obligation to observe the Sabbath. The Shulchan Aruch famously states:<sup>46</sup>

מותר ליתן בגדיו לכובס נכרי ועורות לעבדן סמוך לחשיכה אם קצץ לו דמים או שעושה אותם בטובת הנאה והוא שלא יאמר לו לעשות בשבת ... כל שקצץ אע"פ שיעשה העכו"ם מלאכה בשבת מותר לישראל ללבוש הכלי בשבת עצמה דכל שקצץ אדעתא דנפשיה קא עביד

It is permitted to give his clothes to the laundry before Shabbat, or skins to a non-Jewish tanner if he set a fixed fee in advance and he did not specifically ask that the work be done on Shabbat...It is even permitted to wear the clothes on Shabbat itself, for anyone who works for a fixed fee chooses himself when to do the work.

Moses Isserles demures, stating that one should not wear the clothes on that same Shabbat.

Having considered some of the main aspects of the prohibition of shevut, it is time to approach one of the central elements of our question: Is travel permitted on Shabbat? There are very few actual practical regulations of Shabbat that are enumerated in the Torah. Travel is one of the exceptions. The obligation to ‘stay local’ is specifically mentioned in the Torah. “Let everyone remain where he is: let no one leave his place on the seventh day.” (Ex. 16:29)<sup>47</sup>

Some sectarian interpretations of the Torah, notably the Sadducees, the Karaites and the Ethiopian Jews, have taken this prohibition literally. They understood Shabbat as being a time when a person would be confined to their home or to their immediate local area. Ethiopian Jews did not leave their villages on the Seventh day, and frequently spent the entire day in the synagogue compound. Samaritans don't cross rivers or bodies of water as part of the obligation to stay local.

From our Sages earliest days, they understood this prohibition differently. They defined a person’s ‘local place’ as being the town or village in which they are residing, thus enabling free movement within the local environment. They understood that every person has a ‘private space’ of four square-cubits in which they can move regardless of the circumstances, included the entirety of the city's boundaries within this metaphorical limit, and they gave everyone a distance of 2000 cubits beyond the the last of the city's residences in which they could roam. To our minds, this is the mind of the Mishnah trying to mediate the tension between the obligation to stay local, a Shabbat prohibition, and the value of socialising with other people as a key component of oneg Shabbat. This tension acquires and maintains residence in the development of the laws pertaining to travel on Shabbat.

There is a long history to the debate on whether it is permitted to travel on Shabbat. The Amoraim deliberated why it must be prohibited to ride on an animal on Shabbat, as there is no obvious Melakhah involved in sitting on an animal<sup>48</sup>. The Mishnah listed riding an animal on Shabbat as a shevut. The Bavli subsequently gives as reason: ‘lest one cut off a branch to use as a switch to encourage the animal to go forward’.<sup>49</sup> This implies that the Babylonian amoraim (at least) didn’t consider travel to be prohibited by the Torah, and

<sup>46</sup> OH 252:2,4

<sup>47</sup> However, see Deuteronomy 16:7 for a countervailing example.

<sup>48</sup> See Mishna Beitza 5:2.

<sup>49</sup> BT Beitza 36b

considered it a secondary (perhaps Rabbinic) prohibition to prevent accidentally transgressing Shabbat.

The authors of the Tosefot<sup>50</sup> cite Rashbam (Samuel ben Meir; Troyes, c. 1085 – c. 1158) as permitting entering a carriage driven by a non-Jew on Shabbat for a journey of permitted distance since the travel itself is permitted, and the passenger isn't directly responsible for driving the animals. Although this opinion was ultimately rejected by subsequent French-German and Spanish authorities, it was forbidden for other unrelated reasons not germane to our discussion. The idea that travel within settled areas, in and of itself, is permitted on Shabbat was generally accepted. In more modern times, changes in technology meant that the question of travel was debated in new contexts: We'll consider three examples:

### **Travel in a steam-powered vehicle - the Hatam Sofer:**

One of the earliest discussions of motorised travel was whether one could travel in a carriage powered by a steam engine on Shabbat. The Hatam Sofer, one of the early proponents of ideological Orthodoxy, famously prohibited travel in a steam-driven vehicle because of shevut. He writes<sup>51</sup>:

According to this, [the Rabbis permitted travel] only a boat, where he sits in a large room and he is not involved in the deed [i.e. the work] himself, but he sits and is occupied with the pleasure of the Sabbath as at home. But one who travels in the dumpf (steam) wagon, he is not resting and his body is not resting, his body goes back and forth and it impossible for him to be engaged in Sabbath things the way he is at home, and he goes to the edge of the boundary for his business on Shabbat, to be there ready for the weekday ... it is obvious that this is much worse than one who just goes near the end of the boundary. It is completely forbidden by the Torah according to the Nachmanides quoted above. [this refers to a Nachmanides' commentary on Lev. 23:24. See our discussion in the section of shevut for an analysis of this commentary]. And it has been explained in our tradition — *you call the Sabbath "delight"* and this seems to me to be obvious and clear.

To summarize: The Hatam Sofer considers travel in the steam wagon to be a shevut prohibition, because of the stress and discomfort involved in this activity.

### **Use of Public Transport on Shabbat - Ben-Zion Uziel.**

More recently, Ben-Zion Uziel, a former Chief Rabbi of Israel, discussed using public transport on Shabbat, if it was powered by mechanical means<sup>52</sup>. He famously permits this, arguing that there is no melakhah involved in travel, and that there isn't even a rabbinic prohibition, as no animals are involved in the powering of the vehicle. Regarding the matter of shevut that was raised by the Hatam Sofer, he notes that in modern times, we travel in comfortable carriages and on smooth roads (or tracks) and this isn't tedious. Many traditional communities in central Europe allowed travel on trams and trains on Shabbat, as long as one stayed inside the shabbat area and no payment was involved. To this day, you don't pay when getting on public transport in many central European countries. Travel is enabled by possession of a daily, weekly or monthly pass which is randomly checked, but would have been purchased before Shabbat. To Summarise: Rabbi Uziel concludes that travel on Shabbat

<sup>50</sup> BT Eruvin 43a הלכה כרבן גמליאל בספינה

<sup>51</sup> Responsa Hatam Sofer, Collected Responsa 97:21

<sup>52</sup> Piskei Uziel, 13

isn't forbidden and isn't shevut. We only need to consider whether there are secondary reasons to prohibit it (Techum shabbat, payment etc.).

The disagreement between Hatam Sofer and R. Uziel helps us to understand the question of what exactly is the shevut prohibition connected to travel. If travel is uncomfortable and stressful, creating a mundane, daily-grind mentality, as the Hatam Sofer describes, it is forbidden; if it is carefree and pleasurable, as R. Uziel suggests, then it is permitted. There is no doubt that our modes of transport today are much more comfortable than those of the past. But still, even in our day, public transport frequently means standing on a crowded rush-hour train or sitting frustrated in a traffic jam, or the stress of just trying to reach somewhere on time when you are already late. And travelling, for someone who has a daily commute, is perhaps the epitome of *uvdan de-ḥol*-a weekday activity. It is exactly on these issues that the decision of whether to permit travel in our modern context lies.

### **Riding a bicycle on Shabbat**

The question of riding a bicycle on Shabbat is also relevant to our debate. A bicycle is another example of a mode of transport where there isn't a clear and direct Shabbat prohibition involved. Some *poskim*<sup>53</sup> have forbidden riding on bicycles because riding a bicycle is a weekday activity – *uvdan de-ḥol* – one of the categories of shevut. We introduced the concept of *uvdan de-ḥol* above. In a discussion related to the question of travel on Shabbat, the *Bavli*<sup>54</sup> quotes a *Braita* which states:

A blind man may not go out with his staff, nor a shepherd with his wallet, nor may a man or a woman go out in a chair.

Rashi explains that these activities were forbidden because they are 'weekday activities' – *uvdan de-ḥol*. Since any activity which belongs to the everyday work week, and is not necessary or special for Shabbat, is proscribed under this regulation, cycling, as a form of transport, may be prohibited under the category of *uvdan de-ḥol*. The subsequent discussion in the Talmud quoted above concentrates on the Chair – which was a Roman sedan chair carried by two or more people – an early form of transport. The Talmud states that although going out in a Chair is usually considered *uvdan de-ḥol* – if one needs to go out for the benefit of the public, it is permitted. Based on this, the *Shulchan Aruch* rules<sup>55</sup>:

One may not go out in a chair on Yom Tov, man or woman, but if needed by the community it is permitted.

Note that the *Shulchan Aruch* mentions only Yom Tov, and did not include Shabbat in the permission to go out with a chair. This was probably because on Shabbat, in addition to the question of travelling, there is also the prohibition of transporting an object more than 4 cubits in a public domain – which would have been relevant to the chair. The *Arba'ah Turim* included this dispensation in Shabbat, and perhaps understood that the sedan chair would be transported via roofs, alleyways, and courtyards, secondary paths that would avoid the public domain.<sup>56</sup> Needless to say, if one was inside a contemporary-style Eruv, there would be no concern about transportation of objects in our eyes, nor in the eyes of the vast majority of the Halakhically observant Jewish world.

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<sup>53</sup> See, for example Yechiel Yaakov Weinberg, *Tzitz Eliezer* 1:21:27

<sup>54</sup> *Beitza* 25b

<sup>55</sup> *Shulchan Aruch*, OH 522:2

<sup>56</sup> This seems to have been considered permitted under any circumstances (even for mere volitional purposes) in the Spain of Yaakov Ben Asher's lifetime. See the long passage in *Alfasi's Halakhot to M. Shabbat* 19:1, and the enlightening and surprising discussion in *Rabeinu Yona ad locum*. By Karo's time such a practice would not have been deemed acceptable. Ironically, this is perhaps because of the efforts of Ben Asher's father Rosh and his great halakhic alliance with the catalonian iconoclastic posek and polymath, Rashba.

In addition to the concern for ‘weekday activity’, cycling on Shabbat has also been prohibited because of the fear that if there was a breakdown, one might be encouraged to mend them on Shabbat, i.e. by fixing a flat tire or by readjusting a loose chain. In spite of these concerns, Rabbi Chaim of Baghdad, the Ben Ish Chai, permitted riding a bicycle on Shabbat if it didn’t involve going out of the Shabbat techum<sup>57</sup>. He permitted cycling for any purpose inside an Eruv, and for the sake of a Mitzvah outside of the Eruv. He rejected the idea that cycling is *uvdan de-ḥol* arguing that riding a bicycle isn’t like carrying a chair, which involved great effort, but is more like walking. Furthermore, such a prohibition wasn’t mentioned by earlier Rabbis and ‘it is not for us to add prohibitions on our own’. For the same reason, he rejects the idea that bicycles are prone to breakdown. This is an extra, unnecessary safeguard that has no basis in the sources.

To summarise the opinion of the Ben Ish Hai, travel isn’t inherently either a *melakhah* or a *shevut* prohibition. He also takes a rather minimalist view of *uvdan de-ḥol* and other fences around Shabbat. While we need to observe those that were mentioned by the Talmud and the great rabbis, it is not for us to add extra prohibitions or to construct extra barriers.

### Considerations of Shevut

To apply what we have seen up to now to our question, driving an electric car will involve a *shevut* in most circumstances, first and foremost because controlling the electricity is a *shevut*. In addition, according to many Poskim, even being a passenger in an electric car is prohibited because travel is a *shevut*. It is therefore forbidden in normal circumstances. There are circumstances when it might be considered proper to ignore the *shevut* prohibition because of conflicting values, as elaborated above. There are many within our movement who would like to include in such dispensations the case of enabling another mitzvah (i.e. a mohel travelling to a brit milah), *kevod ha-beriot* (to enable a disabled person to participate in a communal activity), or merely the ongoing *oneg Shabbat* of a person who lives too far from the synagogue to walk. While it could be argued that all these examples would justify a relaxation of the *shevut* prohibitions, the overwhelming sense of normative Shabbat legislation is that *shevut* considerations should be overturned only in specific, limited ways where there is a great need, rather than allowing such activity to become the norm. The overwhelming wish is to preserve the nature of Shabbat as a day that is distinct, special, Holy, spiritual and set apart from our everyday activities.

### 5. *Oneg Shabbat*

Shabbat isn’t only about avoiding work and isn’t only a list of prohibitions. There is also a positive aspect to our Sabbath rest. The prophet Isaiah (58:13) describes the ideal Shabbat:

אם־תִּשָּׁב מִשָּׁבֶת רַגְלֶךָ עֲשׂוֹת תַּפְצֹחַ בַּיּוֹם קִדְשִׁי וְקִרְאתָ לְשִׁבְתִּי לְעֹנֵג לְקִדּוֹשׁ יִהְיֶה מְכֻבָּד וְכִבְדֹתָו מֵעֲשׂוֹת דְרָכֶיךָ  
מִמְצוֹא תַּפְצֹחַ וְדַבַּר דְבָר

If you refrain from trampling the Sabbath, from pursuing your affairs on My holy day; If you call the Sabbath "delight," The LORD's holy day "honoured"; And if you honour it and go not your ways nor look to your affairs, nor strike bargains ...

<sup>57</sup> R. Chaim of Baghdad, *Rav Pa'alim, Part 1, OH 25*

In calling Shabbat a delight—in Hebrew *oneg*—the prophet Isaiah reminds us that ‘joy’ or ‘pleasure’ is also an essential ingredient of our Sabbath observance. This has been understood in many ways: an obligation to eat three meals on Shabbat, to save the best quality ingredients for the Shabbat meals, and to wear our best clothing for example. Spending time with our family and friends doing the things we love is a form of *oneg Shabbat* and as such is a valuable part of Shabbat observance. While this does not justify a transgression of a *melakhah*, it is something that should be taken into consideration in deciding whether an activity is deserving of special consideration or not, particularly in regard to *shevut* prohibitions.

Lighting lights before nightfall on Friday is one of the most widely recognised symbols of Shabbat observance. It is also one of the earliest. Long before the Rabbis existed as a group, Jews were lighting Shabbat lamps to make Shabbat a time of joy. The first century stoic philosopher Seneca famously criticised the Jews for lighting lamps before the Sabbath as wasteful, “since the gods do not need light, neither do men take pleasure in soot.”<sup>58</sup> But the Rabbis of the Mishnah did not view the light as an offering to God, understanding it instead as an accommodation within the Shabbat laws to enable *oneg Shabbat*. Lighting a fire is prohibited on Shabbat. Indeed, some early Jewish sects sat in darkness on Friday night to avoid this prohibition. Nonetheless, the Mishnah mandated lighting a flame before Shabbat in order to enable eating the Shabbat meal with our families and friends.<sup>59</sup> The Bavli went on to point out that the Mishnah forbade certain oils and wicks because they produced the sorts of odours and soot that people do not take pleasure in.<sup>60</sup> In that same passage the Bavli calls Shabbat lights an obligation, and the Geonim went on to require a *mitzvah* blessing over the lights, adapting the *Hanukkah* blessing to fit.<sup>61</sup> This example is of a popular practice that the Rabbis approved of, went on to make obligatory, and then finally enshrined as a *Mitzvah*.

This is often how the category of *Oneg Shabbat* has worked, and we cannot minimise the popular desire to treat Shabbat as a day for social and communal reinforcement: Jews doing Jewish with other Jews. We should keep in mind that those who drive to synagogue on Shabbat are showing positive, laudable impulses to take pleasure in the Jewish community on Shabbat. What we lack in our communities is an awareness that the Shabbat environment needs to be prepared before it begins. *Oneg Shabbat* requires proximity to the Jewish community. We would like that proximity to be acquired before the onset of Shabbat.

## 6. *Tempting Others to Perform a Melakhah on Shabbat*

In 1950, Jewish Law Committee published a paper entitled “A Responsum on the Sabbath” by Rabbis Morris Adler, Jacob Agus, and Theodore Friedman. It grappled with the fact that a majority of their synagogue members lived far from their synagogues. They wrote that such folks have:

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<sup>58</sup> *Moral Epistles*, 95:47

<sup>59</sup> M.Shabbat 2:1-2.

<sup>60</sup> B.Shabbat 25b

<sup>61</sup> Shaarei Teshuvah, #91, On Sabbath candles, see B.M. Lewin, “Le-Toldot Ner Shabbat,” in *Essays and Studies in Memory of Linda R. Miller*, ed. Israel Davidson (New York: Jewish Theological Seminary of America, 1938), 58-68 (Hebrew pagination); and Myron Bialik Lerner, “Peirush Midrashi le-Shir ha-Shirim mi-Yemei ha-Geonim,” *Qoveš ‘al Yad* 14 (8) (1976): 145, 159. Robert Brody has concluded that the blessing on Sabbath candles was not instituted due to anti-Qaraite motives; see Brody, *Teshuvot Hilkhatiyyot shel Rav Naṭronai bar Hillay Gaon* (Jerusalem: Ofeq, 2011), 174n5.

...no choice but to drive to the synagogue if they are to attend regularly. Furthermore, many members are not observant and most drive on Shabbat anyway. Assimilation is a real concern, and synagogue attendance is crucial in bringing people closer to the Torah and strengthening their Jewish identities.

Their paper dealt with the challenge of trying simultaneously to inspire both Shabbat observance and synagogue attendance, knowing that there is an inherent contradiction in encouraging both. While their responsum is generally understood as permitting driving on Shabbat, the paper presented driving on Shabbat as a necessary evil that was demanded by the challenges of the time. While we maintain that driving on Shabbat is forbidden (and we understand that paper as also maintaining such a prohibition in the vast majority of cases), we are not blind to these issues: Though its role has undoubtedly diminished in the face of both decreasing observance amongst some Jews, and simultaneously increasing observance amongst smaller but profoundly empowered and committed groups, the non-orthodox synagogue still plays an essential role in Jewish identity in North America and Western Europe. That most of its members cannot (or will not) arrive at the synagogue on foot, should be taken as an indication that Shabbat observance needs to be encouraged within local communities at a grassroots level, rather than imposed from above by some far-off committee.

Though we affirm the Movement's view that driving on Shabbat without intent to fulfil a mitzvah of sufficient worth remains prohibited, and extend that prohibition to operating electric vehicles, we find it unlikely in the extreme that our statement reaffirming this prohibition will significantly affect the observance of members of our communities in any immediate way. Instead, it is our hope and our prayer that this statement, when married to the increasing interest in observance amongst our now smaller but stronger communities, will have a long-term effect on the manner in which our communities imagine themselves and what they want to ideally be. It is our experience that local rabbis can have a powerful influence upon the communities that they lead, and we have seen examples of our affiliated communities breathtakingly transformed by the power of prayer, song, and the joy of Shabbat. We envision an attitudinal shift, a fundamental change in paradigm amongst our communities. We do not think this will happen overnight, or even in the course of 100 years. We do not live in a time of harvest, when we may enjoy the bounteous produce come to fruition. Now is the time of planting for the future.

If driving on Shabbat is forbidden, what message should Rabbis be giving to their members about driving on Shabbat? This is just one aspect of a much bigger question: How do you give halakhic guidance to less-than-fully-observant Jews? Our opinion is that driving is forbidden, but yet a Rabbi should use discretion when deciding whether to encourage or discourage driving on Shabbat. There are times and circumstances when it is better for a Jew to come to synagogue, attend a Shabbat meal, come to a shiur than go to work, go shopping or even just remain at home.

Yet, there are good reasons within the Rabbinic tradition to suppose that it is wrong to encourage someone to come to the synagogue if it involves a Shabbat desecration. The Torah says: 'You shall not insult the deaf, or place a stumbling block before the blind.'<sup>62</sup> The Bavli understood this as a prohibition on giving misleading counsel – as a law against tempting others to fall into sin.<sup>63</sup> Consider the dispute on this question between Rabbi Moshe Feinstein 1895-1986, a leading halakhic decisor for the Haredi Orthodox community, and Rabbi Moshe Sternbuch, b. 1928, currently *Av Beit Din* of the *Eidah HaHareidit* in Jerusalem. Feinstein was asked whether a synagogue could run children services on Shabbat, knowing that the

<sup>62</sup> Lev. 19:14 וְלֹפְנֵי עֵוֶר לֹא תִתֵּן מִכְשָׁל

<sup>63</sup> Avodah Zarah 6b and parallels

children would be brought there by car. He ruled that organising such a service is forbidden, writing: "Is teaching them about prayer more important than teaching them about Shabbat? This isn't education, it's the opposite."<sup>64</sup>

On the other hand, Sternbuch ruled that an observant adult son should be encouraged to invite his secular parents for Shabbat even if he knows that they will most likely arrive by car.<sup>65</sup> Sternbuch suggests that "misleading counsel" depends on *intention*. Just as a doctor performing an operation isn't sinning by wounding others, here too, the son isn't making his parents "stumble." Just the opposite. He hopes to draw them closer to observance of the mitzvot by exposing them to his love for Shabbat and the joy he takes in it. The son wants his parents to come to his house to share in the Shabbat meal, and Sternbuch encourages him, if possible, to make arrangements so they won't have to drive. But if such arrangements are impossible and the son intends to share Shabbat with them in order to inspire them to greater observance, Sternbuch rejects the notion that the prohibition of placing a stumbling block before the blind obtains.

### 7. *Stopgap Modes of Transport*

In the following section we will attempt to answer a question that we both frequently receive by private communication from a variety of people: "I understand that it is better to walk, but I need to travel on Shabbat and I would like to reduce the amount of desecration involved – What should I do?"

Our Answer:

First, consider modes of travel that don't involve Melakha, and are permitted according to some authorities.

Ride a bicycle or skateboard: The main halakhic discussion is whether cycling constitutes 'uvdan de-hol' - a 'weekday activity', which has been prohibited as a form of shevut. As we saw above, the Ben Ish Hai, permitted riding a bicycle on Shabbat and even those who forbade it, did so only because they considered it *uvdan de-hol* or because of the fear that the bicycle would require a repair. Our experience is that bicycles don't break down that regularly<sup>66</sup> (and they may have done so more frequently in the time of the Tzitz Eliezer) and that people today are less likely to repair their own bicycles on the road (and they may have been more likely to do so in earlier times). Assuming you know yourself and your cycling abilities and your journey involves a leisurely ride within a city, this would be a preferable way to get to the synagogue if walking isn't an alternative.

Pre-book a Ride hailing service: Calling a taxi, or booking an Uber, involves many Shabbat prohibitions such as using a smartphone, writing, paying etc. But what about pre-booking a ride before Shabbat so that none of these activities take place on Shabbat itself? Would this be the same as setting a timer or setting in motion before Shabbat an activity which will take place without intervention on Shabbat itself? The main halachic concern with pre-booking a cab is *amirah la-nokhri* (see above). Not only is it forbidden to work on Shabbat – it is also forbidden to ask someone else, even a non-Jew, to do your work for you. Booking a ride hailing service is more complicated. When one books the service, one doesn't directly ask the driver to take them on Shabbat. You ask Uber to ask the driver to do this.

<sup>64</sup> *Iggrot Moshe, Orach Chaim 1:98, 3:71.*

<sup>65</sup> *T'shuvot V'hanhagot, Rav Moshe Sternbuch, Orach Chaim 1:358.*

This process is called *amirah le-amirah* (instructing one person to instruct another) which is generally permitted. Furthermore, the ride hailing service also doesn't directly instruct the driver to take the ride. It 'posts' the ride to several drivers in the area, and the driver chooses whether to take that job or not. It could thus be argued that it was the driver who chose to work on Shabbat - which, as we have seen, is permitted.

Take public transport with a prepaid ticket: The idea of using public transport driven by a non-Jew goes back millennia. The sources talk about sedan chairs, horse drawn wagons, steam powered buses, trains and river boats and ocean liners, from the time of the Mishnah onwards. Some of the concerns raised are mentioned earlier in this teshuvah when talking about whether travel itself is forbidden on Shabbat. We saw that the Hatam Sofer [Hungary, 18th century] rules that all forms of public transport are forbidden on Shabbat because of *uvdan de-ḥol* (weekday activities) whereas Rabbi Uziel permits it. R. Uziel adds that the prohibition of *uvdan de-ḥol* would only apply if one was going on a long journey, particularly if this journey was in preparation for business the following day. Also, it is forbidden to pay for travel, to carry outside of an Eruv or to travel beyond the Shabbat boundaries. Following this reasoning, it would be permitted to travel on public transport on Shabbat for short trips within a city if the journey does not involve carrying, paying for travel, or going outside the city limits. This is on condition that the transport is run by a non-Jewish company for the benefit of society at large, and not specifically for Shabbat.

The main obstacle to using public transport on Shabbat in our context is paying. It is forbidden to purchase a ticket on Shabbat, or even to use a prepaid ticket if by using the ticket it then becomes unavailable to use at another time. However, showing a weekly or annual pass, where there is no charge for any individual use, isn't a form of payment. The Berlin train system does not require users to show a fare card, and cross-town buses in Manhattan now operate on a similar system. One may get on the vehicle without presenting a ticket or a card (though one must keep it on one's person and present it upon demand by an official—an unlikely occurrence). The Oranienburger Straße Synagogue's Rabbi Gesa Ederberg has written a widely cited paper permitting the use of the Berlin system because of this feature.<sup>67</sup> The Manhattan cross-town busses may be subject to a similar leniency.<sup>68</sup> There are a growing number of cities who are using such systems. Using an electronic pass for transport would be the same as using an electronic room key (this is what Nevins calls a magnetic stripe card type II)<sup>69</sup>, as it only checks validity of the pass and isn't a form of payment. Using public transport would be preferable to driving a car.

We encourage those who cannot or chose not to follow our counsel above, and plan to drive, but are open to less serious violations of Shabbat, to consider modes of travel that don't involve *melakhah* but do involve *shevut* prohibitions. We encourage such deliberation even in those circumstances when *shevut* prohibitions will clearly be violated if the only other alternatives are modes of transport that involve *melakhah*. To be clear, we do not want Jews to violate *shevut* prohibitions, but we see this as preferable to violation of *melakhah* prohibitions.<sup>70</sup>

<sup>67</sup> *Travelling on the Metro in the City Of Berlin on Shabbat* (Heb.), written for the Schechter Institute in Jerusalem, 2002.

<sup>68</sup> More work is needed to clarify this. Buses have drivers who stop only at request, and this may constitute *amirah la-nokhri* under certain circumstances. More work is also needed to clarify potential issues of theft-like behaviour if one fails to purchase a ticket in advance.

<sup>69</sup> Nevins pg. 57. We assume any carrying of tickets or passes would take place within a single halakhically defined Shabbat domain, that is in a locale with a properly constituted '*eruv teḥumin*'.

<sup>70</sup> מוטב שיאכל רוטב ולא שומן עצמו

Consider using an electric bicycle or scooter: Electric bicycles share the same concerns as regular bicycles – with perhaps less concern about physical exertion. For those who consider the use of electricity to be a form of *melakhah*, an electric bike is obviously forbidden. But for those who consider this a *shevut*, in those circumstances where a *shevut* is permitted, (and perhaps even as a way of lessening a Shabbat violation, as one is moving towards more observance) cycling on an electric bicycle would be preferable to other modes of powered transport. Note that charging the battery is not a necessary activity and would be forbidden.

Ask a non-Jew to drive you: As we saw above, asking a non-Jew to perform a *melakhah* on Shabbat is prohibited as *amirah la-nokhri*, which is a *shevut* prohibition. In those circumstances where a *shevut* is permitted, this would be preferable to driving oneself. This would include both asking someone you know to drive you or calling a taxi.

At the end of this section we wish to re-emphasize that we are unable to permit Jews to drive a car of any sort, or pilot a boat or aircraft of any type on Shabbat and Yom Tov except in cases of endangerment to human life, health, or safety. We do not and will not construe those who decide not to take our counsel and choose to use one of the modes of transport we view as prohibited on Shabbat as disloyal to the *Kadosh-Barukh-Hu*, Torah, and *mitzvot*. Far be it from us! But we humbly ask that we all consider ways to grow and increase our Shabbat observance. Comfort and complacency are closely related. We hope that we may come to view driving on Shabbat (and other more subtle violations of Shabbat) as stations on personal journeys towards greater observance of the *mitzvot*. We pray for the day when all of our communities will become Shabbat observant, walking communities.

## 8. *Conclusion – Psak Din*

1. Throughout its history, all Conservative Movement institutions have considered driving an automobile on Shabbat uniformly prohibited to all Jews, unless there was an intent to perform a *mitzvah* or out of concern for health or safety. This remains so, regardless of its manner of propulsion. This is true of all major automotive operations and some minor ones, including, but not limited to: ignition or starting, raising and lowering the throttle, shifting gears, breaking, and operating any other motive or safety systems of the vehicle. This prohibition includes automobiles and other vehicles that draw power from internal combustion engines, electric motors, steam boilers, flywheel kinetic energy storage systems, or any other non-human-powered motive device.
2. Operating such a vehicle is not a *melakhah*. It is a *shevut*. We define *shevut* as a positive commandment of the Torah as well as a Rabbinic prohibition. Therefore, a violator of this commandment nullifies a Torah precept but is only (theoretically) subject to Rabbinically imposed penalties.
3. It is a *mitzvah* to operate a car on Shabbat to protect the life, health, or safety of any person. This includes travel to a hospital, doctor, or dentist, fleeing danger, or ensuring the safety of the community, along with other such cases.
4. The 1950 Jewish Law Committee paper entitled “A Responsum on the Sabbath” by Rabbis Morris Adler, Jacob Agus, and Theodore Friedman encouraged construing the decision to drive to the synagogue on the Sabbath as an expression of Jewish faith and loyalty rather than a violation of Jewish law. It went on to present two halakhic arguments as a “*limmud zekhut*” for Jews who were driving to synagogue:

- a. *Hora'at Sha'ah*- That Sabbath observance was so endangered by the abandonment of traditional patterns of observance that it had to be saved by setting aside the prohibition on driving to the synagogue for the moment.
- b. The operation of an automobile is a rabbinic prohibition that could be permanently set aside in presence of the “great mitzvah” of attending public worship

We view this decision—which was controversial at the time and not uniformly adopted by the movement—as perhaps flawed in its halakhic thinking, but largely correct in its view of Jews who choose to drive to the synagogue on Shabbat. All Jews who regularly come to the synagogue in our times are loyal, and their intent is not to desecrate Shabbat. On the contrary! Most Jews who regularly drive to synagogue on Shabbat would probably object to the notion that such driving could be construed in any way other than as a pious, loyal, and laudable act.

5. There is an imperative to make sure that the bulk of the Jewish people remain connected with their synagogues and organized Jewish communal life. There is no doubt that it is important to be able to encourage Jews who are not generally observant to come to synagogue however they come. Our Rabbis should do what they can to ensure that they always feel welcomed. We see no problem with any of our Rabbis actively encouraging Jews to come to participate in minyan on Shabbat, even if they know this means they will arrive by car or public transport.
6. It is preferable to ride a bicycle, use public transport or use a ridesharing service to get to the synagogue on Shabbat than to arrive by operating an automobile oneself. However, when all is said and done, we would like to see as many Jews as possible walking to synagogue on Shabbat as an expression of proper Shabbat observance.
7. Ultimately, in our view, driving on Shabbat is forbidden. Once a person moves from engagement with their Jewish identity through active involvement in synagogue life to a more rigorous halakhic observance, we urge our Rabbis and observant laity to accept that driving on Shabbat is not within the realm of proper observance of Torah u-Mitzvot. Moving away from driving on Shabbat is part of the personal path one takes on the road to greater commitment to Torah.
8. We encourage all Shomer-Shabbat Jews, Rabbis or laity, to open their homes in hospitality to those people in the process of developing Shabbat observance.<sup>71</sup>
9. Avoiding driving, riding, and long travel on Shabbat is only of value if one is keeping Shabbat in its other facets as well. Our goal is not to increase Shabbat prohibitions, but to increase devotion to the Kadosh-Barukh-Hu, Torah, and mitzvot.

יְהִי רְצוֹן מִלְּפָנֶיךָ שְׁתַּנְחִילֵנוּ בְּאַהֲבָה וּבְרְצוֹן שֶׁבֶת קִדְשְׁךָ  
וְיִגְוַחוּ בָּהּ כָּל יִשְׂרָאֵל מִקִּדְשֵׁי שְׁמֶךָ

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<sup>71</sup> Furthermore, I (MMS) encourage learned and observant Jews to do the reverse as well: Regularly spend Shabbat as an overnight guest at the homes of those Jews who live too far from the synagogue to walk. Many Jews have no idea how to keep Shabbat. The painful but true fact is that many of our people are so distant from Torah that they do not have homes of mitzvot, and they do not know where or how to begin building such households. The solution is not to alter Torah to allow them to come to synagogue for three hours each week (if they come, and if they come for that long). If we want novice Jews to take a leap of action, we must ourselves take a leap of action. It is only by entering the family spaces of our people and having Shabbat meals at shared tables and conversing at length that we will all come to be Keepers of Shabbat. This suggestion grew out of a series of personal conversations with Rabbi Kerry Olitzky. I believe it is his original idea.

*Appendix:*

***Melakhah and Shevut in Scripture and Competing Narratives of Melakhah in Rabbinic Literature***

In order to understand what is at play in the Torah, and whether or not there are different conceptions of Shabbat commandments and prohibitions contained in the two words “melakhah” and “shevut” as they are presented in scripture, we must first untangle the relationship between these various verses. First there is the matter of the multiple voices in which the Torah is apparently written. I refer here to the strands of tradition or documents that certain critical Bible scholars have posited since the 19th century.<sup>72</sup> Can the multiplicity of voices that we find in the Torah help us in determining the conception of these two terms and the extent to which the conception of Shabbat they represent differed historically in the time of the composition of the Bible? Can we attribute the geographical, temporal, or ideological differences regarding the nature of Shabbat from these passages in the Torah?

For the sake of heuristic clarity I have created a chart that depicts the relationship between these various verses. I have also assigned a voice to each passage using the letters that Bible scholars have been using for some time (more than a hundred years) to refer to the documents, or strands of tradition that many claim the Torah contains. The Torah undoubtedly contains separate voices running the whole of its length that are consistent in vocabulary; voices that leave off in one passage and then resume at a later point in a coherent, connecting way. The consistency of style, vocabulary, theology, and more that one finds in these voices is deeply convincing that they represent consistent, sustained, coherent, and differing statements submerged below the Torah’s unified surface. I think it clear that this is the way the Torah talks: in a multiplicity of voices. To that extent, considering these voices and how they present the various commandments of the Torah can give us a richer insight into the Torah's conceptions of its commandments. I do not attempt to establish an exact date for each of these voices, nor is it my duty to do so here. I will not be entering into a discussion of which of these voices preceded the other, or whether they all derive from a simultaneous moment of revelation (though the latter is my preference). In any case, in addition to assigning voices to the passages, the chart below lays out the occurrence of the two terms, or their absence in every passage related to Shabbat in the Torah.

| עמוד | שבות | מלאכה | קול | פרשה                |
|------|------|-------|-----|---------------------|
|      | X    | X     | P   | בראשית ב':א'-ג'     |
|      | X    |       | P/J | שמות*<br>ט"ז:א'-ל"ו |
|      |      | X     | P   | שמות כ':ה'-י"א      |
|      | X    |       | E   | שמות כ"ג:ט'-י"ב     |

<sup>72</sup> For a good recent review of the hypothesis see Joel Baden, *The composition of the Pentateuch: renewing the documentary hypothesis*. New Haven: Yale University Press, 2012. 13-33.

|   |   |   |      |                      |
|---|---|---|------|----------------------|
|   |   | X | P    | שמות ל"א:י"ב-<br>י"ז |
|   | X |   | J    | שמות ל"ד:כ"א         |
|   |   | X | P    | שמות ל"ה:א'-<br>ג'   |
| X |   |   | P/H  | ויקרא י"ט:ג'         |
| X |   |   | P/H  | ויקרא י"ט:ל'         |
|   |   | X | P    | ויקרא כ"ג:ג'         |
| X |   |   | P/H? | *ויקרא כ"ו:ב'        |
| X |   |   | P    | במדבר<br>ט"ו:ל"ב-ל"ו |
| X |   |   | R    | *במדבר<br>כ"ח:ט'-י'  |
|   |   | X | D1   | דברים ה':י"ב-<br>ט"ו |

We see here that the Torah presents (at least) two differing narratives around Shabbat prohibitions: *shevut* and *melakhah*. The verb  $\sqrt{\text{shbt}}$  ( $\sqrt{\text{shbt}}$ ) appears in the Torah in four passages (Gen. 2:1-3; Ex. 16:11-36, 23:9-12, 34:21). One is in Genesis, the other three are in Exodus. The three Exodus passages depict a commandment to rest using this verb. The noun *מלאכה* (*melakhah*) appears in six passages in which Shabbat is addressed (Gen. 2:1-3; Ex. 20:8-11, 31:12-17, 35:1-3; Lev. 23:3; Deut. 5:12-15). They appear together only once: Gen. 2:1-3. This passage is not prescriptive, being a creation narrative. There are five passages in which Shabbat is addressed, yet neither the verb  $\sqrt{\text{shbt}}$  ( $\sqrt{\text{shbt}}$ ) nor the noun *מלאכה* (*melakhah*) appears (Lev. 19:3, 19:30, 26:2; Num. 15:32-36, 28:9-10). This binary presentation of Shabbat prohibitions in the Torah makes it clear that the Sages of the Mishnah inherited two types of Biblical Shabbat prohibitions: *melakhah* and *shevut*.

Despite later Rabbinic tradition, the Mishnah does not understand *shevut* as a Rabbinic prohibition.<sup>73</sup> It views it as a scriptural commandment. The Bavli correctly understands the Mishnah to mean that *melakhah* is prohibited by scripture.<sup>74</sup> On the other hand, the Bavli has long conditioned students of the Talmud to view *shevut* as nothing more than a rabbinic prohibition. This is based on the Bavli's claim that *shevut* is not a Torah-level (*de-oraita*) law. B. Beitzah 36b is the most explicit on this point. Nonetheless, many passages in the Bavli tally with this understanding.<sup>75</sup> Since the rise of the Bavli as the "official"

<sup>73</sup> Rabbi Shimon may dissent from this see M. Eruvin 10:15.

<sup>74</sup> Y. D. Gilat, "On the 39 Shabbat Avot-melakhot," *Tarbiz*, no. 29 (1959): 222-28.

<sup>75</sup> These include—but are not limited to—B. Shabbat 8b, 97a, 114b, 150a; 'Eruvin 30b, 32b, 34b, 98a, 103a, 105a; Beitzah 33b.

interpretation of the Mishnah,<sup>76</sup> this understanding has more or less been the dominant view amongst Rabbinic figures. (Though both Maimonides and Nachmanides, two major exceptions to the general rule, attempted to harmonise the Bavli's understanding with a scripturally-oriented conception of shevut).<sup>77</sup> While some contemporary scholars of Rabbinics appear awake to the shifting nature of *shevut*,<sup>78</sup> its origins as a positive scriptural commandment and awareness of its distinctive mishnaic postulation seems not to have penetrated deeply in the world of Jewish studies, even among those learned in Talmud and Rabbinics. Far from being oppositional, binary categories melakhah and shevut arise from two different "schools" of tannaitic midrash, and just as in the Torah, the two terms never appear together in the same passage in the Mishnah. Finally, we cannot understand shevut without understanding melakhah on its own terms, and in the diversity of narratives that have grown up about it.

There are actually at least three competing narratives as to the origin of melakhah in Mishnah Shabbat. We will have to interrogate all three of them, along with a fourth drawn from the Mekhilta of Rabbi Ishmael to fully understand the diverse definitions of melakhah. Over the next few paragraphs we will take up each of these narratives, discuss its proper role in halakhic deliberation, and put forth a model for melakhah that we think most reasonable to use in drawing our conclusions.

#### A. Narrative One: Carrying and Reassembling the Mishkan

One view is that melakhah derives from the work of the Levites in carrying and reassembling the Mishkan (M.Shabbat 10:3, 11:2, and 12:3)<sup>79</sup>:

##### 1. M.Shabbat 10:3

If one carries something out, whether with his right or with his left hand, in his lap or on his shoulder, he is liable, because this is the way of the carrying of the children of Kohat.<sup>80</sup>

הַמוֹצֵיא בֵּין בְּיָמֵינוּ בֵּין בְּשִׁמְאֵלוֹ, בְּתוֹךְ חִיקוֹ אוֹ עַל כְּתָפוֹ, חֵיב, שֶׁכֵּן מִשָּׂא בְּנֵי קֹהַת.

##### 2. M.Shabbat 11:2

If there are two balconies facing each other in the public domain, he who reaches over or throws [an article] from one to the other is exempt. If both are on the same row, he who reaches over is liable, while he who throws is exempt, for thus was the service of the Levites. Two wagons, this one behind this one in the public domain, [and] they reached over the boards from one to another, but they did not throw.

שְׁתֵּי גִזְזוֹטְרָאוֹת זוֹ כְּנֶגֶד זוֹ בְּרֵשׁוֹת הַרְבִּיּוֹת, הַמוֹשִׁיט וְהַזֹּרֵק מִזוֹ לְזוֹ, פְּטוּר. הֵיוּ שְׁתֵּי הַבָּיִטָּה בְּדִיּוֹטָא אַחַת, הַמוֹשִׁיט חֵיב, וְהַזֹּרֵק פְּטוּר, שֶׁכֵּן הִיְתָה עֲבוֹדַת הַלְוִיִּם, שְׁתֵּי עֲגָלוֹת זוֹ אַחַר זוֹ בְּרֵשׁוֹת הַרְבִּיּוֹת, מוֹשִׁיטִין הַקְּרָשִׁים מִזוֹ לְזוֹ, אֲבָל לֹא זוֹרְקִין.

<sup>76</sup> On this complex process see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture*. (1998) New Haven: Yale University Press. 155-166.

<sup>77</sup> See *Mishneh Torah, Hilkhot Shabbat* 21:1 and Nachmanides' Commentary on the Torah, Lev. 23:24.

<sup>78</sup> Two recent examples: (1) Aviad Stollman, *Babylonian Talmud, Eruvin X: Critical Edition with Comprehensive Commentary* (Vol. 7 of *Talmud Haigud*; Jerusalem: The Society for the Interpretation of the Talmud, 2006) 164-165, 275 n. 4, 286, n. 8, 357-358. Hebrew. (2) Richard Hidary, "One May Come to Repair Musical instruments': Rabbinic Authority and the History of the Shevut Laws." *JSIJ* 13 (2015): 1-26.

<sup>79</sup> The translation is from Joshua Culp's *Mishnah Yomit*, commissioned by the United Synagogue of North America.

<sup>80</sup> A family of Levites who were charged with carrying the sacred vessels of the Mishkan in the desert. See Numbers 7:9.

## 3. M. Shabbat 12:3

He who writes two letters... is liable. Rabbi Jose said: they made one liable for writing two letters only because [he makes] a mark, since this is how they would write on each board of the tabernacle, to know which its companion was.

הפּוֹתֵב שְׁתֵּי אוֹתוֹת... חֵיב. אָמַר רַבִּי יוֹסֵי, לֹא חֵיבּוּ שְׁתֵּי אוֹתוֹת אֶלָּא מִשּׁוּם רֶשֶׁם, שֶׁכָּפָּה הָיוּ כּוֹתְבִין עַל קַרְשֵׁי הַמִּשְׁכָּן, לִידַע אִיזוֹ כָּן זוּגוּ.

It is important to note that none of these sources seem to speak of the initial construction of the Mishkan, nor do they speak of the service of the Kohanim. They speak only of the carrying of the vessels and structural elements of the sanctuary in the wilderness and its reassembly.

10:3 is concerned with what exactly we may consider to be a normal manner of carrying. One can only be held liable for carrying from one domain to another if one does so in a standard way. If one carries in an unusual way, on the back of the hand, or on top of a foot, or in the mouth, for example, one cannot be held liable for punishment.<sup>81</sup> The standard way of carrying is defined here as the manner by which the Levites carried the sacred vessels of the Mishkan from place to place in the desert. Again, this is not about construction, it is about transport of the vessels to a new location where the Mishkan will be reassembled.

The meaning of 11:2 tallies pretty closely with this, though now the description is of the removal of the boards from the Levites' wagons prior to the reassembly of the Mishkan. Again, one can only be held liable for punishment if one moves a burden from one domain to another in the same way that the Levites unloaded the boards after transport. In both these mishnaïot, the Mishkan does not set the specific types of work, but rather the threshold for liability—the “how” of the violation, rather than the “what.”

We see this same idea—the threshold of criminality—set by the Mishkan in 12:3. This mishnah posits one can only be held criminally liable for writing two letters on Shabbat, since this two-letter format was how the Levites kept track of the boards that went next to each other during reassembly of the Mishkan: alef-marked boards next to alef-marked boards, bet-marks next to bet-marks, and so on. But the Mishnah never claims that the origin of the 39 categories of the Avot melakhah was derived from the workings of the Mishkan, only the extent of the threshold for liability for doing forbidden labour.

Ultimately, even the Bavli does not really seem to believe that the origin of the 39 Avot Melakhah is found in the Mishkan. Rather, the Bavli posits that it is a measure of the degree of liability for forbidden acts of work:

One only faces penalty for a melakhah of the type that was in the Mishkan.<sup>82</sup>

אֵין חֵיבִין אֶלָּא עַל מְלַאכָּה שְׁכִיּוּצָא בֵּה הִיתָה בַּמִּשְׁכָּן

The Mishkan narrative in Mishnah Shabbat functions less as a hermeneutic instrument for deriving specific melakhah from scripture, and more as a means of criminal defence to mitigate the theoretical sentence for violating Shabbat: If one commits an act of melakhah on Shabbat, one is only held liable if they did it as it was done in the Mishkan. This outcome is only indirectly pertinent to our deliberations here. What will be relevant for us? The conclusion that if one performs a melakhah below this threshold, we should define it as (“a melakhah for which one is not liable to bring a sin offering”)—

<sup>81</sup> This usually termed *שינוי יד* or *כלאחר יד* (the term used in our mishnah) in halakhic literature. Moses ben Isaac Judah Lima and Hezekiah da Silva claimed this was because it is not considered *מלאכת מחשבת*, which in this case would mean a melakhah done with skill. *Ḥelkat Meḥoqeq*, 123:1:5; *Pri Hadash EH* 123:1.

<sup>82</sup> B. Shabbat 49a.

language that the Bavli seems to associate with shevut prohibitions, rather than prohibitions based in melakhah.<sup>83</sup>

### B. Narrative Two: Basic Human Needs

The second narrative seems to derive the prohibition of melakhah from the quotidian processes of making products that fulfil the most basic of human needs (food, clothing, written documents, shelter) along with the transportation of those products from place to place. After a brief introduction announcing the number of melakhot on the list of Avot melakhah (“Forty less one”), M. Shabbat 7:2 goes on to present four “courses” of forbidden labors followed by a single sui generis category (taking things from one domain to another).

The first course is as follows:<sup>84</sup>

Sowing<sup>85</sup>, plowing, reaping, binding sheaves, threshing, winnowing, sorting, grinding, sifting, kneading, baking.

הזורע והחורש והקוצר והמעמר הדש והזוררה הבורר הטוחן והמרקד והלש והאופה

The Bavli responds to this list with shock:<sup>86</sup>

Rav Pappa said, “The author of our Mishnah has abandoned the cooking of herbs that was in the Mishkan!”<sup>87</sup> The author of our Mishnah has used the order of baking bread.

אמר רב פפא: שבק תנא דידן בישול סממנין דהוה במשכן ונקט אופה! תנא דידן סידורא דפת נקט.<sup>88</sup>

Rav Pappa is bewildered as to the origin of these categories. He seems to say, “How can it be that cooking is not on this list? Was not cooking done during the construction of the Mishkan?” As noted above, the major thrust of the Bavli is that the work done in the Mishkan is a measure of extent of liability, rather than a derivation of types of forbidden labor. However, Rav Pappa’s statement seems to betray his understanding of the origin of the types of melakhah in the *construction* of the Mishkan. There are a number of statements in the Bavli that contain clues that an understanding of the work of sanctuary construction as the derivation of the Avot melakhah had currency among the Amoraim of Babylonia, particularly after the third generation.<sup>89</sup> Note well that the anonymous voice of the Talmud rejects that possibility here. The anonymous voice of the Talmud responds to Rav Pappa’s bemusement by noting that M. Shabbat 7:2 functions more as a mnemonic device to remember the Avot melakhah than as an exhaustive list. This voice may be saying that the author of our Mishnah has phrased the passage employing the order of baking bread to record the individual categories, perhaps as an aid to memory.

In a recent article, Rabbi Judith Hauptman proposed another possibility. She writes:

<sup>83</sup> See B. Avodah Zarah 16a with Rabeinu Hannanel and Ritva ad locum. The later halakhic tradition uniformly accepts this interpretation, see Mishneh Torah 20:4 and Maggid Mishneh ad locum. The concept has its origins in Mekhilta De-Rabbi Shimon Bar Yochai 12:16, as we shall see see ה”א in sub-section 4, “shevut.”

<sup>84</sup> See David Kraemer, “Interpreting the Rabbinic Sabbath: The “Forty Minus One” Forbidden Labors of Mishnah Shabbat 7:2” *The Faces of Torah Studies in the Texts and Contexts of Ancient Judaism in Honor of Steven Fraade* (Vandenhoeck & Ruprecht:Göttingen, 2017) 385-394; Abraham Goldberg, Commentary to the Mishnah Shabbat (in Hebrew) (Jerusalem: The Jewish Theological Seminary of America, 1976), 145, 148, and 152; Yitzhak Gilat, “Thirty-Nine Primary Labors.” in *Studies in the Development of the Halakhah* (Ramat Gan: Bar-Ilan University Press, 1992), 32–63.

<sup>85</sup> These first two melakhot switch places in differing manuscripts. See Goldberg, 135 and 139.

<sup>86</sup> B. Shabbat 73b

<sup>87</sup> It is unclear whether these herbs were used to dye cloth for the construction of the Mishkan or if they were used to produce incense for its regular operations. Both are possible meanings of the word “semamnin.” See B. Bava Qama 101a and B. Keritot 6a.

<sup>88</sup> B. Shabbat 74b

<sup>89</sup> See also B. Shabbat 49b and 102b.

Without m. Shabbat 7:2 one might have thought that a syntagmatic series, like the steps of baking a loaf of bread, is also punishable by only one sin offering, because its steps are “many labors like one labor” in that they lead to one grand outcome.<sup>90</sup>

In other words, the list in 7:2 is created for an interpretive reason. Even though M. Shabbat 7:1 states one is liable for only one sin-offering for each Av melakhah, one is held liable for each step on each list: one sin offering for plowing, one for sowing, one for reaping, etc. Not just one sin offering for making bread. Whatever the case, in the end the 39 Avot Melakhot do not function as either an exhaustive list of forbidden Shabbat labors or as a halachically influential narrative for the origin of melakhah.

Indeed Gilat, Hauptman, and Kraemer all note that the specific list of Avot melakhah have their origins elsewhere in Rabbinic literature in a vastly different context, T. Berakhot 6:2,

Ben Zoma when he saw the crowds on the Temple mount said, “blessed is the one who created these to serve me. said: How hard did Adam toil before he could taste a morsel: he sowed, plowed, reaped, sheaved, threshed, winnowed, bound sheaves, ground, sifted, kneaded, and baked, and only then could he eat. But I arise in the morning and find all these before me. How hard did Adam toil before he could wear a cloak? He sheared wool, whitened it, combed it, dyed it, spun, and wove, and afterwards wore it. But I arise in the morning and find all these before me.

בן זומא כשראה אוכלסין בהר הבית, או' ברוך מי שברא את אלו לשמשני. כמה יגע אדם הראשון ולא טעם לוגמה אחת עד שזרע וחרש וקצר ועמר ודש וזרה וברר וטחן והרקיד ולש ואפה ואחר כך אכל, ואני עומד בשחרית ומוצא אני את כל אילו לפני. כמה יגע אדם הראשון ולא לבש חלוק עד שגזז ולבן ונפס וצבע וטווה וארג ואחר כך לבש, ואני עומד בשחרית ומוצא את כל אילו לפני.

It is obviously worth noting that this order not only tallies with the first course of labors in 7:2, but also the second course:

Shearing wool, whitening it, combing it, dyeing it, spinning, weaving, making two loops, weaving two threads, separating two threads, tying [a knot], untying [a knot], sewing two stitches, tearing for the purpose of sewing two stitches.

הגוזז את הצמר המלבנו והמנפצו והצובעו והטווה והמיסך והעושה שתי בתי נירין והאורג שני חוטין והפוצע שני חוטין הקושר והמתיר והתופר שתי תפירות הקורע על מנת לתפור שתי תפירות

Clearly, this is a list of tasks needed to produce clothing. If the passage from the Tosefta predates M. Shabbat 7:2, then the specific melakhot on the list are drawn from an aggadic context to fill out the labours of daily life without regard to their actual professional context. In that case, they would not be carefully considered legal categories, but literary ones. And indeed, several important scholars (including Hauptman herself) have demonstrated that there are quite a number of passages in the Tosefta that are earlier than corresponding materials in the Mishnah.<sup>91</sup> This understanding of the relationship between these texts meshes nicely with the model of melakhah we are hoping to put forth. It is our conclusion that the 39 Avot melakhah will not be a helpful structure for us to use in our deliberations on this question. It may be appropriate to point out that Rabenu Yaaqov Baal Ha-Turim came to the same conclusion when he was writing his great code, explicitly saying that he was ignoring the structure of the 39 Avot melakhah, since they don't really have relevance for determining what is forbidden or permitted on Shabbat:

If I attempted to write all the Halakhot of Shabbat the work would overwhelm me. For

<sup>90</sup> Judith Hauptman, “A New Interpretation of the Thirty-Nine Forbidden Sabbath Labors” *The Faces of Torah Studies in the Texts and Contexts of Ancient Judaism in Honor of Steven Fraade* (Vandenhoeck & Ruprecht:Göttingen, 2017), 333.

<sup>91</sup> See Hauptman, *Rereading the Mishnah: A New Approach to Ancient Jewish Texts*, Mohr Siebeck, Tübingen, 2005. Shamma Friedman, *Tosefta Atiqta*, Bar-Ilan, Ramat-Gan, 2002.

Shabbat Halakhah is vast. (B.Shabbat 12a) And in any case the 39 Avot Melakhah and their Toldot are well known and I have no need to go on and on about them or their minimum measures. For these measures were only promulgated for purposes of liability. But they are prohibited in any amount. Therefore, I will only write the needed things.

אם באתי לכתוב כל הלכות שבת תרבה עלי המלאכה כי הלכתא רבתי לשבתא  
(כדאיתא שבת יב.) וגם כי כל ארבעים אבות מלאכות חסר אחת ותולדותיהם ידועות ואיני  
צריך להאריך בהם ולא בשיעוריהן שלא נאמרו שיעורים אלא לחיוב אבל איסורא איכא  
בכל שהוא ע"כ לא אכ תוב אלא דברים הצריכין

### C. Narrative Three: Physical Changes in Form or Substance on Shabbat

Above, in section three of the paper we stated our preference for the narrative of melakhah as abiding physical change on Shabbat. As stated, this narrative has its origins in the Bavli's reading of M. Shabbat 12:1. Or definition is:

***Any intentional physical work on Shabbat that endures in an altered material form is forbidden as melakhah, so long as one does that work in its standard way and for its common purpose. Any forbidden work that achieves less than this is not melakhah. It is shevut.***

The reader is referred to section 3 of the paper to see that narrative analysed and adopted.

### D. Narrative Four: the Construction of the Mishkan

Surprisingly, none of these Mishnaic narratives base themselves on the *construction* of the Mishkan. Though traces of such a narrative are found in a number of passages in the Bavli (especially among Babylonian amoraim after the third generation),<sup>92</sup> it is not the main theory the Bavli puts forth.<sup>93</sup> The discussion of the derivation of the prohibition of carrying into a public domain on the bottom of B.Shabbat 96b points to Moses' order to stop bringing materials for construction as the origin of this one melakhah. This is not really a construction process, nor is it a scriptural derivation of specific melakhah. As for 12:3, the context is clearly one of re-assembly, not initial construction.<sup>94</sup> In tannaitic literature (works from the time of the Mishnah), the construction narrative is only found in the Mekhilta de-Rabbi Ishmael (Vayakhel, Masekhta de-Shabbta, 1):

A. If the sacrificial service is only possible by dint of the tools [of sacrifice, namely the Temple, its furnishings, and its vessels], and [the service] overrides the Sabbath.

<sup>92</sup> B.Shabbat 44a, 49b, 73b, 74b, 96b, and 102b. Nevins would likely include B.Hagigah 10b on this list. See Nevins, *Electricity and Shabbat*, 9. He wrote: "In tractate Hagigah 10b, the rabbis explain that melakhah is categorically limited to מלאכת מחשבת—actions intended for the same purpose as their equivalent activities in the tabernacle." With respect to Rabbi Nevins and his learning, this is Rashi and Tosafot's explanation of the Gemara, not the Gemara itself. The Bavli itself says no such thing. It just introduces the idea that מלאכת מחשבת אסרה תורה ומלאכת מחשבת לא קתיבא.

<sup>93</sup> Though this is the dominant narrative in the Yerushalmi. See Y.Shabbat 9:3-4, see Golberg, *Mishnah Shabbat*, 136-138.

<sup>94</sup> See Rashi, Shabbat 103a, SV משום רושם. However, there is an ambiguous baraita in B.Shabbat on 49b that may imply a construction narrative. It starts to list the 39 categories found in 7:2 in order as acts of melakhah that were present in the Mishkan. However it tires after the first two (sowing and 1 plowing) and skips to the last—carrying from domain to domain. On a literary level this seems to be an attempt to marry the carrying and reassembling narrative to the 39 Avot melakhah—what we have been calling the basic-human-needs narrative. Note however that the baraita dispenses with sowing and ploughing in ten words, but spends 47 words describing the derivation of the prohibition of carrying from domain to domain. This baraita is much more grounded in the carrying and reassembling narrative than any other.

- B. It would be logical to conclude that since the service cannot persist without them, repairing those tools of the sacrificial service should override Shabbat *a fortiori!*
- C. For example, if the horn of the altar were broken off, or if a knife were damaged, I might have thought they could be repaired on Shabbat.
- D. It is, therefore, written "Moses then convoked [the whole Israelite community and said to them: These are the things that the Lord has commanded you to do: On six days work may be done, but on the seventh day you shall have a sabbath of complete rest, holy to the Lord...]" (Exod. 35:1-2) before charging the people with the work of the sanctuary — to teach that such work is to be done] on a weekday, and not on the Shabbat.

ומה עבודה שאינה באה אלא מכח המכשירין, הרי הוא דוחה שבת, מכשירי עבודה שאין להם מלא מכהן אינו דין שידחו את השבת, כגון: שניטלה קרנו של מזבחי או שנפגמה הסכין שומעני יתקנם בשבת?! שנאמר: ויקהל משה - בחול ולא בשבת:

While the amoraic materials (statements attributed to named Tamudic Rabbis) are all somewhat ambiguous, mediaeval and early-modern Rabbis certainly regularly employed this construction narrative in the later Halakhic tradition.<sup>95</sup> Indeed, Rashi famously posits that the origins of the limitation of liability to skilled labor—מלאכת מחשבת—lay in this narrative:<sup>96</sup>

The Torah prohibited skilled labour, that is the labour of the craftsman. For the passage about Shabbat is juxtaposed with the labour of the Mishkan in Vayakhel, and there "skilled labour" is written.

מלאכת מחשבת שהיא מלאכת אומנות אסרה תורה שנסמכה פרשת שבת למלאכת המשכן בויקהל והתם מלאכת מחשבת כתיב

We claim that when we make our *pisqei din*, we do not need to relate to the construction narrative for the origin of *melakhah* since it does not have much importance in the halakhically canonical Rabbinic sources (the Mishnah and the Bavli) or in the Torah itself. The construction narrative appears to be primarily a post-facto justification of an established halakhah in the Mekhilta in any case, and does not function there as a narrative with halakhic implications. Though building a temple in time by refraining from building one in real space is a beautiful idea possessing a homiletic power that can undoubtedly bring many to Shabbat observance, it is not an appropriate category for halakhic consideration in the present context.

<sup>95</sup> See Michael Yechiel Halevy-Epstein, *Arukh Ha-Shulhan*, OH 242:9 and the sources he collects there. For the apotheosis of this marginal narrative's rise to glory see Eliezer Melamed, *Peninei Halakhah*, Shabbat 9:2:2 (emphasis added):

כל המלאכות שנעשו לצורך הקמת המשכן הן המלאכות האסורות בשבת.

<sup>96</sup> B.Betzah 13b.