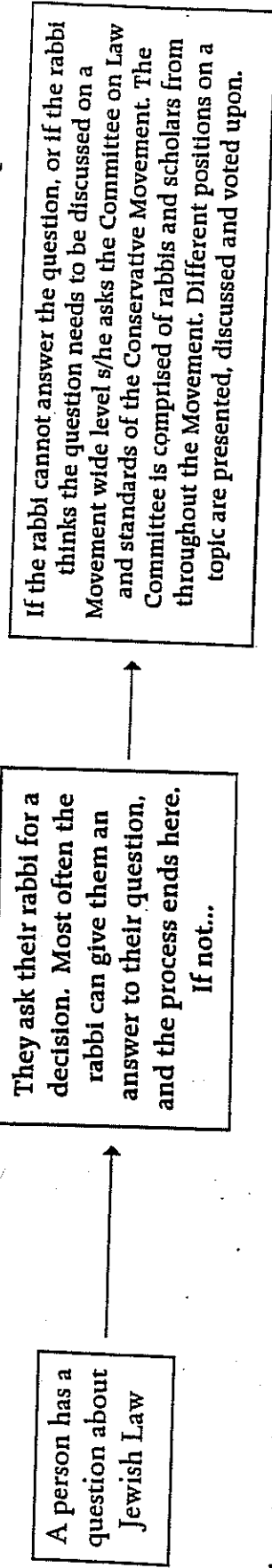
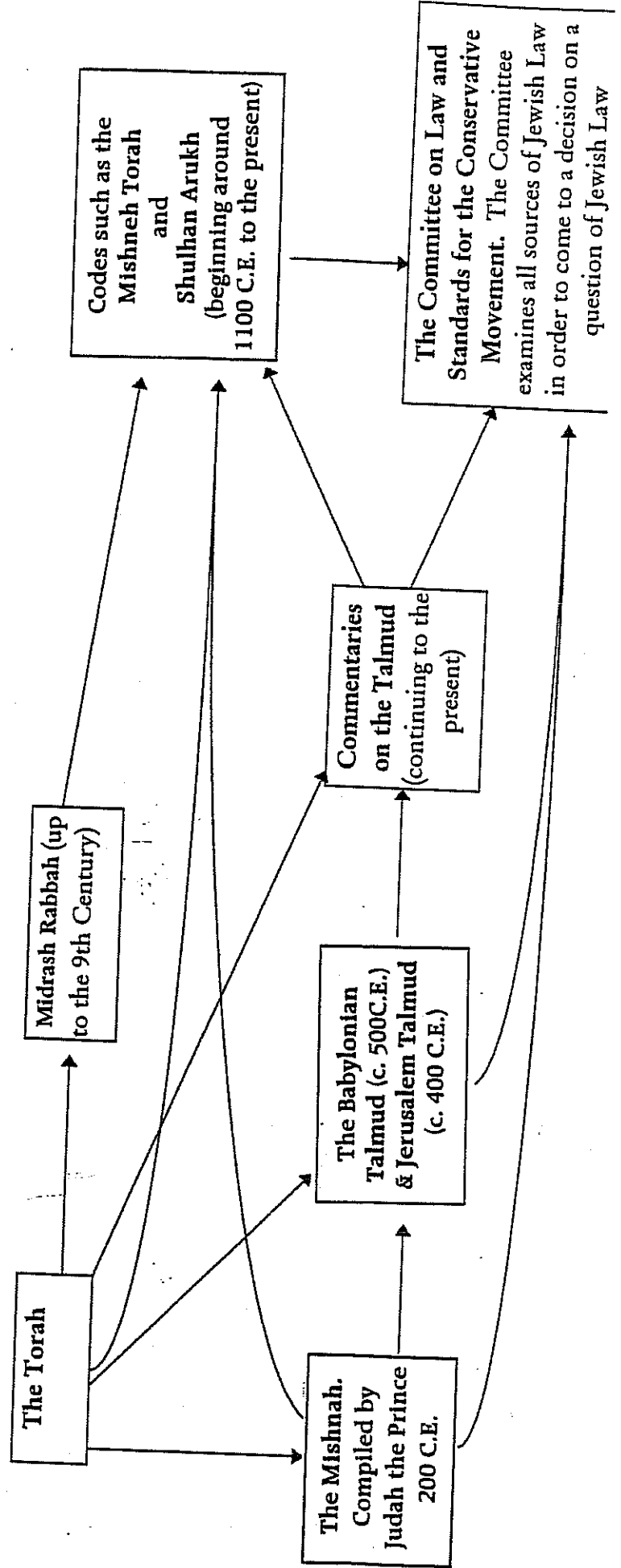


THE WORLD OF HALAKHAH -- הלכה (JEWISH LAW)

How do we as Conservative Jews get answers to questions involving Jewish Law? Below is a typical example.



How does Jewish law get determined? Below are some of the major sources from which Jewish Law has been determined and is determined in our time (with approximate dates for when the source was compiled). The arrows from one source to another mean the source had some influence on the later source. For example the Torah directly affects all works of Jewish Law, so the arrows go out from the Torah to all of the sources. Since the Torah is the *first* source in Jewish Law, no arrows go to the Torah.



Dorff USY 1977, 1996

The first responsum is taken from Mordecai Waxman, ed., *Tradition and Change* (New York: The Rabbinical Assembly, 1958), pp. 351 ff. The second selection is from David Novak, *Law and Theology in Judaism* (New York: Ktav Publishing House, Inc., 1974) Series I, Ch. 3.

A RESPONSUM ON THE SABBATH

(Rabbis Morris Adler, Jacob Agus and Theodore Friedman)

This is the first of two sets of responsa on the questions of riding...on the Sabbath. The responsum printed below is the collective effort of three men who prepared it for the approval of the Law Committee of the Rabbinical Assembly. It secured the support of a majority of the Law Committee and it was subsequently presented at a convention of the Rabbinical Assembly (1950).

Sheelah:

As a rabbi in Israel, I turn to you my Colleagues, for assistance in a question both theoretic and practical which has caused me concern and anxiety. One cannot serve a congregation for any time without being depressed and disheartened by the widespread disintegration of Sabbath observance among our people. This breakdown of one of the major institutions in Jewish life is too deep and too prevalent to be countered by preachment and exhortations. Sermons declaring the pre-eminence of the Sabbath in Jewish life or extolling its spiritual beauty and social significance are politely received by our congregants but exert no influence on their practices or habits.

Yet the American Jew is not innately resistant to religious forms and values. I find among many in my congregation a fine receptivity to Jewish teaching and a marked interest in Jewish affairs. Some recognize the lack of spiritual satisfactions in their present mode of living and evince eagerness not alone for instruction in Jewish ideas but likewise for guidance in their practical conduct as Jews.

They are Jews who not only have been born into the modern, industrial world, but have also been educated in its institutions and have been mentally and psychologically shaped and moulded by its approaches, attitudes and activities. To ignore this fact and to speak to them as if they were the identical counterparts of their East European forbears is to engage in futile rhetoric. On the other hand, to overlook the spiritual alertness and interest as well as the healthy Jewish pride and desire for Jewish identification which motivate them is to doom to atrophy those characteristics which hold forth greatest promise for the future of American Jewish life. To do nothing, or to mouth easy formulas that have a respectable past behind them, is to abandon to the haphazard forces of the pervasive secular environment much of the richest potential for Jewish living in this land.

I know, dear Colleagues, that the question of the Sabbath, as indeed of Jewish religious life, has agitated

you as it has disturbed every earnest and thinking Jew. It cannot be met on a level of individual action since the problem is far too aggravated for such a necessarily fragmentary approach to it. In addition, were every rabbi to work in terms of his individual judgment, the confusion and disharmony in our midst would be greatly intensified.

Our Conservative movement must marshal its forces to meet the problem I have described. I therefore turn to you to ask for guidance in instructing my people as to our view as a movement on the Sabbath disciplines, our best thought as to its proper observance and a practical program by which its meaning may be better understood, its spirit more widely shared, its sanctities more greatly respected by the congregations that look to us, as Conservative rabbis, for guidance and instruction.

PLACE OF SABBATH – PAST AND PRESENT

Teshubah:

The question raised by our colleague penetrates to the basic core of Judaism and touches likewise the most difficult and aggravating problem in contemporary Jewish life. A question of such scope cannot be simply or readily answered. We have deliberated through many months and have focused upon this problem our most earnest thought. We seek a solution, humbly and prayerfully aware of the fact that we are dealing with one of the central sanctities of our tradition. The feeling that a Sabbath-less Judaism is no Judaism governs our consideration and motivates our reverent approach to the complex issues which are associated with so fundamental a problem. The colleague who has directed his quest to us has rightly suggested that as spiritual leaders in Jewry we would be remiss in our calling were we content to leave the Sabbath to its fate, to be further buffeted about by the compelling pressures of the changed outer world in which we live and by the dictates generated by a greatly altered inner world of ideas and attitudes which we have come, as modern men, to inhabit.

To overlook the former is to sacrifice relevance; to ignore the second is to violate integrity. Our duty as rabbis is not exhausted when we cite the law as it has been understood and practiced, and ignore the conditions of life in the midst of which, or the thoughts of men by whom that law is to be followed. One of the great responsibilities of this age in our history is to release the life-giving and life-enriching powers that inhere in our tradition, by relating that tradition to modern life. Changing conditions threaten an inert system of law. The Halachah lived and functioned in our history because it has traditionally been characterized by resiliency and responsiveness to life. The very designation of Jewish law as Halachah suggests its capacity for movement, and reveals the intent of its architects and builders to charge it with a genius for vital adaptability to the moving and changing scene.

It is out of a faith in the significant meaning which our historic tradition can and should have for us today and out of our conviction that modern Jews have a capacity for spiritual living and Jewish loyalty that we seek an answer to the question addressed to us by our colleague.

The preservation of the Sabbath spirit and of Sabbath practices is an indispensable element in any

program for the Jewish future. The Sabbath has always served Israel as a "sanctuary in time," when, released from the deadening drudgery of daily duty, the Jew could soar to the highest realm of his human possibilities. The Sabbath was the most eloquent manifestation of the covenant with God into which Israel had entered and to the fulfillment of which its history is dedicated. The Sabbath helped to naturalize the Jew in a world of spiritual values and sensitivities, and made the Shekinah, the presence of God in human life, felt and experienced by even the humblest. It is impossible to overstate the role the Sabbath played in the spiritual and social economy of Judaism, or to exaggerate the widening circles of influence which it sent forth to the farthestmost bounds of Jewish life.

We feel convinced, however, that never before was the Sabbath called upon as urgently to play its creative part in Jewish living as in our time. We could understand most vividly the full meaning of the saying of our sages (ירושלמי ברכות פ"א) *"The Sabbath is equal in value to all the precepts of the Torah."* Into a world whose landscape is dominated by visible and massive monuments to human ingenuity and power, the Sabbath quietly but firmly brings the humbling and saving message of man's dependence upon God. Our modern environment, built as it has been by the drives for possession and dominion which it stimulated, needs the spiritual overtones of a day overflowing with moral and religious content. The competitive character of the society we live in not only fosters man's acquisitive appetites, but also encourages the view that man stands in the relationship of competitor and antagonist to his fellow-men in the incessant struggle for worldly reward and gain. Sabbath peace and holiness represent not simply a temporary interruption of the daily struggle, but renew with men the deeper and greater truth that men are brothers under the Common Fatherhood of a Universal God....

The Sabbath forges vital and enriching linkages which the modern Jew needs as a man and as a member of an historic group. The Sabbath unites the Jew with his people not on the level of a joint philanthropic enterprise organized to meet an emergency, nor again on the level of a defense against the defamation of the Jewish name or the denial of Jewish rights – but rather in terms of deeply-felt and experienced identification with the life and history of a people dedicated to a purposeful and benign destiny. Through the opportunities for study and prayer which in the pressure of life, the Sabbath alone offers, the Jew enters the rich world of Jewish ideas and feelings and becomes kin to those eternal contemporaries in Jewish life – prophet, sage and poet. The Sabbath quickens the spirit and fortifies the meaningful cohesiveness of the Jewish family by rededicating the family altar and by providing a fund of shared spiritual experiences and delights, this in an age in which the family is being subjected to centripetal forces and multiple corrosions. Thus from the Sabbath there can flow into the life of modern Jews numerous streams of spiritual balm and enrichment...

PROGRAM FOR THE REVITALIZATION OF THE SABBATH

We call upon you and upon all our colleagues of the Rabbinical Assembly of America, in concert with the United Synagogue of America, to launch a campaign for Sabbath observance among our people. The campaign should have as its immediate goal the acceptance on the part of the people of the following basic indispensable elements of Sabbath observance. Emphasis on this immediate program

should in no wise militate against the ultimate objective – the cessation of all gainful employment on the Sabbath. It is in the conviction that only the immediate can lead to the ultimate that the following program is proposed.

- (A) The ushering in of the Sabbath at home through the kindling of the Sabbath candles, the recitation of the Kiddush, the blessing of the children, the singing of Sholom Aleichem and other zemirot.
- (B) All preparations for the Sabbath, such as the Sabbath meals, the tidying of the home, as well as personal preparation, should be completed before the onset of the Sabbath. It is also suggested that there be introduced the custom now prevailing in Israel of adorning the house with flowers for the Sabbath.
- (C) Attendance at public worship at least once on the Sabbath.
- (D) A portion of one's leisure time on the Sabbath should be devoted to the reading of Jewish sacred literature, particularly the weekly Torah portion.
- (E) One should refrain from all such activities that are not made absolutely necessary by the unavoidable pressures of life and that are not in keeping with the Sabbath spirit, such as shopping, household work, sewing, strenuous physical exercise, etc.
- (F) The type of recreation engaged in on the Sabbath should be such as is calculated to enhance one's spiritual personality in its intellectual, social and esthetic aspect.
- (G) Refraining from the use of a motor vehicle is an important aid in the maintenance of the Sabbath spirit of repose. Such restraint aids, moreover, in keeping the members of the family together on the Sabbath. However, where a family resides beyond reasonable walking distance from the synagogue, the use of a motor vehicle for the purpose of synagogue attendance shall in no wise be construed as a violation of the Sabbath, but, on the contrary, such attendance shall be deemed an expression of loyalty to our faith.

We are well aware, in the above connection, that in accordance with Jewish law one may worship at home as well as in the synagogue. We are equally aware, however, that the practice of private prayer has unfortunately fallen into such disuse that only a very minimal number of people engage in prayer unless it be at a synagogue service. Indeed, it is a well-grounded supposition that were it not for synagogue attendance on the Sabbath, there would be no prayer for most of our people from the end of one week to the other. Moreover, when almost every Jew had some measure of competence in understanding the Torah and our sacred literature, many Jews could and did spend time in studying Torah. Today, however, this condition no longer obtains. The average Jew's knowledge of Torah and his Jewish information are gained through the synagogue and in great measure through the sermon which both instructs and inspires our people to live in accordance with our faith. Hence, in our time regular attendance at the synagogue has become a *sine qua non* for the maintenance of Judaism. We are, we sincerely believe, acting in accordance with the spirit of our rabbis when they declare

אין שבת במקדש - "The Sabbath prohibition of *shebuth*³" does not apply to the carrying out of the temple ritual. We similarly state in our program for the revitalization of the Sabbath that the traditional interdiction of riding on the Sabbath for the purpose of attending the synagogue service may, in the discretion of the local rabbi, be modified under the conditions we have described above.

PRINCIPLES IMPLIED IN THIS PROGRAM

(1)

Every effort to restore standards of observance among our people is likely to be met with cynical skepticism, as if the process of continuous deterioration were a foregone conclusion. Actually, there were many occasions in Jewish history when the seemingly hopeless process of decay was arrested and even reversed by a determined and courageous act of reconsecration. The Jewish religion does not favor the emotional excesses of the Christian "revivalist" movements, but it fosters the principle of voluntary acceptance of a pattern of life...It is to a nation-wide effort, conceived in the spirit of the love of God and reverence for our tradition, that we must now dedicate ourselves.

At the same time, we must learn to adjust our strategy to the realities of our time and place, in keeping with the realistic genius of the great builders of our faith. Thus, our Sages cautioned us, *tafasta m'rubah lo tafasta* – "to overreach is to court failure," when you attempt to grasp a great deal, you will grasp nothing. They also advised all builders of fences in Judaism, "it is better to build a fence of ten handbreadths that is likely to stand than one of a hundred handbreadths that is liable to fall," *tov assarah t'fahim v'omed mimeah t'fahim v'nofel* (Aboth D'Rabbi Nathan). It is also well to remember the sage advice, *mutav shelo lomar davar sheaino nishma* – "it is better not to say a thing which will not be heeded."

(2)

In this spirit it is our consensus that riding to the synagogue on the Sabbath and the use of electric lights in the course of this journey or for other purposes are comprised in the general category of *oneg shabbath*, the delight of the Sabbath. Before discussing in detail the precepts and laws relating to these two specific enactments, we wish to point first to the general principle of community enactments.

The power of a community to enact ordinances in the field of religious life is virtually unlimited, provided its ordinances are made with the consent of the resident scholars and provided further that they be inspired by the purpose of "strengthening the faith," and intended only for their own time and place. The general impression that Jewish Law is rigidly inflexible and incapable of adjustment or adaptation is completely erroneous....In crucial periods, our Sages did not hesitate to make special enactments for their own time or for a limited period of time, in order to meet the challenge of new circumstances.

³ A quasi-labor activity prohibited by the Rabbis in connection with the Sabbath. The purpose of the prohibition was to erect "a fence about the law."

(3)

This power of the communities to make special enactments on behalf of the faith, through their spiritual leaders and lay representatives, is in turn a corollary of the principle of development in Jewish Law....

The share of the people in the creation and repudiation of laws is taken for granted in Jewish tradition. The Torah became binding upon Israel only when the twelve tribes accepted it voluntarily at the foot of Mt. Sinai. The power of the minhag to make laws and break them is well-known. It was the duty of the highest rabbinic court to declare an ordinance invalid if the majority of the people did not accept it in their daily practice. When otherwise observant people were living in habitual violation of a Torahitic ordinance and it was considered likely that they would not obey the law if told about it, the rabbis advised that the people be not told that they transgressed the law so as not to induce either feelings of guilt or a mood of rebellion. *Mutav she yihu shoggim v'al yiyhu mezidin....*

To sum up, the human share in the making of Jewish Law is both undeniable and inevitable. The greatest authorities of the Medieval and early modern period were cognizant of this need. Thus, Maimonides who formulated the principle of the irreplaceability of the Torah, (*zoth hatorah lo t'hai muhalefeth*) stressed the duty of rabbis to formulate and enact special regulations for their time and place. The court may revoke these ordinances, for a time, even if it be smaller than the first courts, for the rabbinic ordinances are surely not greater than the words of the Torah itself, which the courts are entitled to revoke on a temporary basis...Even as the physician cuts off a hand or a foot in order that the patient might survive, a rabbinic court may teach the violation of some mitzvot for a time, in order that the totality of Judaism might be preserved. Thus, our ancient Sages declared, "Desecrate for him one Sabbath in order that he might keep many Sabbaths."

The great scholar of the eighteenth century, Rabbi Jacob Emden, declared "that many mitzvot come into being at different periods in Jewish history, both in respect of permitting the prohibited and in prohibiting the permitted...Thus, it is clear as the sun that the commandments are dependent upon the time, the circumstances and the people of every age. They were not at one time set up in a pattern that is complete and final, but they are subject to additions and modifications, as changing times require."

In the same spirit, the famed glossator of the Shulchan Aruch, Rabbi Moses Isserless, declared in a responsum, "that when new circumstances develop, which were unknown to the ancient authorities, it is permitted to institute new enactments."

THE PROBLEM OF RIDING

The use of an automobile involves the following activities: the kindling of lights, the indirect combustion of gasoline to produce power, and locomotion from one domain to another....The combustion of gasoline to produce power is a type of work that obviously could not have been prohibited before its invention. All acts of burning are prohibited only when performed for specifically described purposes, such as: cooking, heating, lighting or the need of its ashes. Burning for the sake

of power was not included in this list. Of course, some heat is produced in the act of combustion, but this result is neither intended nor desired by the motorist. Hence, it falls in the category of *m'lachah sheainah z'richah l'gufah* which is permitted by the latest authorities. The combustion of gas in the carburetor is therefore the type of work, classed as *m'lachah sheainah z'richah l'gufah*, according to the definition contained in Tosafot, Shabbat 94a – ¹²

נראה לר"י. דמלאכה שאינה צריכה לגופה קרי כשעושים מלאכה ואין צריך לאותו צורך כעין שהיו צריכין לה במשכן. אלא לענין אחר. כי הצורך שהיתה מלאכה נעשית בשבילו במשכן הוא גוף איסור המלאכה ושורשו.

While Rashi defined *m'lachah sheainah z'richah l'gufah* differently, we favor the definition of the Tosafists in this matter. Finally, locomotion from one domain to another (e.g. מרשות היחיד לברמלית) is a rabbinic prohibition; since today there is no רשות הרבים, there can be no Torahitic interdiction involved. As a matter of fact, on the basis of the strictest interpretation of the law, riding would not be prohibited on Sabbath in a public vehicle driven by a non-Jew. Hence we deal here with a prohibition instituted by the rabbis. Their main reason for the prohibition of riding a horse or in a wagon was the fear that it may lead indirectly to the violation of the Sabbath. Thus they said that one may not ride on an animal because the rider may be tempted to break off a branch to use as a whip (ביצה ל"ו) ומורה (ביצה ל"ו) גזירה שמא יחטוך שאתה מצווה על שביתת בהמתך (ירושלמי ביצה פ"ה) – on the Sabbath

Obviously, neither reason applies to the automobile. The apprehension that the driver might be moved to fix the car in the event of a breakdown is remote, since its complicated mechanism generally requires the services of an expert.¹³

פירש רש"י שמא יתקן כלי שיר. ומיהו לדין שרי. דדוקא בימיהן שהיו בקיאים לעשות כלי שירים שיך למיגור. אבל לדין אין אנו בקיאים לעשות כלי שירים ולא שיך למיגור.

The above analysis leads us to the conclusion that riding in an automobile on the Sabbath is at most a rabbinically interdicted activity. When this act prevents the fulfillment of the mitzvah of attending public worship it shall not be considered a prohibited act. We base this conclusion upon the numerous precedents in the Halachah for the setting aside of a rabbinic prohibition when a great mitzvah is

12

A labor which, while it necessarily results in a transgression, is neither intended nor desired. Thus *m'lachah sheainah z'richah l'gufa* is a labor which is not performed for its own sake. The Tossafot' definition is that it is a labor which is performed, but not for the need for which it was performed in the tabernacle (which is the basis of the rabbinic description of types of work) but rather as the means of achieving another type of benefit – e.g., combustion not for the purpose of burning but of achieving movement.

13

Tosafot, Betzah, 30a. – The Talmud enjoins that one should neither clap his hands on the Sabbath while singing nor dance, lest he injure, and thus be led to repair a musical instrument. Rashi remarks that we may "in our time" both clap hands and dance for "in our time" people are not versed in repairing musical instruments. It has become the work of professionals, so there need be no fear that the ordinary person will undertake it and thus violate the Sabbath.

involved, such as the mitzvah of Yishuv Eretz-Yisrael (Baba Kama 80b, Maimonides Hilchoth Shabbat 6:11, 6:9) and in the case of witnesses who came to testify on the appearance of the new moon, the law of *tehumim*¹⁴ was relaxed by a *takanah* (ordinance) of R. Gamaliel the elder (Mishnah Rosh Hashanah 4:5). We may also cite the frequently quoted general principle regarding the easing of *shebuth* prohibitions when a great mitzvah or public welfare is involved.

הפנין אסור. חפצי שמים מותר (Shabbat 150a)¹⁵. As we have already indicated, participation in public service on the Sabbath is in the light of modern conditions to be regarded as a great mitzvah, since it is indispensable to the preservation of the religious life of American Jewry. Therefore it is our considered opinion that the positive values involved in the participation in public worship on the Sabbath outweigh the negative values of refraining from riding in an automobile. When attendance at services is made unreasonably difficult, without the use of automobile, such use shall not be regarded as being a violation of the Sabbath.

We cannot too strongly emphasize that our views in regard to the use of electric lights and the automobile on the Sabbath are not separable from the total program for the revitalization of the Sabbath as herein suggested. To take these elements out of the context of the entire national and local effort required for the strengthening of the basic institution of the Sabbath would be to subvert the spirit and the purpose which animate our decision. On the other hand, it shall be understood that in their wisdom and in the light of the conditions prevailing in their respective communities, individual rabbis may find the easements here proposed unnecessary for the achievement of the larger goal herein envisaged. We take into consideration the fact that different situations in particular communities may dictate the application of varying methods.

The crucial question in the issue before us is whether we of the Conservative movement are well advised to labor on behalf of the Sabbath in our own way. Rooted in the consciousness of our people is the conviction that Judaism is the business of the entire Jewish people and that Jewish Law should be changed, if at all, only by the duly constituted authorities of a reunited Israel. Indeed, in ancient times, the present divisions in Jewish life could scarcely have been envisaged. However, we are neither able nor willing to turn back the clock of history. Diversity of opinion is a direct function of democratic freedom, so that whenever outside pressure was relaxed, the variety of thought and feeling which always existed within the Jewish community came to the surface.

Today, the choice before us is not unity or diversity; the first quality is illusory in any positive program of religious dedication. The second quality is inescapable. The only alternatives we face are a policy of continued inaction by all groups, permitting Sabbath observance to sink out of Jewish life, or a resolute attempt, on as broad a front as possible, to set a floor below which respect for the Sabbath-institution shall not fall among our congregants. In setting forth this program of

¹⁴ The limitation on the distance one is allowed to walk on the Sabbath.

¹⁵ Work which you desire to perform for your own benefit is prohibited, but if it is designed to achieve some religious objective, it may be permitted.

Sabbath-observance for our congregations we hope to contribute toward a reversal of the trend of deterioration in all three groups. We earnestly trust that both the Orthodox and Reform movements will be moved to set up and implement similar programs of reconsecration for their respective memberships, with a consequent gain for American Judaism as a whole. Far from widening the present cleavage in American Jewry, such efforts are bound to make allegiance to Judaism more meaningful and to lead to the emergence of a common core of reference for Judaism and respect for its institutions.

The division of Jewry into communities, maintaining their own forms of ritual observance, is not an unprecedented development. Even before the rise of the Reform movement, there were Ashkenazic and Sephardic communities living side by side and employing a parallel set of rabbis, shochtim and cantors. Similarly, the rift between *Mithnagdim* and *Hassidim* demonstrated the capacity of Judaism to make room for a variety of emphases in religious expression, within the general pattern of loyalty to the tradition.

We call upon our colleagues in the Conservative movement to give to the program of Sabbath revitalization pre-eminence in the many duties they are called upon to discharge. *אחינו וחברינו*, as rabbis in one of the most difficult and confusing ages for Judaism, we must consecrate our greatest efforts to the preservation of the most sacred institution in Jewish life. In our congregations and in the life of our communities we must, by every means at our disposal and through all the influence and energy we command, bring a heightening consciousness of the sanctity of the Sabbath. We must rally about us the most loyal and understanding members of our congregations and prepare a concerted attack upon Jewish indifference, neglect and ignorance. Our movement nationally must mobilize its best talents and its most dedicated spirits and make of the renewal of Sabbath observance the main object of our efforts. This breach in our wall must be repaired and none among us must rest or divert his energies to other work until American Jewish life is made safe for the Sabbath. We regard this responsum as but the humblest of beginnings in that direction.

By tireless activity, by earnest planning and unwearied persistence it may yet be given to us to bring back the Sabbath to its former glory as a reservoir of Jewish spiritual strength, renewal and inspiration. We earnestly pray

ויחי נועם ה' אלהינו עלינו ומעשה ידינו כוננה עלינו ומעשה ידינו כוננה.

And Let the pleasantness of the Lord God be upon us
And establish Thou the work of our hands upon us
Yea, the work of our hands establish Thou it.

RIDING ON THE SABBATH

Rabbi David Novak

[Footnote references have been omitted.]

There was a time in Jewish history when it was assumed that the vast majority of Jews kept the Sabbath. The effects of this collective Sabbath not only extended to human lives but even to the natural world. There are stories about rivers that would not flow on the Sabbath and oxen who behaved towards the human beings around them differently on the Sabbath than on any other day.

Today the Sabbath-observer is in a minority. Although it is true that many contemporary Jews have partial Sabbath experiences, whether synagogue attendance, lighting candles, or eating special foods, fewer have experienced what the prophet described:

If because of the Sabbath you turn away your foot from pursuing your business on My holy day, and you call the Sabbath a delight and make it honored...then shall you find delight in the Lord... (Isa. 58:13-14)

The reasons for the weakening of Sabbath-observance, especially among modern American Jews, are seemingly economic and demographic.

Earlier in this century, when large masses of Jews were immigrating to this country from Eastern Europe, economic conditions made Sabbath observance an extreme hardship for many of these people. With the breakup of the semiautonomous communities in which these Jews had lived for centuries, the centrifugal forces of emancipation had economic as well as religious and cultural consequences. In Europe Jewish artisans and petty traders to a large extent controlled the market in which they operated. The non-Jewish peasants came to them. Thus the economic patterns of life were a function of the community as a whole, a community regulated by Jewish religious norms. In America these Jews were thrown into an open-market situation controlled by economic and cultural forces outside their community. As such they now had to go to the non-Jewish world to sell their goods and services.

However, the phenomenon of the American five-day week, although not affecting such occupations as retailing, has indeed affected many other Jews, especially with the gradual broadening of the occupational involvement of American Jews. Most people are no longer required to work on Saturday.

Nevertheless, as regards Sabbath-observance, the lessening of the economic problem has almost simultaneously coincided with the development of a demographic problem. With the availability of the automobile to virtually every American family, housing patterns have arisen that have all but eliminated walking as a practical means of locomotion in a community. Religious considerations aside, how many suburban housing-developments have sidewalks? Therefore, the notion of "neighborhood" as previously understood has been radically altered. Most modern synagogues serving suburban areas are beyond reasonable walking distance for a large number of their members. This is why the question about riding on the Sabbath is probably asked more often than any other question of

Sabbath-observance. Indeed, the popular definition of a "Sabbath-keeper" (*shomer shabbat*) is usually expressed in terms of "Does he or she ride on the Sabbath or not?"

Question: What is the source of the prohibition of riding on the Sabbath?

Answer: In Jewish law there are two irreducible sources of perennial authority: (1) the Written Torah, the Pentateuch; (2) the Oral Torah, the traditions ascribed to Moses (*halakhot*), which were kept as if written in the Torah, even though their specific prescription could not be found in the text of the Pentateuch. These two sources were always regarded by normative Judaism as revelations of God's will.

All other legislation is secondary. It has had to justify itself as either: (1) direct interpretation of Scripture (*derash*); (2) indirect interpretation of Scripture (*asmakhta*); (3) protection of scriptural laws by "fencing" them with additional laws (*gezerot*); or (4) adjustment of specific laws in the interest of greater priorities (*takkanot*).

In the area of Sabbath-observance, the Mishnah classifies thirty-nine specific acts (*abot melekhah*) as subsets of the general prohibition: "On the seventh day, a Sabbath unto the Lord your God, you shall do no work..." (Exod. 20:10). These thirty-nine acts were determined by carefully analyzing the different kinds of labor involved in the building of the Sanctuary (*mishkan*) in the wilderness under the direction of Moses. Since the penalty for working on the Sabbath is directly juxtaposed (*semukhim*) in the Torah to the detailed description of the building of the Sanctuary, the rabbis concluded that this was meant to specify just what the Torah meant by "work" in relation to the Sabbath.

Furthermore, the juxtaposition accomplished two things: (1) It demonstrated that the Sabbath as a "Sanctuary in time" had priority over the building of the physical Sanctuary in space. As important as the building of the Sanctuary was, it did not surpass the observance of the Sabbath. This idea was profoundly developed by my late revered teacher, Professor A. J. Heschel, in his book, *The Sabbath*. (2) It established an objective historical criterion for work, which applied to all Jews since the entire people of Israel, men and women, participated in the building of the Sanctuary (Exod. 35:25-26). The only other criterion would be the highly subjective category, "exertion," which would obviously vary from individual to individual. The Sabbath was meant to be a social institution.

Nevertheless, our sages, although using a historical criterion, were interpreting a law whose source is transhistorical. Despite the fact that the labors involved in the building of the wilderness Sanctuary are the paradigm for the labors prohibited on the Sabbath, there was certainly a recognition that the situation in the wilderness was not in every respect identical with subsequent Jewish history.

The revelation of the law in a particular time and place might very well influence its initial meaning, but it certainly did not confine its ultimate meaning. As the Torah states, "...from the day the Lord commanded and henceforth for your generations" (Num. 15:23). To limit the prohibition of work only to labors performed in the Sanctuary would have the effect of relativizing the concept of work on the Sabbath. Such limitation would shrink the hegemony of the law with each new technological innovation or change. Therefore, derivative acts (*toldot*), which are clearly related to the primary acts

(*abot*), although not in themselves identifiable with the construction of the Sanctuary in the wilderness, were also prohibited. Since the number of such derivative acts is potentially infinite, their affirmation saves the hegemony of the law from becoming contingent on historical circumstance. Thus the principles of the law, in our case the Sabbath law, are seen as transcending any finite period within Jewish history, and, therefore, are applicable to all Jewish history.

Now there is no specific prohibition of riding on the Sabbath in either of the primary sources of Jewish law. In other words, there is no explicit "You shall not ride on the Sabbath" in either Torah or tradition. Therefore, the prohibition of riding is either a derived prohibition (*toldah*), or a rabbinic "fence" built to protect the Sabbath (*gezerah*).

1. Automobile Driving

The first case of riding to be considered is that of driving an automobile, since this is the most common way most of us ride today. Driving an automobile, although obviously not directly prohibited in sources first published centuries ago, involves three main areas with which the sources most definitely did deal: (1) combustion of fuel; (2) locomotion over distances not normally covered by walking; (3) various preparations required for travel.

Concerning combustion of fuel the Written Torah states, "You shall not kindle fire in any of your dwelling places on the Sabbath day" (Exod. 35:3). "Dwelling places" refers to anywhere one happens to be. Every time one starts his automobile he is igniting the gasoline in the motor.

In 1950 three members of the Rabbinical Assembly presented a responsum that attempted to legally justify riding on the Sabbath, if one's destination were the synagogue. The responsum created a sensation within the Conservative rabbinate and far beyond. What is much less known, however, is that dissenting papers were prepared by Dr. Robert Gordis and Dr. Ben Zion Bokser. These papers, learned and well written though they were, did not really show the halakhic fallacy upon which this whole dispensation (*heter*) was based. They were, rather, elaborations of the dissenters' theological objections.

Since I was only eight years old in June of 1950, I was not personally involved in the heated discussions that accompanied this responsum or the *ad hominem* attacks that were inevitable in such a charged atmosphere. Therefore, I believe that I can be more objective than my predecessors of twenty-three years ago in showing the fallacy of permitting riding on the Sabbath, especially driving an automobile.

The three rabbis (Dr. Jacob B. Agus; Dr. Theodore Friedman, and the late R. Morris Adler) argued that kindling is only prohibited when there is a need for it as there was a need for it in the construction of the Sanctuary. Since combustion for energy was not needed in the building of the Sanctuary, this analogy would rule that combustion for energy is not a prohibited form of kindling on the Sabbath. This is presented as the view of the Tanna, R. Simon, as interpreted by R. Isaac the Elder (Ri).

The combustion of gasoline to produce power is a type of work that obviously could not have been prohibited before its invention. All acts of burning are prohibited only when performed for specially described purposes such as: cooking, heating, lighting or the need of its ashes.

Burning for the sake of power was not included in this list....The combustion of gas in the carburator is therefore the type of work classed as *m'lachah shaina tzrichah l'gufa* [work not needed for itself]...

This reasoning is halakhically inadmissible for the following reasons:

1. Even if this is a correct interpretation of the position of R. Simon, the law is not according to him.
2. Even according to R. Simon the act is certainly rabbinically prohibited (*assur*) even if not actually liable according to scriptural law (*patur*).
3. R. Simon's view concerns removing something on the Sabbath for a negative rather than a positive purpose. Rashi states:
It is an act not performed for its own sake, but only to remove something from the actor...for it did not come to him out of choice and he had no need of it, therefore it is not a premediated act [*melekhet mahshabat*] according to R. Simon.
Thus, according to Rashi, even R. Simon would hold that any act performed for a positive purpose is scripturally prohibited (*hayyab*).
4. The Tosafists point out that an act was prohibited when it was done to accomplish something that would not have existed before (*l'taken yoter mimah shehayah batehilah*). Unless one accepts the position of the ancient Greek physicist Zeno that locomotion does not exist, a position successfully refuted by Aristotle, igniting an engine to drive an automobile certainly accomplishes something.
5. Moreover, it should be noted that even though the Mishnah holds that only constructive acts violate the Sabbath in the scriptural sense (*d'oraita*), the Talmud includes one who injures a fellow man where injury, a negative act, is the motive. Maimonides holds that the reason for this is that the person did something positive; namely, he appeased anger. Therefore, a seemingly negative act had a positive end (*veharay hu k'metaken*). If a purely subjective state of mind is considered a positive end, how much more is combustion for the sake of locomotion, which is an objective fact?
6. It is surprising that these rabbis, who so emphasized that the Halakhah was never "a frigid and frozen mold" should base their reasoning on a view that, if accepted at face value, would rule out any expansion, which is a positive aspect of the development of the Halakhah. As often happens, extremes look alike. What looks like progress is at times regression.

In short, this whole line of reasoning is unacceptable because it violates the two cardinal principles of all reasoning: the principle of contradiction and the principle of sufficient reason. The position of the three rabbis contradicts itself on the one hand by calling for the development of Jewish law, and on the other hand by presenting a standard that would make the definition of work dependent on conditions in the time of Moses. And their position is based on an insufficient use of the sources, in that they present a minority interpretation of a minority opinion.

As regards combustion for the sake of locomotion, if it is not "kindling" (*habarah*) in the original sense (*ab*), then it is certainly "kindling" in the derived sense (*toladah*). Practically, there is no difference between the two. The only difference between the two categories concerns the sacrifices brought for

their unwitting (*shegagah*) transgression. The sacrificial system has been inoperative for almost two thousand years.

2. Riding in a Vehicle Driven by Someone Else

The next question involved in riding on the Sabbath is the matter of traveling distances not normally covered by walking. The Torah states, "Let everyone remain in his place; let no one go out from his place on the seventh day" (Exod. 16:29). Now what is considered a person's place (*mekomo*)?

The Karaites, a group of Jewish biblical literalists, over a thousand years ago interpreted this verse to mean that on the Sabbath one's place is restricted to home and synagogue. However, in the rabbinic tradition, of which we are the heirs, one's place is interpreted as the normal space of one's community and its outlying areas. These were determined to be the limits of one's city plus two thousand cubits (three thousand feet, or approximately a half-mile). This area is known as the *tehum*. If one wanted to walk beyond this distance he had to make special provision (*erub*) for the extension of this limit another two thousand cubits in any given direction. Because of the great areas of space covered by our metropolitan communities, this is rarely a problem today. Nevertheless, I remember the son of Grand Rabbin Fuchs of Lorraine telling me that his father has to make this special provision regularly in order to travel on foot from his seat in Colmar to visit outlying towns on the Sabbath.

We can thus see that the intention of the law is to keep one in the vicinity of his or her own neighborhood – "neighborhood" being the area of normal walking distance.

However, a question does arise as to the use of public transportation on the Sabbath under the following conditions: (1) the vehicle is driven by a non-Jew; (2) the vehicle makes regular stops irrespective of the presence of Jewish passengers; (3) its route is confined to the municipal limits; (4) one is not required to pay his fare on the Sabbath (or Festival).

Practically this would be a possibility if one had a pass attached to his or her clothing, enabling the person to ride on a bus, streetcar, or similar public conveyance. The late Sephardic Chief Rabbi of Israel R. Ben Zion Uziel (d. 1954), addressed himself to this question in a responsum written over thirty-five years ago. He admitted that such travel was legally permissible, especially to attend synagogue services. He pointed out that earlier prohibitions of riding were based on the fact that animals were being used to work on the Sabbath, something the Torah explicitly forbade. Nevertheless, more general theological concerns influenced him to refuse to allow this halakhic leniency in actual practice.

His main point was that the Sabbath must be kept in the spirit of the law as well as in its letter. This desire to extend the physical and spiritual rest of the Sabbath was behind the rabbinic institution of *shebut* – the prohibition of acts resembling work, even though not work in the technical legal sense. R. Uziel quotes both Maimonides and Nahmanides on this general point. More specifically, he quotes the leading nineteenth-century authority. R. Moses Schreiber of Pressburg (Hatam Sofer, d. 1839), who prohibited such travel because it creates both physical and mental tension inconsistent with the spirit of Sabbath rest. Nevertheless, R. Uziel points out that the anxiety meant is that of a business trip, and

this would not be the same as a trip to the synagogue for Sabbath worship. On the basis of this distinction he dismisses R. Schreiber's prohibition and permits such riding, provided the other preconditions are present. R. Uziel claims that if tension is the key factor (*gufo na ve'nad*), then travel on foot ought to be prohibited too. However I would say that in our day the mere experience of being in traffic creates far more tension for the rider than for the pedestrian, irrespective of what his purpose in riding is.

In a subsequent edition of his responsa published twelve years later R. Uziel emphasized to a rabbi in Bombay that anyone who "fears and trembles" for the word of the Lord" ought not ride in any vehicle on the Sabbath and Festivals, irrespective of the conditions. Why R. Uziel so abruptly changed his view is unknown to me. I can only suspect that his dispensation met with strong rabbinical opposition and that he yielded, "inclining after the majority."

The problem with this kind of travel is that public transportation in our day inevitably involves direct payment and other preparations not in keeping with the Sabbath. The Talmud states, "One is not to ride on an animal on the Sabbath lest he go beyond the limits of travel [*tehum*] and even more so lest he cut a twig to prod the animal." The limits of travel were marked for pedestrians, but, as Rashi pointed out, one riding may overlook them. Furthermore, various auxiliary acts, such as carrying money, identification, and automobile-repair tools, are the modern equivalents of "cutting a twig to prod the animal." This point was brought out in the bitter criticism of several members of the Rabbinical Assembly following the presentation of the responsum of the three rabbis in 1950.

Moreover, there is the problem of the Jew who drives his or her car to the synagogue on the Sabbath to attend services. Should this person be told to stay home? Here one must know who is asking the question about riding to the synagogue on the Sabbath.

If the person is already a Sabbath-observer, I do not hesitate to inform him or her not to ride to the synagogue. In one particular case, an observant man in my congregation fractured his leg before Rosh Hashanah. The only way he could attend the synagogue services to hear the blowing of the shofar was to ride. I told him that he should not ride even if this meant he would not hear the blowing of the shofar. After all, our sages prohibited the blowing of the shofar on Rosh Hashanah coinciding with the Sabbath lest people carry the shofar. In other words, the restraining sanctity of the Sabbath or Festival takes precedence even over a positive, Torah-ordained institution. As it happens, God helps those who desire to do His will, and the injured man heard the shofar blown in his home by a teenage member of the congregation. One can always have the full Sabbath at home even without the synagogue but one cannot have the full Sabbath at the synagogue without the home.

On the other hand, there are many people who if told not to ride to the synagogue on the Sabbath would continue riding everywhere *but* to the synagogue. For them the synagogue's influence would be lost altogether. Therefore, it is wiser not to condemn people who are unprepared as yet to become full Sabbath-observers. As the Talmud puts it.

R. Iylaa said in the name of R. Eleazar ben R. Simon that just as one is commanded to say something which will be heard, so one is commanded not to say something which will not be heard.

However, once such people begin to seriously ask about the Halakhah of riding on the Sabbath they are usually at a level where they are ready to translate the synagogue Sabbath experience into their own personal action. I know several people who came by automobile when they began attending Sabbath services. Later, as they came closer to God and the Torah, they stopped riding to services. In some cases this involved purchasing or renting a house or apartment closer to the synagogue. One chooses where to live on the basis of his or her life-priorities. If Sabbath-observance is high on the list of those priorities, one will make it his business to live in the neighborhood of the synagogue. If Sabbath-observance is not high on one's list of priorities, choice of a home will be determined by other considerations. The late Professor Louis Ginzberg (d. 1953) was entirely correct, it seems to me, in refusing to endorse innovations in Jewish Law designed to exonerate Jews "most of whom had long ago denied its authority."

Finally, a fundamental spiritual problem was overlooked by those who felt that they were saving the Sabbath by permitting people to ride to the synagogue. The assumption underlying this dispensation ignores the possibility of repentance (*teshubah*). To tell people who are not living according to the law of the Torah that what they are doing is correct is to close the door of return in their faces. It places a "stumbling block before the blind." The same is true, on the other hand, if we fail to see that riding to the synagogue, although not permissible, is spiritually on a higher level than driving to business or to a place of amusement. In other words, driving to the synagogue may be the beginning of a true return for persons who have never known any other kind of Sabbath.

In practice I have come to the following conclusions:

1. Driving an automobile is prohibited according to scriptural law in a derived sense (*toladah*), if not in an original sense.
2. Riding on a public conveyance where no other preparations are necessary and in a non-Jewish area is almost too remote a possibility to rule on. Moreover, because of the tension and anxiety involved in any vehicular travel today, such travel is inconsistent with the spirit of the law. The whole institution of *shebut* (rabbinically prohibited activities on the Sabbath) is the practical outcome of speculating on the deeper meaning of the Sabbath.
3. Observant Jews should be warned of the prohibition of travel on the Sabbath, even in order to attend synagogue services. Non-observant Jews should be dealt with more cautiously lest their contact with the synagogue be severed and they be further alienated from the Torah.