

## The Reverse Kiddush & A Palace in A Set Time<sup>1</sup> O.H. 267:2.2012a

Rabbi Aaron Alexander

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**She'elah:** In a case where Shabbat doesn't begin until very late on Friday night, say 9:30pm (Vancouver in late June), and therefore the earliest time to bring in Shabbat would be *plag minhah*, 7:30pm<sup>2</sup>: For those who would be going to synagogue for Kabbalat Shabbat/Ma'ariv, dinner wouldn't begin until around 9:00pm, which is too late for many reasons (kids, minyan, etc...). What should the communal practice and/or personal practice be in this situation, according to Halakhah? To begin Shabbat before *plag minhah*?<sup>3</sup> Or, might we prefer for Shabbat to be accepted right at *plag minhah*<sup>4</sup>, have kiddush and dinner eaten right after candle lighting, and then a communal *davvening* to be held at 9:00 or 9:30? Or, should the only communal *davvening* be *minha* late Friday afternoon, with some communal singing to bring in the Shabbat mood before folks go home to make Shabbat?<sup>5</sup>

**Teshuvah:** Before getting into the rich details of the legal tradition, a note on the importance of this question and the many issues that need to be addressed. In many ways, the communal space for bringing in Shabbat becomes a sacred haven for Jewish communities. While one could claim that individuals and families ought take sole ownership of a part of their Shabbat experience in the home, reality forces us to recognize that creating Shabbat space at synagogue is essential for so many people in our communities. For families with young kids who go to sleep early, for those who would otherwise be alone Friday night, for those for whom the synagogue is a significant religious or social outlet--removing this opportunity has serious ramifications. We must also not forget the inherent power our tradition ascribes to the minyan and communal *davvening*, so often buttressed by the powerful verse, "*BeRov Am Hadrat Melekh*," legally interpreted as, "God's splendor is most present in the multitudes of people (during ritual acts)."<sup>6</sup> Finally, we must always remember that accepted and long-held communal practices hold significant weight in Jewish Law, even in cases

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1 . I would like to thank my teachers and colleagues, Rabbis Elliot Dorff, Brad Artson, Justin Goldstein, Ronit Tsadok, Dan Selsberg (for whom this is a very real issue during 4 months of the year) and Dr. Aaron Amit for their thoughtful comments and edits to this *teshuvah*. Of course, all opinions stated are my own and any mistakes are fully my responsibility.

2 . This paper will take for granted that the earliest time one can begin the next day, supported by the vast majority of our textual tradition, is *plag minhah* (see next footnote). This is based on the overwhelming majority of explicit *halakhic* sources, some of which will be cited in the paper. We must also recognize that communal practice has not always reflected this. Again, this paper will attempt to try an honor the explicitly legalistic textual tradition and the ideals it portrays, while also taking communal *minhag* into consideration. See footnote #7. For the explicitly legal-textual evidence, see *Shmirat Shabbat K'hilkhata* 52:6. One could make the argument that midday Pesach, the time for not eating *hametz* contradicts this. I would argue, however, that that law relies on a particular sacrifice for a particular holiday, without a way to use it to impact our case. See also *Responsa Minhag Shlomo*, 1:3, for a discussion and affirmation of this argument. It can be found at the end of this responsum.

3 . *Plag minha*: The prevalent practice is to calculate *plag minha* as 1 & 1/4 *halakhic* hours before sunset.

4 . 7:30 in this case. See the *Shulhan Arukh* source on page 6 for this permission.

5 . For many communities in similar time zones, the new daylight savings times also heighten the implications of this question.

6 . Proverbs 14:28

where they conflict with our authoritative and textual tradition and its explicit laws.<sup>7</sup> Any decision must deal seriously with these considerations.<sup>8</sup>

But also, Shabbat is a *mitzvat aseh/lo ta'aseh sh'hazman gerama*,<sup>9</sup> a time-enacted Mitzvah with a set of time-enacted imperative and prohibitive commandments. While we may begin Shabbat early (from *plag* onwards), it is still at a time that can be rabbinically considered to be part of the next day. Given how alienated humanity is from the rest of creation, and the high price we pay for our rupture from natural cycles, seasons, temperatures and even the cycles of light and dark, it is virtually self evident that the commanding power of Jewish holy days and festivals connects us to the world around us. Observant Jews are aware of the setting of the sun and its rising, the cycles of the moon - with its waxing and waning, and can look to the sky for midday. These ways of truly living in the world are facilitated by the liturgical calendar, by the reality that Shabbat beginning is a relating of astronomical events with human self-definition Especially in our environmentally-awakening time, to weaken or sever those links is tragic. It is for this reason that Birkat Ha-Mazon is not a time-enacted mitzvah. We enact the obligation only when we eat despite the fact there is a time-frame in which we must recite Birkat Ha-Mazon afterwards. Our bodies create the necessity. Not so, Shabbat. With Shabbat, we answer to the night sky itself.

Divorcing the 'personal/introspective' aspect of Shabbat from the 'biological/astronomical' aspect seems to me exactly what our tradition should oppose. And yet, this modernist conceit is becoming more common, especially with Passover Seders happening well before or after the appropriate days, as with severing the connection between Shabbat and the cosmos. Without dismissing the blessing of individuality and diversity, there is also blessing to be found in celebrating our place in creation and our inability to speed up, or slow down, the heavens, just as the tradition invites us.

Indeed, the permissive teshuvah on *ma'ariv* before *plag minha* of the Terumat Ha-Deshen (#1)<sup>10</sup>, while certainly authoritative due to Rabbi Isserlein's well-earned stature, in my mind only explicitly legitimizes communities that already have a long-standing tradition of taking on Shabbat before *plag minhah*. While I wouldn't necessarily want to prevent them from continuing this practice,<sup>11</sup> I would also try to encourage them to consider an option this *teshuvah* will advocate. A robust,

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7 . In fact, Prof. Jacob Katz wrote a stunning article that essentially makes this point. In "Divine Law in Human Hands" (The Magnes Press, The Hebrew University, Jerusalem, 89-127) Katz deals extensively with the history of how the early *Ma'ariv* was dealt with, both in text and practice. Katz shows that the complexity of the issues involved created for multiple practices based in expansive reasoning. The essential question: what is the proper time for *Ma'ariv*, and how early might one recite it? It is complicated, legally, because the service itself is *quasi de-rabbanan*, while the evening *Shema* itself is *de'oraita*. Textually, one could make an argument that: 1) it shouldn't be said until actual night, 2) close to actual night, 3) not earlier than *plag minha*, or 4) anywhere in between. Historically, it is clear that many communities pushed up the time, even to before *plag minha* during the summer months. Some Poskim chose to try and logically justify this practice (*Ra'avan*, *Rabbeinu Tam*, *Terumat Ha-Deshen*, R. Barry Leff), while others just relied on the legal weight of *minhag* knowing the tradition had no solid textual proof (*Ravyah*, *Sefer Eshkol*). Others allowed for hybrid positions with different standards for scholars and regular people in some combination of saying *ma'ariv* both with the congregation as well as after nightfall (R. Hai Gaon, Rashi, Rambam, *Ra'avad*). Some tried to altogether abolish the practice (*Rokeah*, *Hagahot Maimoniyot*, *Vilna Gaon*). The position of this paper will attempt to treat *kiddush* with more of a hybrid model, recognizing the power of both *minhag* and the lack of strictly legal-textual and permissive evidence for the question at hand.

8 . This paper will deal solely with the question an early Shabbat. Yom Tov brings its own challenges, many of them outside the scope of this particular investigation. Particular questions are welcomed individually by this paper's author.

9 . See *Mishneh Torah*, *Laws of Shabbat*, 1:1.

10 . Rabbi Israel Isserlein ben Petachia, 1390 - 1460. See appendix for full text of this responsum.

11 . After all, Rabbi Isserlein didn't prevent this, or suggest it should be prevented, when he mentioned it in his *teshuvah*.

compelling, reasoned *halakhic* case has yet to be made for advancing Shabbat before *plag minhah*. Even if one could reasonably prove that 'b'ode yom gadol' really does mean before *plag minhah*, using it *halakhically* against the weight of the tradition, in order to reshape halakhic time when an alternative is readily available is an unnecessary stretch. On top of that, the Terumat Ha-Deshen *teshuvah* is addressing *ma'ariv* only, not beginning Shabbat early and making *kiddush ha-yom*. They are not the same, nor should they be considered the same.<sup>12</sup> While he does give one example in his *teshuvah* of a community that began Shabbat too early, it is a case of "ani shamati", not very explicit in its details, hence, not explicitly permitted by him beyond that.<sup>13</sup>

I think accepting Shabbat promptly at *plag minhah*, chanting *kiddush*, eating dinner, and then *davvening*,<sup>14</sup> is the preferred path any community should employ. That allows one to eat and recite the Shabbat blessings in their proper time and then *davven ma'ariv* privately at home.<sup>15</sup> Also, the *minhah* minyan should continue to meet before Shabbat at 6:00 and ideally become the central communal space for the evening. For those rabbis who want to maintain an aspect of the joyous pre-shabbat Kabbalat Shabbat, it would be permissible to sing these psalms with an extra *kaddish*, provided that they maintain the express intention not to take on Shabbat before its time and refrain from making the rabbinically ordained synagogue *kiddush*.<sup>16</sup>

But, 1) Is *kiddush ha-yom* permitted before sunset, like *davvening*? And, 2) Is *kiddush ha-yom* before Kabbalat Shabbat and *ma'ariv* permitted? Or, is taking on Shabbat earlier than *plag minhah* the only reasonable option for a situation beyond one's immediate control, like the question stated in the *she'elah* above?

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12 . This point is essential. Even for those who allow the *derabbanan* aspects of *ma'ariv* to be recited early (*berakhot* and such), the prevailing *halakhic* opinion is that once nightfall happens, one should return and say the paragraphs of the Shema, without *berakhot*, in order to fulfill the *de'oraita* obligation of Shema "when you lie down", i.e., in its appropriate time. The Terumat HaDeshen even says this in his *teshuvah* as a way to permit people to remain in communities that *davven ma'ariv* too early. Undoubtedly, Katz does show in his article that some poskim didn't even require a late Shema to be recited. Which is to say, some allowed for even the *de'oraita* aspect of *ma'ariv* to be said before actual night, even before *plag minhah* in some cases. While that may be a *s'nif le-hakel* for those who wish to allow *kiddush* to also be said before *plag minhah*, this paper contends that making the same general permission for the onset of Shabbat has wider and more significant implications to how we manage holy time. Consider also the implications of allowing one to fulfill the obligation for *leishev ba-Sukkah*, clearly *de'oraita* on the first night of Sukkot, before *plag*. In any case, since all agree (on some level) that *kiddush ha-yom* is a *de'oraita* obligation, it is hard to compare it to the *ma'ariv* service. (See M.T. *Laws of Prayer*, 3:7; and SA, OH 235)

13 . Which is to say, permission could only be deduced from his responsum for communities that already have a longstanding practice to do this. To be clear, there is no *halakhic* 'ideal' here. No option is perfect, and the situation is in many ways *b'diavad*. But is there a best option of the imperfect ones?

14 . Which could mean either individually or with a late minyan. Though, a late minyan in these few months could be unreasonably late. It would be up to each rabbi to decide what is best for their respective communities.

15 . I address this again in my conclusions. There are, indeed, challenges with the last piece, the late minyan. This I admit. However, this *teshuvah* prefers to use *halakhic* maneuvering to support the *kiddush* and *oneg-Shabbat* in its textually-supported proper time, over the communal *ma'ariv* service and even *kaddish*.

16 . This point is also crucial. The main reason I would prefer that no official *Kabbalat Shabbat* and/or no part of *ma'ariv* is officially said is because legally there are several liturgical points during the service that have the potential of bringing in Shabbat, even without intention, if it is after *plag minhah*. Admittedly, if it is before *plag minhah* these prayers would likely have no cosmic impact, however, the confusion over what the service implies and what is actually happening is enough to warrant a hybrid position. For the various times Shabbat can be accepted by a community or individuals, see *Shmirat Shabbat K'Hilkhatah*, Ch. 46.

## The Early Kiddush - Before Sunset but after Plag?

The primary source is B. Berakhot 27b.

אמר רבי חייא בר אבין: רב צלי של שבת בערב שבת, רבי יאשיה מצלי של מוצאי שבת בשבת. רב צלי של שבת בערב שבת. אומר קדושה על הכוס, או אינו אומר קדושה על הכוס? תא שמע: דאמר רב נחמן אמר שמואל: מתפלל אדם של שבת בערב שבת ואומר קדושה על הכוס. והלכתא כוותיה.

R. Hiyya b. Avin says: Rav would pray the Shabbat Amidah while it was still *erev* Shabbat. Rabbi Yshiya prayed the Amidah for *motzei* Shabbat while it was still Shabbat.

Rav would pray the Shabbat Amidah while it was still *erev* Shabbat. Does [that mean] one should say the kiddush over a cup, or not?

Come, learn - R. Nachman said in the name Shmu'el: A person [may] say the Shabbat Amidah on *erev* Shabbat and make *kiddush* over a cup. And the law follows him [Shmu'el].

This source can be read in two ways. 1) It permits reciting both the Amidah and the *kiddush* of Shabbat before Sunset [but after *plag*], and does not mandate any particular order. It is simply stating that each might be done. Or, alternatively 2) The way in which the final statement is ordered implies the chronological order in which the two practices might be recited. I think the preferred reading is the former.

The Rosh comments:

### תוספות הרא"ש מסכת ברכות דף כז עמוד ב

אומר קדושה על הכוס או אינו אומר וכו'. קט"ד משום דקדושה מן התורה הוא אין לו לאומרו מבעוד יום ומסיק שהיה אומר גם קדושה על הכוס משום דכתיב זכור את יום השבת דמשמע סמוך לכניסתו מדלא כתיב זכור ביום השבת.

One might think that since the *kiddush* is a *de'oraita* (Tora'itic) obligation, that it cannot be recited while it is still day. But the [proper] conclusion is that even the *kiddush* may be said [before sunset], as it is written, "Mention the day of Shabbat," which implies close to its [astronomical] commencement. For the Torah doesn't teach, "Mention it IN THE day."

The Rashb'a concurs with this conclusion, and is even more explicit:

### יידושי הרשב"א מסכת ברכות דף כז עמוד ב

הא דאמר שמואל מתפלל אדם של שבת בערב שבת ואומר קדושה על הכוס. מיד קאמר ואפילו קודם שתחשך וכן הא דאמר רב תחליפא אמר רב מתפלל אדם של מוצאי שבת בשבת ואומר הבדלה על הכוס מיד קאמר ולומר שבהבדלה זו מותר לו לעשות מלאכה בערב ומותר לו לאכול וכן בקדוש של כוס זה מותר לו לאכול בשבת וכן הסכים רב האי גאון ז"ל וכן הראב"ד ז"ל ואע"פ שיש מקצת מן הגאונים ז"ל שאומרים שאינו אומר קדוש ולא הבדלה עד הערב ואין לו טעם והראשון עיקר.

That which Shm'uel said... - [*kiddush* may be recited] immediately, even before sunset. And also Rav's statement is related in its opposite: One may pray the weekday Amidah [for *motzash*] while it is still Shabbat and say havdalah over wine, immediately, and to say that with this havdalah it is permitted for him to do melachah in the evening and it is permitted for him to eat and so too with this *kiddush* on a cup it is permitted to him to eat on shabbat. And Rav Hai Ga'on agrees, and so does the Ra'avad. And even though some Geonim Z"L claim that neither *kiddush* nor havdalah may be said until night - there is no reasoning behind this opinion. The first [opinion] is the essence of the matter.

The Pn'ei Yehoshua adds another level to our question, the difference, legally, between *ma'ariv* and *kiddush*. Namely, *tefillah* is *derabbanan*<sup>17</sup>, and *ma'ariv* is of a slightly lesser status (*reshut* that

17. Even if one argues that according to the Rambam, some kind of Amidah is *de'oraita*, the structure, timing, and

became halakhah), but *kiddush* is *de'oraita*. At the very least it is an *asmahta*, therefore still commanded by rabbinic interpretation.<sup>18</sup> The Pn'ei Yehoshua further clarifies and also tries to explicate the reason for the Geonic stringency. I'll underline the pertinent pieces:

**פני יהושע מסכת ברכות דף כז עמוד ב**

בגמרא רב מצלינו' אומר קדושה על הכוס נו'. נראה דהא דמספקא ליה לבעל האיבעיא משום דאיכא למימר דנהי דמתפלל של שבת בערב שבת היינו משום דתפלה דרבנן וכל שכן בתפילת ערבית דקיי"ל רשות ומש"ה הקילו להתפלל מבעוד יום כמ"ש לעיל בשם הרמב"ם ז"ל [פ"ג מהל' תפילה ה"ז] ומכל שכן למאי דפרישית לעיל דמלשון הירושלמי שהביא הרא"ש בריש מכילתין מבואר להדיא שהיו רגילין להתפלל תפילת ערבית מבעוד יום אפילו בחול. וכן מצאתי בתוספתא שר"א בן יוסי העיד על אביו שהיה מתפלל בעת נעילת שערים וא"כ היינו מבעוד יום ולפי דמפלג המנחה לילה הוא לענין תפלה מש"ה יש להתפלל תפלה של שבת בערב שבת ולא של חול, משא"כ לענין קידוש היום שהיא מדאורייתא ממש או עכ"פ אסמכתא דזכור את יום השבת משום הכי יש סברא לומר שצריך לקדש על הכוס משחשכה דוקא, וקפשיט ליה ממימרא דרב נחמן דאומר קדושה על הכוס והיינו נמי מבעוד יום כמ"ש הרשב"א ז"ל בחידושינו. ולפי"ז יש ליישב ג"כ שיטת הגאונים שהביא הרשב"א ז"ל שם שכתבו דבאמת צריך לקדש על הכוס משתחשך דוקא ועל זה קשה שאין לזה טעם ולפמ"ש מבואר שיש לסברא זו טעם. ואפשר שהם מפרשים הסוגיא בענין אחר משום דסברי דזוכרהו על היין לא הוי אלא מדרבנן וא"כ אפשר לומר דלאחר שכבר הזכיר קדושת היום בתפלתו מבע"י משום תוספת קדושה שוב אין צריך לקדש שנית על הכוס כדאשכחן נמי כה"ג לקמן [ל"ג ע"א] לענין הבדלה שהיו כמה תקנות בדבר, ובהא פשטינן ממימרא דרב נחמן שאומר קדושה על הכוס ולעולם דהיינו משתחשך, כן נראה לי ליישב שיטת הגאונים:

This opinion, that kiddush may be recited before sunset, is also shared by the Rambam (Laws of Shabbat 29:11), the Bach (Responsa HeHadashot, 51) and is codified in the Shulhan Arukh:

**שולחן ערוך אורח חיים הלכות שבת סימן רסז: סעיף ב**

מקדימין להתפלל ערבית יותר מבימות החול, ובפלג המנחה יכול להדליק ולקבל שבת בתפלת ערבית (ולאכול מיד (וע"ל סי' רל"ג כיצד משערין שיעור פלג המנחה).

*Maariv* is said earlier than on weekdays. And from *plag minhah* onwards one may light candles and accept upon oneself Shabbat with *maariv* and eat immediately.

Since *kiddush* must be said before the Shabbat meal (and any eating before *kiddush* is actually forbidden by the rabbis as an assault on *k'vod L'Shabbat*, the honor of Shabbat - see below) this text makes clear that *kiddush* may be recited before sunset, but only after *plag*.

It appears that the majority of poskim allow this shift to an earlier recitation to happen because they consider the obligation of adding from the regular to the holy (*tosefet shabbat*) to be a *de'oraita* requirement, therefore, strongly enforcing that it is Shabbat even before it is 'astronomically' the next day. And even for those who may think *tosefet* Shabbat is only rabbinic, many still permit this.<sup>19</sup>

many of the *berakhot* are generally accepted as rabbinic. See B. *Berakhot* 20b.

18. See B. *Hullin* 64b. See also the first *Bach* to TUR, *Orah Hayyim* 242.

19. See *Mordechai* to the end of the second perek on B. *Megillah*.

Nevertheless, one problem persists. While the Shulhan Arukh text above indicates one can recite *kiddush* early, can that recitation precede *ma'ariv*? Karo indicates that eating occurs only after the *davvening*, which officially constitutes the acceptance of Shabbat. But is that necessary?

We find in the Arukh HaShulhan:

**ערוך השולחן אורח חיים הלכות שבת סימן רע"א: סעיף יב**

...ואם קיבל שבת מבעוד יום אסור לו לאכול ולשתות ולטעום עד שיקדש כיון דקיבל שבת ויכול לקדש ולאכול ולהתפלל ערבית אח"כ ובלבד שיהיה יותר מחצי שעה לזמן ק"ש של ערבית דאל"כ הרי אסור לאכול מצד ק"ש...

...And if one accepts Shabbat while it is still *erev* Shabbat (but after *plag*), it is forbidden for him to eat, drink, or taste anything until he makes *kiddush*, because he has accepted upon himself Shabbat. And he can make *kiddush*, and eat and pray *ma'ariv* afterwards, as long as he doesn't start his meal a 1/2 hour before the time for saying the evening Shema. But if there isn't more than 30 minutes, he has lost his opportunity to eat because of the obligation to [be ready] to say the Shema...

This text clearly sets a precedent for *kiddush* before *ma'ariv*. This view is also explicitly stated several times in *Shmirat Shabbat K'hilkhata* by Rabbi Yehoshua Neuwirth.<sup>20</sup>

In cases of need, like the situations mentioned at the outset of this *teshuvah*, one can certainly rely on these sources to adopt this practice. If a family or individuals feel the need to eat at *plag*, the 1/2-hour worry shouldn't really matter because it happens well before nightfall. Additionally, the Hofetz Hayyim said that this stringency can be easily lifted.<sup>21</sup>

Yet, many still have the impression that *kiddush* is only possible after *davvening* is complete. This debate is most relevant to Shabbat *Shaharit* and is often misunderstood. Traditionally, we don't eat and recite *kiddush* until after we have finished *davvening* *Shaharit*. If that is hard-line law, then, it would mean reciting *kiddush* and eating dinner before *Kabbalat Shabbat/ma'ariv*, which would be impossible. However, the set of questions one would ask for daytime *kiddush* and the evening *kiddush* are not necessarily the same.<sup>22</sup>

I see two possible textual objections to moving *kiddush* and dinner before *davvening*. The most significant rabbi against this practice is the AR"l. Rabbi Yaakov Chaim Sofer (1870-1939, Bagdad) quotes the following in his name:<sup>23</sup>

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20 . See there 47:23, a:1 & 2, as well as 54:33, a - c.

21 . This point is dealt with more extensively below.

22 . What's behind the not-eating-without-kiddush-only-after-davvening-practice? The question hinges on whether or not the obligation to make daytime *kiddush* exists on its own, separate from *tefillah*, or only after *tefillah*, meaning, *tefillah*-enacted. For an in-depth look into these laws, see: Tur, OH, 89 & 289. For the question of daytime *kiddush* as *D'oratia* or *Derabbanan*, see M.T., Shabbat, 29:10, Rashb'a (Responso 7:529), the Ran to B. Pesachim 106a.

23 . Sefer Kaf Ha-Chayyim, Orakh Hayyim, 271:22

"...However, according to the words of the the AR"l z"l in Sha'arei Kavanot it would not be correct to do this. He wrote that the order of the elevation of the worlds and the attraction of the consciousness begins with Kabbalat Shabbat, and afterwards with the recitation of *barkhu, kriyat shema, amidah, va'yekhulu*, the *me'ein sheva brakhah (magen avot through adon ha'shalom)*. And then afterwards the conclusion is with the *va'yekhulu* over the cup and the blessing of *kiddush*, as is shown elsewhere. So if you were to come and make *kiddush* and eat before *ma'ariv*, this would upend the 'order' which is done Shabbat evenings."

In other words, the transformation of our souls into "shabbat mode" is based on the theurgy of the rituals, but only in their proper order. I find this to be quite powerful and something to aspire to. Yet, in my opinion, it does not necessarily mean that one must always keep the order in tact in order to fulfill their Shabbat obligations and 'transform' the soul. There are certainly times, as this *teshuvah* points out, that permit us to upend the traditional order for alternative and solid reasons.

There is also one general prohibition, seen above in the Arukh HaShulhan text,<sup>24</sup> that one shouldn't eat within a 1/2 hour of the ideal time for *ma'ariv* (3 stars). Apparently, this directive was instituted to make sure that one's meal didn't drag on or cause him/her to sleep, thereby missing *ma'ariv*.<sup>25</sup> However, the 1/2 hour gap is a stringent position. The Taz<sup>26</sup> holds that it is really just a moment before the official time that one shouldn't eat. Furthermore, the Hafetz Hayyim adds that if one can ask for a reminder to davven maariv after the meal, one need not worry about eating before the time for *ma'ariv* at all. With this provision, one could even eat as the ideal time for *ma'ariv* approaches.<sup>27</sup>

Beyond this and the position of the AR"l, there is no other textual reason I can think of to prohibit this. Even if one would not want to rely on the affirmative texts from the Arukh Ha-Shulhan and the Shmirat Shabbat K'hilkhata as precedent, it seems that no solid and all-encompassing objection exists to the practice of reciting kiddush and eating before Shabbat davvening. It should therefore be a valid option for our communities.<sup>28</sup>

#### P'sak Halakhah

1) For communities that are presently trying to find a solution to this problem:

**a)** This *teshuvah* recommends that they continue to hold a prayer service at their normally scheduled Friday night time, but only *davven mincha* formally. They should add a few Shabbat Psalms to sing together, add another mourner's *kaddish*, and then people can make *kiddush* on their own and davven *ma'ariv* after they eat their dinner.

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24 . Page 4

25 . See SA, OH 235:2 with comments from the MB.

26 . R. David ha-Levi Segal, c. 1586 –1667.

27 . Ibid, *Sayyif Katan* 18

28 . This line of thinking does maintain, still, that once the candles are lit, one should not eat anything until *kiddush* is concluded. Since the whole idea is to begin and end the Shabbat meal early, this shouldn't be a problem. The meal will happen immediately after candle lighting. See TUR, OH, 271:4. Of course the usual exceptions remain in force. (sick, elderly, children, etc..)

**b)** For some congregations that prefer to *davven* a full Kabbalat Shabbat and *ma'ariv* together, this could also mean forgoing an early minyan and instead joining together for a 'late minyan'.

While holding both an early *minha* minyan and later, post-dinner Kabbalat Shabbat and *Ma'ariv* minyan is a theoretical possibility, I think we need to recognize the stark practical challenge for both rabbi and congregants to applying this in practice.<sup>29</sup>

In either case, during these months, the rabbi may also want to make sure to add another Mourner's Kaddish to the morning *davvening*, to respect those who are observing *yartzeit* so that they won't miss an opportunity to recite the prayer in honor of loved ones.

2) For those communities who already have a longstanding practice of keeping one time all year for *ma'ariv*, even on *erev Shabbat*: during the summer months, when it means taking on Shabbat before *plag minha*, they may continue to do so. They sit squarely within the boundaries of accepted *minhag* and find support from the *Terumat Ha-Deshen* and the *Leket Yosher* (I, 50).<sup>30</sup> In these communities Rabbis should remind their constituents to recite the *Shema* again at home after it is dark. However, with this permission come alternative challenges. From the moment that Shabbat is communally taken on all Shabbat prohibitions are enacted.

3) For communities who do not have a long-standing practice already of taking on Shabbat before *plag minha* but find the option in *p'sak #1* impossible to institute for a variety of reasons: we have to be honest and acknowledge that all *minhagim*, whether at variance with our traditional sources or in line with them, began at some point, likely for a very good reason. This *teshuvah*, while clearly favoring the options outlined in *p'sak #1*, gives significant latitude to each *Mara D'Atra* and her community. There is precedent for multiple authentic and *halakhic* possibilities.<sup>31</sup> I would also assert that in order to choose this route a communally compelling and distinctly religious case needs to be established and articulated that takes into account, for example, the challenges laid out in first paragraph of this paper. And, if instituted, should be regularly reassessed to ensure it continually ensures the goals for which it was originally put in place.

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29. As I've stated earlier, the late minyan is not uncomplicated and is not as common as it once was. For some communities it is an essential need. Others find no appeal in it. I am not making a value statement on this practice one way or another. Some communities may not find this option tenable. For others, it may work. Either way, in dealing with this less than ideal conundrum, each community will have to decide what most fits in with their goals and vision for a Shabbat community.

30. A colleague who read a draft of this paper asked whether the nature of the community that holds a practice explicitly against normative *halakhic* practice holds the power to retain that practice. In this case, may a non-observant community's *minhag* drive practice? There is a lot of debate as to whom Schechter's Catholic Israel refers. Observant communities? Committed communities? Something in between? Frankly, I am yet to be fully persuaded by any of the arguments. One could make the claim that only observant communities (how would one define this?) may be instrumental in enacting authoritative change. History certainly shows this to be the case. Conversely, the non-observant have also completely transformed or erased ancient *halakhic* categories to meet modern needs. See *Responsa Melamed Le-ho'il*, 1, OH, 29. Therefore, it seems appropriate to allow the *mara d'atra* to determine the threshold for determining how to balance communal practice when it collides with authoritative textual sources.

31. In any of these cases, *Shav'uot* that begins on Saturday night may cause an issue because one cannot detract from Shabbat for the sake of *hag*, which is deemed lower in holiness than Shabbat. Still, one could still *davven* *ma'ariv* so that it is complete by *Yom Tov* candle-lighting time, allowing for dinner to take place as soon as possible.



## 1) The full text of Terumat Ha-Deshen #1:

## תרומת הדשן סימן א

**שאלה:** ברוב הקהילות נוהגין, בימים ארוכים בימי הקיץ, לקרות ק"ש של ערבית, ולהתפלל תפלת ערבית, ג' או ד' שעות לפני צאת הכוכבים. אם יש שום ישוב או טעם למנהג זה; כי גם הרבה ת"ח עם ההמון עם במנהג זה?

**תשובה:** דאין בידינו כלל, למצוא ישוב וטעם למה שנהגו להקדים כ"כ, זמן גדול ג' או ד' שעות; דהא דכתב ר"ת דמפלג המנחה ואילך חשוב לילה, כר"י, ויוצאין מאז ידי ק"ש ותפלה של ערבית. וכתב המרדכי ובהג"ה במיימון, וראבי"ה כתב דדברי ר"ת עיקר הם, והבא להחמיר ע"ע ולהמתין, עד כדברי שאר הגאונים מחזי כיוהרא ונקרא הדיוט; אם לא הורגל בשאר פרישות. מ"מ זמן זה אינו, אלא שעה ורביע קודם צ"ה, אבל מנין לנו להקדים כ"כ? ובימי חורפי, ראיתי בתוס' בברכות בפ"ק, דיש רוצין לומר: דבימי הקיץ שהימים מאריכין, אגן מחשבינן שעות הלילות לשעות קטנות, ושעות היום לשעות גדולות. דרך זה: שלעולם יעלו י"ב שעות ללילה, וי"ב שעות ליום. וכן הועתק לי, תשובה מאחד מהגדולים, שהשיב ג"כ לחשוב היום, לעולם רק לי"ב שעות, אפי' לימים ארוכים, לענין פלג המנחה. ובתוס' כיצד מעברין מדקדק בזה, לענין התקופה היאך מחשבינן השעות ליום ולילה בימים ארוכים וקצרים, ע"ש.

ולפי חילוק זה היה ליישב, אם באנו להקדים יותר משעה ורביע, לפי אורך הימים; כגון באמצע הקיץ, שהיום מאריך ביש ארצות, כמו י"ח שעות מעלות השחר עד צאת הכוכבים, ונמצא כל שעה יתירה שלישי מלבר. וא"כ משעה ורביע, תעשה ב' שעות פחות שמינית השעה בינונית. וע"כ לא יישבנו, אפילו ב' שעות קודם הלילה, כ"ש שלשה או ארבעה. ע"כ נראה, דאין ליישב כלל, בטעם ובסברת התלמוד, אלא יש לומר: שהמנהג נשתרבב על ידי תשות כח שירדה לעולם, ורוב ההמון תאבים ורעבים לאכול, בעוד יום גדול, בימים ארוכים. ואם היו אוכלים קודם מנחה, היו שוהים באכילה ובשתיה ולא יבאו כלל לבית הכנסת. ומהאי טעמא, אסרו כמה גאונים אפילו סעודה קטנה, סמוך למנחה גדולה. וא"כ לא היו שפיר דמי כלל, לסעוד תמיד קודם תפלת המנחה, ומתוך כך, לא היה כח לת"ח, לפרוש ההמון עם, מלהתפלל תפילת ערבית, ולקרוא את שמע בעוד היום גדול. וכה"ג אשכחן, אפילו בדורות הראשונים, בימי רב האי גאון, כדאיתא באשירי ריש ברכות, ובימי ריב"א, כדאיתא בהגה"ה במיימון בהלכות תפילה: שהיו הצבור מתפללין וקורין את שמע בערבית, בזמן שהיה נראה לאלו הגאונים, שלא היתה תפלה וק"ש בזמנה, ואעפ"כ לא היו מצי לעכבינהו. גם שמעתי בישיבה, מפי אחד מהגדולים, ששמע וקבל, כי בימי הקדמונים בקרימ"ש, התפללו ערבית וקראו את שמע, בע"ש בעוד היום גדול, כל כך, שהיה רב העיר שהיה מהגדולים הקדמונים הוא, וכל טובי הקהל עמו, הלכו לטייל אחר אכילה של סעודת שבת, על שפת הנהר דונא"; והיו חוזרין לבתיהם קודם הלילה. גם נמצא כתוב, בשם אחד מהגדולים, שהורה להתפלל ערבית ולקרוא את שמע בעוד היום גדול מאוד, לצורך סעודת נשואין.

מכל הלין משמע, דמקדם היה בקל להורות לקולא בדבר זה, וא"כ כיון דהתוספות בריש ברכות /דף ב' ע"א ד"ה מאימתי/ כתבו: דעבדין תרי קולא דסתרי אהדי בתפלה, משא"כ בכל מקום, ובק"ש נמי אליבא דרש"י, נפקינן בק"ש שעל מטתינו, נראה דאפילו ת"ח, אם הוא בצבור, שמקדימין להתפלל ולקרוא את שמע בימים הארוכים, אם אין יכול להפרישם, אין צריך להפריש מהם, אלא מתפלל וקורא עמהם ויוצא בזה. אבל אם הורגל בשאר פרישות, יתפלל ויקרא בזמן שתקנו חכמים, לפי כל הדיעות. הנראה לע"ד כתבתי.

2) The Validity of the early kiddush according to Reponsa Minhata Shlomo:<sup>32</sup>

## שו"ת מנחת שלמה חלק א סימן ג

קידוש מבעוד יום להוציא אחרים שכבר קבלו עליהם שבת

נשאלתי מת"ח שהיה רגיל לקדש בכל ליל שבת בבית חולים שבתוך העיר כדי להוציא במצות קידוש על היין את החולים שנמצאים שם והי' רגיל תמיד לחזור אח"כ לביתו לקדש לעצמו ולבני ביתו, **אולם בזמן האחרון עבר ביה"ח למקום אחר שהוא רחוק מאד מביתו, ולכן הציעו לו לעשות את הקידוש מבעוד יום לאחר פלג המנחה ולהתנות שכונתו רק להוציא את השומעים אבל הוא עצמו לא יתכין כלל לקבל שבת בכך וממילא גם יוכל אח"כ לנסוע חזרה לביתו לפני כניסת השבת.**

...מ"מ אם אחד הנמצא בארה"ב יקדש **בחצות היום של ערב שבת** עבור מי שנמצא בא"י שאצלו כבר שבת, או יקרא את המגלה ביום י"ג בצהרים עבור בן עיר שבא"י שאצלו כבר ליל י"ד דודאי לא יצא כיון דהקידוש שבארה"ב לא נקרא כלל בשם קידוש, דאף שהמקדש ודאי חייב בערבות גם עבור בני א"י מ"מ סו"ס לאו קידוש הוא כיון שמקדש **ממש ביום חול וכן בקריאת המגלה...**