

Musical Instruments and Recorded Music as Part of Shabbat and Festival Worship

Rabbis Elie Kaplan Spitz and Elliot N. Dorff

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She'alah: May we play musical instruments or use recorded music on Shabbat and *hagim* as part of synagogue worship?

If yes, what are the limitations regarding the following:

1. Repairing a broken string or reed
2. Tuning string or wind instruments
3. Playing electrical instruments and using prerecorded music
4. Carrying the instrument
5. Blowing the shofar
6. Qualifications and pay of musicians

I. Introduction

The use of musical instruments as an accompaniment to services on Shabbat and sacred holidays (*yom tov*) is increasing among Conservative synagogues. During a recent United Synagogue of Conservative Judaism's biennial conference, a Shabbat worship service included singing the traditional morning prayers with musician accompaniment on guitar and electronic keyboard.¹ Previously, a United Synagogue magazine article profiled a synagogue as a model of success that used musical instruments to enliven its Shabbat services.² The matter-of-fact presentation written by its spiritual leader did not suggest any tension between the use of musical instruments and *halakhic* norms. While as a movement we have approved the use of some instruments on Shabbat, such as the organ, we remain in need of guidelines to preserve the sanctity of the holy days. Until now, the CJLS (Committee of Jewish Law and Standards) has not analyzed *halakhic* questions that relate to string and wind instruments, such as

¹ See "Synagogues Become Rock Venues: Congregations Using Music to Revitalize Membership Rolls," by Rebecca Spence, *Forward*, January 4, 2008, A3.

² "Back from the Brink: How One Synagogue Turned Itself Around," by Cantor Mark Goodman, *United Synagogue Review*, Fall/Winter 2005, vol. 58, no.1, pp. 10-11.

the permissibility of changing strings or reeds, carrying on Shabbat, electrical instruments, and tuning.

In this *teshuvah* we seek to provide a comprehensive *halakhic* analysis of the use of musical instruments and machines for playing pre-recorded music for services on Shabbat and *yom tov*. We agree with our predecessors that the creation of the State of Israel voided the blanket prohibition against the playing of music as a symbol of joy. Yet, we are cautious about the use of musical instruments during our religious services and celebrations on Shabbat and *hagim*. We are aware that there is a fuzzy line between music that is spiritually uplifting and that which is debasing. Musical taste is also idiosyncratic and subject to change. We are primarily wary of the slippery slope entailed by the use of musical instruments toward “work,” primarily fixing (the final hammer blow), and carrying. We will also address the prohibitions of “tying and untying,” “building,” and “tearing down” as causes of concern. At the same time, we acknowledge that many of our constituents use musical instruments and that there is a permissible context to do so. In sum, we recognize the need for guidelines and discipline in order to maintain the integrity and sanctity of Shabbat and *yom tov*.

II. Some background

A. The Use of Musical Accompaniment in Antiquity

On Shabbat and *yom tov*, observant Jews since the destruction of the Second Temple have consistently sung their prayers *a cappella*. Yet, part of the contemporary attraction to musical instruments is its natural value in amplifying emotion and the rich history of music in the Biblical tradition. Instrumental accompaniment marked the celebration of pivotal moments in relationship to God, such as Miriam using a timbrel to lead women in song upon reaching the banks of freedom (Ex. 15:20)³ and King David dancing before the Holy Ark during its transport to Jerusalem as part of a parade that contained lyres, drums, rattles, cymbals and shofars (II Samuel 6:5-15; I Chronicles 13:8). We have accounts of the prophets using music to achieve ecstasy and prophetic inspiration (I Samuel 10:5,10; 19:20; II Kings 3:15).⁴ The psalmist recommended musical accompaniment to convey sadness and hope, as evidenced by the invitation to

³ Also note, the women’s welcome of David and Saul in I Sam.18:6-7.

⁴ Playing on a harp inspired Elisha (II Kings 3:15); Maimonides notes that music can enable enlightenment: *Guide for the Perplexed* 3: 45, 46; for an analysis of the mystical dimension attributed to music see Moshe Idel, “Music,” in *Contemporary Jewish Religious Thought*, edited by Arthur A. Cohen and Paul Mendes-Flohr (New York: Scribners, 1987), pp. 635-642.

those in the first exile to “take up the melody and sound the timbrel” (Psalms 81:3). There are nineteen different kinds of musical instruments mentioned in the Bible, underscoring the variety and wide-use of musical instruments among our ancestors.⁵

Musical instruments are also identified with communal worship and Temple services. Scripture records that King David organized the Levite chorus, which sang with the support of an orchestra (I Chronicles 15:16-24). Musical instruments were later played in the Temple to accompany the bringing of the daily sacrifices.⁶ Many of the Psalms begin with instructions for the conductor of the orchestra and contain references to the use of instruments as tools to praise God. Such instruments were even played in the Temple on Shabbat. Psalm 92 entitled “the psalm of Shabbat” invites praise of God with lute and harp.⁷ In the Temple, twenty-one blasts of the shofar were blown each day, including Shabbat: three at the opening of the gates, nine each at the morning and evening daily sacrifices.⁸ Even on Shabbat, the flute was played at the time of slaughtering the Paschal Lamb;⁹ it was also played on the first day of Pesach, on Shavuot, and on the eight days of Sukkot.¹⁰ The shofar was sounded in the Temple on Rosh Hashanah even when it fell on Shabbat (M. *Rosh Hashanah* 4:1).

Yet, the playing of instruments on Shabbat even during the time of the Temple had limitations. For instance, the Mishnah states that the elective playing of the flute in the Temple in celebration of the *simhat beit ha-sho'evah* was prohibited on Shabbat (M. *Sukkot* 5:1).¹¹ The Rosh Hashanah shofar was not blown outside the Temple on Shabbat (M. *Rosh Hashanah* 4:1). More relevant for the current synagogue service, some of the early rabbis demanded, “No more

⁵ “Music,” *Encyclopedia Judaica* (Jerusalem: Keter, 1972). Vol. 12, p.560.

⁶ In later times, there was a dispute over whether instruments to accompany sacrifices were required: Rabbi Meir requires them, but the Sages do not (B. *Arakhin* 11a). For more on the topic of musical instruments and the Temple, see Josephus, *Antiquities* VII: 12, 3; and Louis Ginzberg, *Legends of the Jews*, VI, 263, Idelson, *Jewish Music*, pp. 8-18.

⁷ Tosefta *Eruvin* 8:19 confirms that the harp was played in the Temple on Shabbat and M. *Arakhin* 2:3 describes many instruments that were used in the Temple during *hagim*.

⁸ B. *Sukkah* 53b (for the rule concerning blowing the shofar on Shabbat); also see B. *Rosh Hashanah* 29b; Tosaphot to B. *Bava Kamma* 80 b, s.v. *matri'in*; and Ginzberg, *Legends* VI, 174.

⁹ M. *Pesachim* 6:1.

¹⁰ B. *Arakhin* 10a.

¹¹ This unique prohibition may have been due to the unusually loud sound of the flute, which the Mishnah in *Tamid* 3:8 states could be heard as far away as Jericho. Wind instruments on average are ten times louder than a classical guitar. Nonetheless, other Tannaitic rabbis permitted the celebratory, holiday flute- see, T. *Sukkah* 4:14; B. *Sukkah* 50b, 51a; J. *Sukkah* 55a; and T. *Arakhin* 1:13.

music-making!” to mark an ongoing mourning for the destruction of the Second Temple.

B. The Rabbinic Prohibition of Music as *Zekher l’Hurban*, a Memorial to the Destruction of the Temple

The Mishnah (*Sotah* 9:11) states: “When the Sanhedrin ceased to exist, song at places of feasting was discontinued, as it says: ‘With song they shall not drink wine’” (Isaiah 24:9).¹² Later, the spiritual leaders of the Babylonian Jews opposed popular music altogether (not just on Shabbat or festivals) as unsuitable for a nation in distress.¹³ The condemnation of any music was stated strongly, as evidenced in the following remarks of third century rabbis:

Rav said: The ear that listens to song should be torn off.

Rava said: When there is song in a house, there is destruction on its threshold....

Rav Huna abolished singing....

Rav Joseph said: “When men sing and women join in, it is licentiousness; when women sing and men join in, it is like fire in tow.”¹⁴

Yet on that same page, the Babylonian Talmud records that Rav Hisda (Rav Huna’s successor) “came and [ordered that Rabbi Huna’s edict be] disregarded.” Likewise, the exilarch Mar Ukba I allowed music at his ceremonial reception.¹⁵ Nonetheless, there remained ambivalence to music in the aftermath of the Temple’s destruction, along with evolving standards as to when music was played.

Dr. Boaz Cohen reviewed the early *halakhic* literature and wrote:

To sum up briefly, in Tannaitic times, the Jews abstained from music as a token of mourning. During the Amoraic period the Rabbis strove with might and main to dissuade the people from indulging in song, especially during wine parties when women furnished the entertainment. The Gaonim upheld the talmudic law on this subject and took steps to enforce it. They permitted music

¹² See commentaries to Psalm 137 and statement that the *kinor* hung on a willow.

¹³ Relying on M. *Sotah* 9:11, 14.

¹⁴ B. *Sotah* 48a.

¹⁵ J. *Megillah* 3:2, 74a; B. *Gittin* 7a.

which was not of a sensuous character at weddings. R. Isaac Alfasi summarized the view of R. Hai and that became the norm for Maimonides and the subsequent codifiers. In spite of the rigor of the law, music could not be suppressed; and not only did the Jews borrow melodies from the people among whom they lived for secular purposes, but they also imported various tunes for their divine services. The law prohibiting music was never fully observed, because it ran counter to human nature.¹⁶

The Rabbinic prohibition of music as a *zekher l'urban* is given context by a much larger list of symbolic actions, such as:

- A woman should not wear all her jewelry at once;
- A person could not build a permanent residence outside the land of Israel and therefore should leave a part of the house unfinished;
- A person had to leave an open space among the dishes being served at a festive meal;
- At a wedding, ashes would be placed on the head of a groom and he would break a glass;
- People should not “fill their mouths with laughter in this world.”¹⁷

Some of these practices, like placing ash on the groom's head or not filling one's mouth with laughter, have fallen out of practice. Still others, like the shattering of the glass at a wedding, have gained widespread acceptance. Apparently, the stipulations that were more onerous were lightened or qualified over time.

Despite some strong statements of prohibition, orchestras performed at Jewish weddings during the Middle Ages. Rabbi Joel ben Eliezer HaLevi (Ra'aviah), a widely admired German sage of the 12th-13th centuries, permitted asking a Gentile to play music at a wedding on Shabbat since it is a *mitzvah* to have music at a wedding celebration.¹⁸ Rabbi Jacob Mollin HaLevi (Maharil), living in German on the cusp of the 15th century, responded to the problem of a wedding that was to be celebrated in a community where music had been forbidden because of the death of a member of the royal family. The Maharil

¹⁶ Dr. Boaz Cohen, “Responsum of Maimonides Concerning Music” cited by R. Arthur Neulander, “Music at a Sabbath Bar *Mitzvah* Se'udah,” minority opinion, 1962, Rabbinical Assembly Archives T505-507; the citation is on T506.

¹⁷ S.A. *Orah Hayyim* 560:3.

¹⁸ Cited in Mordechai, B. *Beitzah* 696 and Tur, *Orah Hayyim* 338. It was not uncommon in Medieval times to have a wedding on a Friday afternoon, enabling the feast of the wedding to coincide with the Shabbat meal, thereby enhancing Shabbat and saving money.

ordered the wedding to be moved to another community, in order that music might give joy to the wedding couple.¹⁹ We will return later to the use of “mitzvah,” showing that as in the case of music at a wedding, the concept was given a broad definition and was applied to overcome a rabbinic decree.

While honoring *zekher l’hurban*, Rabbi Joseph Caro in the 16th century codified a strict limitation on the enjoyment of music, with a community-generated exception:

And thus they decreed that one may not play music with a musical instrument or with all types of music or with anything that causes the sound of music to be heard for enjoyment by them ... and it is forbidden to hear them because of the destruction of the Temple. And even singing with the mouth over wine is forbidden, as it is said: ‘with song you shall not drink wine’ (Isaiah 24:9). But all of Israel already is accustomed to saying words of praise or songs of thanksgiving and remembrances of the kindness of the Holy One, Blessed be He, over wine.²⁰

Rabbi Moshe Isserles (the Rema, 16th century, Poland) expanded the exception by writing: “...and similarly for the need of a *mitzvah* as in the case of a wedding party, everything [both vocal and instrumental music] is permitted [on Shabbat].”²¹ According to the *Mishnah Berurah*, the Rema was referring to both song and music over wine, provided that there were no obscenities and that participants did not enjoy it too much.²² The commentators on the *Shulhan Arukh* also agreed that it is a *mitzvah* to sing songs of praise during Jewish festivals.²³

¹⁹ See Israel Abraham, *Jewish Life in the Middle Ages* (Philadelphia: Jewish Publication Society, 1993), pp.197, 255; S.A. *Orah Hayyim* 338:2 and Isserles there.

²⁰ S.A. *Orah Hayyim* 560:3.

²¹ “v’khen l’tzorekh mitzvah, b’vait hatan v’khalah, ha-kol shari,” *Mishnah Berurah* 560:16.

Note that by this standard attending a concert was forbidden. Magen David [David HaLevi Segal, Poland, 17th century] on this paragraph denounces the use of a *badkhan* at weddings, terming it a “grave sin,” but his need to say that indicates that despite the concern that Jews remember and mourn the destruction of the Temple, popular custom had made weddings the occasion of not only music, but all kinds of entertainment.

²² See *Mishnah Berurah* 560:14 and *Magen Avraham* to S.A. *Orah Hayyim* 560:10.

²³ See *Magen Avraham* to S.A. *Orah Hayyim* 560:10 and *Mishnah Berurah* 560:14.

Today, in all segments of the Jewish community, singing is a regular part of Shabbat and holiday celebrations, let alone the willingness to enjoy music at other times. There are still some Ultra-Orthodox Jews who will not attend a wedding in Jerusalem when a band performs, but the joy of the bride and groom is usually identified with instrumental song and dance. Despite the acceptance of music generally, in the Orthodox community and many, if not most, Conservative congregations the playing of musical instruments on Shabbat and *hagim* remains taboo.

C. Conservative Movement Holdings

In the Conservative Movement an acceptance of playing musical instruments on Shabbat and *hagim* has evolved, which is revealed by the following chronology:

1940 – Rabbi Boaz Cohen, writing unofficially, responded to the question, “Is It Allowed to Use the Organ at Jewish Religious Services?” He held that playing musical instruments on Shabbat is forbidden by *halakhah* and it is an imitation of Christian practice. “Jewish services have been marked for the past eighteen hundred years by a total lack of instrumental music.”²⁴

1959-The CJLS held, without written analysis: “The Committee does not consider the use of the organ as halakhically prohibited at services.”²⁵

1962- Rabbi Eli Bonem wrote on behalf of the majority forbidding instrumental music at bar mitzvah dinners. His reasoning does not focus on the permissibility of musical instruments, but rather the inability to control the kinds of music played and that instrumental music in that setting could lead to vulgar, social dancing. Rabbi Arthur Neulander responded with a minority opinion that examined more closely the laws governing musical instruments generally and on Shabbat in particular. Regarding the general prohibition he wrote:

The mourning for the *Hurban Yerushalayim* has been largely mitigated and eliminated because of the rebirth of the State of Israel. Jews do not go weeping for the destruction of the Temple. On the contrary, they recite *Hallel* on the new Independence Day. This circumstance too might

²⁴ Rabbi Boaz Cohen, “Is it allowed to use the organ at Jewish religious services,” 1940.

²⁵ Report of the CJLS (020458B); *Proceedings of the Rabbinical Assembly, 1959*, p.115.

make it appear possible for us to permit music at a Bar Mitzvah celebration.”²⁶

Rabbi Neulander characterized the prohibition of musical instruments on Shabbat as a *shevut*, a rabbinic ordinance to protect the sanctity of Shabbat, which he maintained should be overridden in order to ensure that the party following services in celebration of the Bar or Bat Mitzvah would accord with the Torah’s decree of eating kosher foods, a standard assured in the synagogue setting.²⁷

1963- Rabbi Ben Zion Bokser, writing on behalf of the CJLS, addressed the question of “The Organ and Jewish Worship.” He acknowledged that many Conservative synagogues use the organ during services on Shabbat and said, “Under the circumstances, the use of the organ must be regarded as legitimate within Conservative Judaism. A congregation resolving to use the organ is not inconsistent with the standards of Jewish worship, as we understand them.” Rabbi Bokser went on to caution against the use of the organ when it would lead to increased passivity among worshipers.²⁸

1970- The CJLS minutes recorded that the committee held that it was permissible to have non-organ instrumental music during a Sabbath service or on a Yom Tov occurring on a weekday, explaining as follows: “There is no distinction to be drawn between instruments in the light of our organ responsum and the general trend today developing, especially among our young people, toward the guitar.”²⁹

In sum, we as a movement have held that the prohibition of music is no longer grounded in *zekher le’urban*, as a memorial to the destruction of the Temple. The modern State of Israel gives us reason to remove the ancient sackcloth. Moreover, we no longer seek the renewed institution of sacrifices, finding that prayer with words is our preferred mode of worship as an offering of the heart (*avodah shebalev*).³⁰ Although we do not seek to reclaim Temple sacrifices, we remember that its mood setting and psalm recitation included the

²⁶ Rabbi Eli Bohnen, “Should dinner music be permitted at Bar Mitzvah Dinners held on the Sabbath?” November, 1962. Found in the *Proceedings of the Rabbinical Assembly*, p. 226.

²⁷ Rabbi Arthur Neulander, “Music at a Sabbath Bar Mitzvah Se’udah.” November, 1962 in *Proceedings of the Rabbinical Assembly*, in three pages.

²⁸ Rabbi Ben Zion Bokser, “The Organ and Jewish Worship,” A Statement of the CJLS from the minutes of 1962 in *Conservative Judaism*, p.113.

²⁹ CJLS, Minutes to the meeting of June 23, 1970 (062370B).

³⁰ We have accordingly changed the wording of the traditional *Musaf* liturgy asking for the return of the Temple rites of sacrifices from a hope for the future to a memory of how our ancestors expressed their devotion to God in the past.

use of musical instruments. Although appreciative of the sounds of musical instruments, we also value and seek to preserve the sanctity and integrity of our holy days. We honor the centuries-old, rabbinic concern that the use of musical instruments may lead to fixing or carrying from a private to a public domain, acts traditionally defined as prohibited “work” on Shabbat. We are also concerned, as noted by Rabbis Bohnen and Bokser, that even if technical problems can be resolved, instrumental music must not compromise the spirit of Shabbat or transform congregants into passive listeners rather than active worshipers.

One way that Rabbis have expressed their concerns with the use of musical instruments was through a series of rabbinic ordinances intended to protect the sanctity of Shabbat and holidays. Such an ordinance is called a *shevut*, a “refraining” [of activity]. We shall examine that aspect of the question before we move on to the Torah-based issues of fixing and carrying. Along the way we shall also consider the issues of preserving the spirit of Shabbat and the active participation of worshipers.

III. *Shevut* (“Refraining”)

The rabbis of the Mishnah delineated thirty-nine primary categories of work, *avot melakhot*, that are biblically prohibited on Shabbat and Yom Kippur.³¹ Each is tied to a type of labor that took place in the crafting of the *mishkhan*, the holy Tabernacle. With the exception of cooking and carrying, these prohibitions also apply to the *hagim*, the other biblical holy days (Pesach, Shavu’ot, Rosh Hashanah, Sukkot, Shemini Atzeret). The making of music is not explicitly defined as “work,” but there are related prohibitions of *makeh b’patish*, “the final hammer blow,” and *hotza’ah*, “carrying” within the public domain or from the private domain to the public domain or the reverse.

In order to protect the sanctity of the Sabbath, the *Tana'im* (rabbis of the first two centuries of the Common Era) employed the term *shevut* to categorize certain activities that were inconsistent with the requirement of rest on Shabbat, but did not entail capital punishment (the express penalty for the violation of the

³¹ The thirty-nine forbidden acts are: plowing, sowing, reaping, sheaf-making, threshing, winnowing, selecting, sifting, grinding, kneading, baking, sheep-shearing, bleaching, combing raw material, dyeing, spinning, inserting thread into a loom, separating into a loom, weaving, removing the finished article, separating into threads, tying a knot, untying a knot, sewing, tearing, trapping, slaughtering, skinning or flaying, tanning, scraping, marking out, cutting to shape, writing, erasing, building, demolishing, kindling a fire, extinguishing a fire, the final hammer blow, carrying from a private domain to another or to the public domain or within a public place (M. Shabbat 7:2).

thirty-nine primary categories of *melakhah*, “work”). During the third to fifth century, the *Amora'im*, especially among the Babylonians, expanded the definition of *shevut* to encompass rabbinic prohibitions that prevented a biblical infraction. Examples of *shevut* are the prohibitions on Shabbat of climbing trees, riding an animal,³² or using a *lulav* and *etrog*.³³ Rabbi Isaac Klein wrote about the attempt to protect and enhance the sanctity of Shabbat through the use of the category of *shevut* as follows:

We should add that the whole area of *shevut* has to be mapped out anew because the reason for the *gezeirot* [ordinances] and the nature of *‘uvdin dehol* [profane activities] have changed. What was in the spirit of Shabbat a generation ago may not be considered so today ... The doctrine that a *gezeirah* still stands even if the reason for initiating it has ceased is untenable as a general principle. However, if a practice is deeply rooted and stable, we are usually able to find new meaning in it for our day.³⁴

The invitation to revisit rabbinic prohibitions has precedent in the Talmud, where the Rabbis made a distinction between the binding nature of the Torah’s laws, *halakhot de’oriata*, and ordinances enacted by the rabbis, *gezeirot de’rabbanan*. To illustrate how that distinction led them to reconsider and revise earlier rabbinic precautions, here are a pair of examples where the rabbis of the Talmud set aside or modified a *shevut* due to a countervailing interest:

* B. *Ketubbot* 60a describes a drainpipe that is clogged by debris preventing the free flow of water. If the blockage causes the water to overflow onto a flat roof and seep into the house or cause damage to the roof, a person may take action even on Shabbat, according to a *Baraita* attributed to Nahum of Galia. Although direct repair with a shovel or with one’s hands is forbidden as a violation of Shabbat, permission is given for the person to remedy the problem indirectly, which is normally forbidden as a *shevut*. To prevent financial loss the person may stomp the blockage in private with his or her foot, thereby eliminating the obstruction and enabling the proper flow of water.

³² M. *Beitzah* 5:2.

³³ B. *Rosh Hashanah* 29b; S.A. *Orah Hayyim* 658:2.

³⁴ Isaac Klein, *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary of America, 1979), p. 85.

* B. *Menahot* 37b-38a rules that if on Shabbat a *tzizit* (fringe) of a person's garments tears, the fringes would no longer satisfy the *mitzvah* and wearing them could constitute an illicit carrying, because there is a *shevut* barring carrying from a quasi-public place, a *karmalit*, to one's home. Yet, the Rabbis held that the person's honor superceded the violation of a *shevut derabban*.

The *Shulhan Arukh* took these precedents into account by repeatedly applying the principle that whenever a *mitzvah* or a public need was involved, the prohibitions of *shevut* were waived. For instance, consider the following holding: A Jew may move a thorny branch on Shabbat less than four *amot* in a public space and may certainly move it across a quasi-public space (*karmalit*) because of concern for public safety, despite a *shevut* that would otherwise have forbidden such action.³⁵ In justifying the removal of a *shevut* in order to actualize a *mitzvah*, the category of *mitzvah* broadly encompasses *hiddur mitzvah*, the beautifying of a *mitzvah*. As another example from the *Shulhan Arukh*, although on Shabbat a Jew should not normally take produce or wine casks from storage as a matter of *shevut*, permission is given to accommodate unanticipated guests or provide for the communal study hall.³⁶ There is even greater leniency for doing activities at the dusk of Shabbat to meet a greater good.³⁷

³⁵ S.A. *Orah Hayyim* 308:18; There was also the waiving of the protective measure against asking non-Jews to do work on Shabbat in order to meet a communal need: see S.A. *Orah Hayyim* 307:5 Acceptable requests to non-Jews to perform *shevut*-violating acts: (also see 586:21)- To aid a sick Jew by bringing a shofar or carrying water across a courtyard on Shabbat; *Yoreh De'ah* 262:5: To bring a knife on Shabbat, but not to carry it across a public space.

³⁶ S.A. *Orah Hayyim* 333:1.

³⁷ S.A. *Orah Hayyim* 342:1, 22: At dusk a Jew is permitted to do those activities, such as asking a non-Jew to light Shabbat candles. This leniency is apparently based on a statement of Rabbi in the *Bavli* (Shabbat 8b and *Eruvin* 32b) that "any matter of *shevut* does not apply during dusk." The context of the statement is in preparing an *eruv*, but neither the text nor Rashi make the doing of a *mitzvah* a specific requirement. Nonetheless, in the Mishneh Torah [*Hilkhot* Shabbat 24:10 and *Shulhan Arukh* such an explicit requirement is made and the time frame is further narrowed in the *Mishnah Berurah* [*siman* 342, end of *se'if kattan* 1] does not apply after one has made Shabbat, specifically after *Lekhah Dodi*. The history of the different readings by Rishonim is summarized in the *Encyclopedia Talmudit* 3:128-129. Although the rabbis tighten up this apparent leniency and restrict it to the doing of a *mitzvah*, there is the possibility of relying on the original language of Rabbi in the *Bavli*, enabling a leniency of musical instruments for conducting of Kabbalat Shabbat until three stars have appeared. There is a principle that when there is doubt as to interpretation of *hazel* you may choose the leniency [*safek miderabban l'kula- eg. Beitzah 3b*]. This analysis is a product of the thinking on this topic by our colleague Rabbi David J. Fine.

Although there is an unfolding flexibility in reassessing the binding nature of a *shevut*, it must be emphasized that the early Rabbis were consistently stringent with the *shevut* of the use of musical instruments on Shabbat. So great was their concern that the Mishnah rules as follows (M. *Beitzah* 5:2):

The following acts are culpable as a *shevut*:
A person may not ...clap hands, slap the thigh, nor dance.³⁸

The Mishnah does not explain why these acts are prohibited. Perhaps the strictness of these prohibitions was grounded in a desire to set Shabbat aside as a day of quiet.³⁹ Support for this as the Ta'anaitic motivation is the Jerusalem

³⁸ Identical prohibitions appear explicitly in a variety of Tannaitic sources, although the order of the terms may vary. See *Tosefta* (Lieberman edition)-*Beitzah* 4:4; *Shabbat* 17:29; *Sifra, Acharei Mot* 7, p.83a (Weiss); *Mechilta DeRabbi Shimon Bar Yohai* 12, p.20 (Epstein). For a brief discussion of the variations in the forms and orders of these verbs see Saul Lieberman, *Tosefta Ki-Fshutah*, part III, p. 298 (61-62), 300 (67-68). At the same time, there is uncertainty as the meaning of the Hebrew terms. Rashi, for instance, defines *mitapchin* in some places as slapping a palm across the heart (chest) and *misapkin* as thigh to thigh (*Eruvin* 104a; also *Shabbat* 148b) and in other places defines *mitapchin* as slapping one palm against another palm and *misapkin* as a palm across the thigh (*Beitzah* 30a; also *Beitzah* 36b). The Yerushami states that the difference between the two terms is that *misapkin* is an impulsive, emotionally-based clapping, while *mitapchin* is intentional- see *Beitzah* 63a, using the anger of Balak responding to Bilaam as an example of *misapkin*. The word *mirakdin* may either mean dancing, suggesting rhythmic movement, or the making of sound by stamping of feet.

³⁹ Rabbi Ethan Tucker- "Sacred Silence: Musical Instruments and Shabbat," posted at <http://mahrabu.blogspot.com/2008>- marshals evidence that the initial rabbinic motivation for forbidding clapping was to enforce an atmosphere of quiet on Shabbat and *hagim*. As stated by Rabbi Elazar in the *Yerushalmi*, "All noisemaking is forbidden on Shabbat," reinforced by the apparent majority holding there according to Rabbi Lezar that on Shabbat even knocking on doors was forbidden (*Beitzah* 5:2, 63a). Further evidence for this quiet-atmosphere orientation are the early rabbinic prohibitions against a donkey wearing a bell in the public domain on Shabbat, even when plugged up (Mishnah *Shabbat* 5:4); forbidding making noise with one's hands to scare away animals in one's garden (*Tosefta Shabbat* 17:25); and the singling out of the relatively loud *halil*, the flute, as banned for performance even on holydays in the Temple (Mishnah *Sukkah* 5:1). Rabbi Tucker also shows that as the tradition unfolded in the Babylonian Talmud there was a decisive shift away from atmosphere to focusing on actions connected with forbidden labors of Shabbat. For instance, although the Mishnah (*Eruvin* 10:14) forbade the use of a loud well on Shabbat outside the Temple, Ameimar in the ensuing Talmudic discussion permitted drawing water from a well in Mehoza because there were no gardens there to water (B. *Eruvin* 104a).

Post-Talmud, *posekim* consistently focused on labor rather than intrinsic quiet as the reason for the ban on noise making. Even when Yitzhak ben Yosef (Corbeil, France, 1210-1280), *Amudei Golah, Sefer Mitzvot Katan, Semak* 282 prohibited door knocking on Shabbat, siding with the Palestinian Talmud's holding and Rabbi Ulla's opinion in the Bavli, he justified the barring of such mechanical sounds to the practical concern of "lest it lead to fixing." Likewise, Rabbi Tucker cites Rabbi Aha ben Ya'akov's explanation of *Tosefta Shabbat* 17:25 [see his footnote 15 citation] that the prohibition initial, primary rabbinic concern for quiet. Yet, we find that Rabbi Aha's explanation is no more strained than the statement that clapping could lead to music

Talmud's apparent holding that even knocking on a door on Shabbat was forbidden (*Beitzah* 5:2, 63a) or another Mishnah that prohibits an animal wearing a bell, even when plugged, in the public space on Shabbat (Mishnah *Shabbat* 5:4). Yet in the ensuing discussion in the Babylonian Talmud on the above Mishnah prohibiting hand clapping, the Gemara gives only one reason, "It is a preventive measure lest a person repair musical instruments" (B. *Beitzah* 36b). This statement, offered by the *stam* or anonymous discussion narrator, will become the determinative explanation in the ensuing codifications of Jewish law and is therefore the primary halakhic focus of this *teshuvah*. Let us look closely at the rabbinic concern of *she'mah ye'takein*, "lest it lead to fixing" on Shabbat.

III. Potential desecrations of holy time.

A. *She'mah ye'takein kli shir*, "Lest It Lead to Fixing a Musical Instrument"

The Talmud is cryptic in describing the prohibition of Shabbat hand clapping and slapping the thigh. We are not told what constitutes a fixing and which musical instruments are the sources of concern. When we look to the classical codes of Jewish law, we find "fixing" is a subcategory of "the final hammer blow" and an expansive definition of musical instruments are offered.

Maimonides writes as follows in his code, the *Mishneh Torah*:

Anyone who completes a form of work [*melakhah*] is liable [for violating Shabbat] under the category of "the final hammer blow." And because of this one who drags anything or one who repairs an instrument in any way that it can be repaired is liable. Therefore it is forbidden to cause the sound of music to be heard on Shabbat either with a musical instrument like a harp or a lute or by other things. Even to hit a finger on the floor or on a board or one against another [to snap] in the way that singers do or to knock shells [of nuts] for babies or to play with a couple of shells so that he [the baby] will be quiet- all of these, and

making. Practical considerations of protecting Shabbat overlap with atmospherics and may have been intertwined as a key focus from the beginning of rabbinic discourse.

things similar to them, are forbidden by the decree lest [a person] will repair a musical instrument.⁴⁰

In the next paragraph, Rambam emphasizes the same point:

One may not slap [the thigh] or dance or clap on Shabbat lest [i.e., because of the decree that perhaps] one will come to repair a musical instrument. Yet, to hit in an unintentional manner, it is permitted.⁴¹

Rabbi Joseph Caro in the *Shuḥan Arukh* adopts Maimonides' ruling and uses similar language:

One should not clap palm to palm, or clap palm to thigh, nor dance, as an ordinance lest a person will fix a musical instrument. And even to strike a finger against the floor or on the wall or one against another as is the way of singers or to knock nutshells for babies or to play with a pair [of nutshells] so that [the baby] will be quiet, all this and things similar to them are forbidden by the decree lest one will repair a musical instrument. Yet, to hit in an unintentional manner, it is permitted.⁴²

As a further precaution, Rabbi Joseph Caro prohibits listening to musical instruments on Shabbat as well.⁴³

Although prohibiting intentional clapping, tapping fingers to the floor, or knocking even two shells together on Shabbat, Rambam and Caro do not adopt the most stringent positions that are recorded in the respective Talmuds.⁴⁴ Some

⁴⁰ M.T. *Laws of Shabbat* 23:4.

⁴¹ M.T. *Laws of Shabbat* 23:5- The concluding phrase *ulisafek kil'echad yad* is ambiguous and could mean "striking unintentionally" or "striking in an unusual way." Unintentional in this context meaning so as not to make musical sounds.

⁴² S.A. *Orah Hayyim* 339:3. Rabbi Caro is clear that knocking on a door is permitted-338.1 and clarifies Rambam by forbidding the listening to a "musical instrument" rather than simply "music"- 339:3.

⁴³ S.A. *Orah Hayyim* 338 and 339. Rabbi Caro there forbids listening to an instrument-- *hashma'at kol* -- but permits listening to a non-Jew perform at a wedding.

⁴⁴ In the Jerusalem Talmud (5:2; 63a) Rabbi Lezar takes a stringent position forbidding any listening to knocking sounds on Shabbat. Although some other rabbis appear doubtful. "But this doubt can hardly be understood as a strenuous objection to Rabbi Lezar's position. Rabbi Shemuel only wished to knock on the door- he did not actually do so. Rabbi Yirmiyah is rebuked for doing

rabbis forbade even non-musical sounds, emphasizing the need for a quiet atmosphere on Shabbat. Among the Babylonian *Amora'im*, Ulla objected to knocking on the door on Shabbat, and Abaye sided with him; but Rabbah (some read Rava) disagreed, saying that only a musical sound is forbidden.⁴⁵ The leading *posekim*- Alfasi, Rambam and Caro- held in accordance with Rabbah.⁴⁶ Both Rambam and Caro state, based on opinions voiced in a debate in the Jerusalem Talmud, that as Rabbi Yehudah Hanasi stated, it is permitted to make a sound in the unusual manner of clapping with the back of one's hand.⁴⁷

On the continuum of positions concerning clapping and dancing on Shabbat, there are also more lenient positions than those taken by Rambam and Caro. Already in the Talmud we have the following exchange:

Rava Bar Ran Chanin said to Abaye, “We teach in a Mishnah: “One does not clap or slap [one's thigh] or dance,’ but now when we see that they [the people] are doing this, we do not say anything to them?!...Here also, let Israel be; it is better that they should unwittingly [violate the law] than knowingly.”⁴⁸

The above reasoning is grounded in the principle that when people are likely to ignore a rabbinic decree, silence is preferable to an ineffective and damaging admonition. That the public has a significant role in determining law is stated as follows in the Bavli: “We do not enact a decree on the public unless the majority of the public are able to stand with it.”⁴⁹ This principle is even more clearly stated in the Yerushalmi: “Any enactment of a court and the majority of the public do not accept it, it is not enacted.”⁵⁰

so. When the Rabbi permitted tapping on the intestines, it is unclear whether they did so on Shabbat or not, but even so, they only permitted it for an ill person. In light of these statement, it seem that the consensus of the Palestinian Talmud is embodied in Rabbi Lezar's statement” (quoting the analysis of Rabbi Adam Rosenthal from his student paper written in 2008). Also see the Bavli at *Eruvin* 104a.

⁴⁵ B. *Eruvin* 104a

⁴⁶ The only major exception is Rabbenu Hananel (990-1050; Tunisia) who is often influenced by the Jerusalem Talmud, which forbade door knocking, and so, here sides with Ulla's ban on all noise-making, including knocking on a door on Shabbat. See *Eruvin* 104a-b and the Rosh's (*Eruvin* 10:20,124a) quoting Rabbenu Hananel.

⁴⁷ See J. *Beitzah* 5:2, 63a.

⁴⁸ B. *Beitzah* 30a.

⁴⁹ B. *Avodah Zarah* 36a, quoting Rabban Shimon ben Gamliel and Rabbe Elazar bar Tzadok.

⁵⁰ Y. *Avodah Zarah* 2:8, 16a, quoting R. Yohanan, who received it from Rabbi Lezar. To see this principle in the Codes, note Maimonides, M.T. *Mamrim* 2:6-7.

The Tosaphot of 12th century, Germany, commenting on Bavli's concern of "lest they fix [musical instruments]," go beyond an implicit acceptance to an outright justification of clapping and slapping on Shabbat. They examine the original motive for the *shevut* and assert that the original circumstances had changed for their community:

We taught in a Mishnah: "One does not clap or dance." Rashi explained "lest one will repair a musical instrument." However, for us, [clapping and dancing] are permitted. Because specifically in their days [of the Talmud], when they were experts in making musical instruments, it was appropriate to make this decree. But for us, who are not experts in making musical instruments, it is not appropriate to make this decree.⁵¹

The Tosaphot only overturn the narrow *shevut* of clapping, slapping or dancing. In terms of their reasoning, it is unclear what constitutes "repair" and if the musical instruments they are referring to are percussion instruments alone or stringed instruments as well.⁵² Rabbi Moshe Isserles (the Rema) in 16th century Poland codified the Tosaphot's leniency as follows:

And there are those that say that in this time all of these [clapping the hands, slapping the thigh, dancing] are permitted. Since we are not experts in the making of musical instruments, there are no grounds to decree that [one may not clap, slap the thigh, or dance] for perhaps one will come to repair a musical instrument. It is a matter that is not common [that one has the ability to fix instruments],

⁵¹ Tosaphot on B. *Beitzah* 30a, s.v. *ein metafhin*.

⁵² Moshe Feinstein prohibited the use of the microphone on Shabbat due to the concern of *shema yetakain* even though it is apparent that most people are unable to repair a microphone. *Iggerot Moshe, Orach Hayyim*, part 4, #84. He also holds stringently in examining the Tosaphot's leniency: see *Iggerot Moshe, Orach Hayyim*, part 2:100.

and it is possible because of this that they were lenient in all this.⁵³

Later *posekim* are explicit that the exception of the Tosaphot does not apply to even the simplest kinds of instruments.⁵⁴ Hence, Rabbi Israel Meir Kagan (the Hafetz Hayim) writes at the end of the 19th century in his *Mishnah Berurah*: “As for this, ‘to be lenient in all these [matters]’ refers to clapping, slapping [on the thigh] and dancing, but not to the rest of the things [mentioned in the *Shulhan Arukh*, like hitting shells together].”⁵⁵ The various 19th century rulings are codified in the *Kitzur Shulhan Arukh* as follows:

On the Sabbath, it is forbidden to make a musical sound, either with an instrument or with the limbs of the body (except the mouth). It is even forbidden to snap the fingers or to strike on a board to make a sound, or to rattle with nuts, or ring a bell to silence a crying child. It is forbidden to clap with the hands or to dance, but it is permissible to do so in honor of the Torah; neither should a person be prevented from doing it for the sake of a crying child, since there are some authorities who permit it.⁵⁶

Similarly, in the 20th century, Rav Eliezer Yehudah Waldenberg, in his work *Tzitz Eliezer*, emphasizes that Rema’s leniency is limited to clapping and dancing.⁵⁷ Yet remarkably, despite the explicit prohibition in the Mishnah, clapping and dancing will gain widespread acceptance. As one example, Rav Chaim Elazar Shapira (Munkacz, Czechoslovakia; 1871-1937) would write that clapping, tapping, and dancing are permitted during the singing on Shabbat since these acts are performed within the context of the *mitzvah* of honoring Shabbat [*kavod Shabbat*].⁵⁸ Let us pause to examine the possibility of loosening a *shevut* against instrumental music in the context of Shabbat prayer.

B. The Removal of *Shevut*

⁵³ S.A. *Orah Hayyim* 339:3, gloss.

⁵⁴ There is the possibility of a rabbi as prominent as Nahmanides (Ramban; Spain, 1194-1270) permitting the playing of musical instruments on Shabbat. The Meiri (R. Menachem Meiri of Provence, 1249-1316) states (*Magen Avot* #10) that the Ramban’s students regularly played stringed musical instruments on Shabbat, which Meiri attacks as a violation of *halacha*.

⁵⁵ *Mishnah Berurah* 339:3.

⁵⁶ Solomon Ganzfried (with English translation by Hyman Goldin), *Code of Jewish Law* (New York: Hebrew Publishing Society: 1961), Chapter 80, paragraph 87; vol. 2, p.103.

⁵⁷ *She’alot u’teshuvot Tzitz Eliezer*, Third portion, 16:4, s.v. *ukishmidakdikim*.

⁵⁸ *Minchat Elazar* (Vol. 1, Siman 29).

As we have seen, a *shevut* may be set aside when the integrity of Shabbat is preserved and a sufficiently strong, countervailing need is presented, such as enabling a *mitzvah*. In order to answer whether our previous ruling in the “organ case” is still justified and whether it would also encompass moveable percussion, wind, and string instruments, let us look more closely at the spirit of Shabbat and the nature of instrumental music.

If Shabbat is “a palace in time,”⁵⁹ then much of the architecture of Shabbat- the biblical and rabbinic ordinances- are intended to separate Shabbat from the rest of the week.⁶⁰ When Shabbat is “made holy” by God in the creation account (Genesis 2:3), the root *kadosh*, often translated as “holy,” also means “set aside.” Shabbat’s otherness includes engagement of spirit in communion, repose, and celebration. We are commanded both to “observe” (*sh’mor*) the limitations of the day and to “remember” (*z’khor*) by making preparations throughout the week to enhance the sacred day’s joy.⁶¹ Singing in synagogue contributes to the spirit of Shabbat.

Shevut enables protection of the otherness of Shabbat. Yet, in some cases the outside walls, the rabbinic ordinances, may not serve their original goal. We do not know exactly what caused the *Tosaphot* to reconsider the ordinance against clapping and dancing, but surmise that they were responding to people clapping and dancing when singing their prayers. In contrast to the Talmud’s dicta of looking the other way on this matter, the *Tosaphot* saw a need to justify a behavior that did not directly infringe on the Torah’s laws of Shabbat and responded to the natural tendency to celebrate Shabbat physically.

There is also a temptation for us as the Conservative Movement’s Committee on Jewish Law and Standards to look the other way and not to address the awkward question of musical instruments. After all, Jews have managed to celebrate Shabbat without musical instruments for a long time. The advantage of not having musical instruments is that it places the responsibility for crafting joyful song and the mood of reflection directly on the worshippers. Due to the potential violation of Shabbat the *posekim* have consistently opposed musical instruments. Nonetheless, many Conservative synagogues today are using musical instruments in services, particularly on Friday nights, and many use them as well

⁵⁹ An image taken from Abraham Joshua Heschel, *The Sabbath* (1951), Chapter One.

⁶⁰ Every week at *Havdalah*, we praise God as *ha-mavdil bein yom ha-shevi’i l’sheset y’mei ha-ma’aseh*, “the One who distinguishes between the seventh day and the six days of working.”

⁶¹ Deuteronomy 5:12; Exodus 20:8; M.T. *Laws of Shabbat*, Chapter 30.

on the biblical Festivals and the High Holy Days. Like the *Tosaphot* in their day, we should not pretend that contemporary Jewish practice is otherwise and ignore the issues involved, but rather examine whether musical instruments have enhanced *tefillah* (prayer) for Jews in our communities. If so, we then need to identify and resolve whatever *halakhic* issues are involved in using them. We may determine that musical instruments actually interfere with the Shabbat or holiday experience or with active worship, and we may also find that even if musical instruments add to those experiences, they involve insurmountable *halakhic* problems – but we need to face all those issues squarely. As we have seen among the *posekim* regarding the use of musical instruments at weddings and the carrying of casks of wine from storage on Shabbat, a *shevut* can be set aside if it “enhances a *mitzvah*,” whether the celebration of a bride and groom or the rejoicing of Shabbat.

Many Conservative congregational rabbis over the last century have found that musical accompaniment has increased attendance and communal participation. Music intensifies feelings of connection to God and other people, which are important ingredients in fulfilling the *mitzvah* of Jewish communal worship.⁶² Instruments provide a melody line that aids many of our constituents in singing along. Finally, music is a language for wonder and mystery, evoking and expressing the ineffable.⁶³ As poetically pointed out by Bahya ben Asher in 13th century Spain, the numerical value of *shirah*, song, is the same as *tefillah*, prayer.⁶⁴

There is, however, another side to the story, which warrants caution. Depending on the type of music and its decibel level, instrumental music can overwhelm worshipers and make them passive. Loud or complicated music – a

⁶² Ben Ish Hai (Bagdad, 1835-1909), in examining the permissibility of riding a bicycle on Shabbat emphasizes that attendance of public worship is a *mitzvah*, enabling the hearing of the *kaddish* and *kedushah*- see responsa *Rav Po'alim*, section one, *Orah Hayim*, *siman* twenty-five. Emotion is a dimension of *kevanah*, intention, which is a vital part of prayer. In that regard, please note the cautions in the Mishnah against making prayer routine: Rabbi Eliezer (*Berakhot* 4:4); Rabbi Shimon (*Avot* 2:13).

⁶³ Along these lines, our colleague, Rabbi Stuart Kelman, has suggested in a team-taught session on prayer with Rabbi Dorff and Debbie Friedman at the conference of the Coalition for the Advancement of Jewish Education (CAJE) on August 20, 2003 that the reason why the Book of Psalms – and the psalms that we use in our daily liturgy of *Pesukai D'zimra* – end with Psalm 150, which speaks of praising God with many musical instruments, is because after 149 attempts to express ourselves in words, we finally realize that some things cannot be expressed that way but can be captured musically.

⁶⁴ Rabbi Bahya ben Asher, in his commentary to Numbers 21:19; cited by Abraham Joshua Heschel, “The Vocation of the Cantor,” *The Insecurity of Freedom* (Philadelphia: Jewish Publication Society, 1966), p. 245. The two words equal 515, spelling *tefillah* with out a *yud*.

capella or with instruments – communicates clearly that congregants are not supposed to join in but rather to listen passively to what others are doing. The muting of worshipers can convince them not to return. Moreover, music that fits the mode of expression of one generation may not fit that of another. Those orchestrating a service must thoughtfully and artfully choose music that fits the worship audience, precisely because music is such a powerful vehicle for communicating emotions, attitudes, and, yes, ideas, including theology.

When used sensitively and skillfully, though, instruments can enhance for many the *mitzvah* of Shabbat worship. Just as medieval rabbis found that people sought to clap on Shabbat and to use orchestras to accompany wedding celebrations,⁶⁵ so many Conservative rabbis have found that both they and their congregants encounter the joy of Shabbat with the aid of musical instruments. For many of our congregants, there is increased motivation to enter the door of Shabbat when the fence, the *shevut*, is taken down allowing musical instruments in. We have chosen in the past as a Conservative community to put aside the *shevut* of musical instruments for the sake of the *mitzvah* of enlivening the Shabbat celebration, leaving it to the local rabbi to decide whether and how to use instruments in worship.⁶⁶

In sum, there are three grounds for removing the *shevut* of prohibiting clapping, slapping and dancing on Shabbat:

1. A rabbinic ordinance may be set aside when the people cannot withstand or choose to abide by a decree.

⁶⁵S.A. *Orah Hayyim* 338:2, and see *Be'er Heiteiv* there, indicating the interest in instrumental music to accompany weddings. *Magen Avraham* to S.A. *Orah Hayyim* 225:4 asserts how important a Bar *Mitzvah* celebration is, likening it to a wedding.

⁶⁶ We would like to record a position already suggested in the early 1970s by a past President of the Rabbinical Assembly, Rabbi David Aronson, z”l, when he was part of a rabbinic advisory body for setting *halakhic* policies for Camp Ramah in California. The national Ramah policy was that no instruments may be used in public worship, but that individuals are allowed to play instruments and stereos in their own bunks. That, he said, was just the opposite of what the policy should be. In public, where staff can regulate what is played, and how, they can determine that the music is appropriate to Shabbat and that no fixing of instruments takes place, music should be allowed. In the bunks, however, when it is impossible for one camper or staff member to play an instrument without all the others hearing it, playing instruments should be prohibited, for “one person’s music is another person’s noise.” Moreover, in a private setting like a bunk, there is minimal, if any, supervision to prevent fixing the instrument. This responsum follows Rabbi Aronson’s wise counsel: In the synagogue setting, where the type and volume can be regulated, effective quality controls can ensure that the music is appropriate to Shabbat, enhancing the Shabbat experience, and that it is of the sort that encourages congregational singing rather than stifling it. Similarly, in a synagogue during services, the rabbi can ensure that no fixing of instruments takes place. At receptions after services and in private homes, those concerns are not easily met.

2. The goal of enhancing Shabbat services is a form of *hiddur mitzvah*, comparable in our day to enabling the celebration of a wedding.
3. We lack the expertise in most cases [to be examined more fully below] to make or repair musical instruments.

The *shevut* of the Mishnah is apparently a *shevut* of a *shevut*, because the expressed concern is fixing musical instruments on Shabbat. The *shevut* of playing of instruments on Shabbat may be removed as well for the same three reasons as stated above if it does not lead to violating a forbidden labor on Shabbat, which is the topic we shall next explore. There are a handful of *av melakhot*, the thirty-nine fundamental categories of prohibited Shabbat activity, which are at risk of violation in the making of Shabbat music.⁶⁷

C. Tying (*qosher*) and untying (*ha'matir*)

During the building of the Mishkan there were a variety of activities that entailed tying knots, including the binding of tent pegs together, weaving of the curtains together, and setting up and opening the traps used for capturing the snails needed for the blue dye.⁶⁸ When the Mishnah (Shabbat 15:1) takes up the topic of tying and untying, it focuses on the skilled tying of knots:

These are the knots for which they are liable, the camel [driver's] knot and the sailor's knot; and just as one is liable for tying them so is one culpable for undoing them. Rabbi Meir says, 'Any knot which one is able to untie with one hand does not render a person culpable for [unfastening] it.'

In the ensuing debate in the Talmud, Rabbi Meir's position is rejected. The criteria for violation of "tying" is that of "permanence," which will also demand further definition. Rashi will comment on this Mishnah's opening words

⁶⁷ For the Mishna's list of the thirty-nine forbidden labors, see fn. 27. The Biblical prohibition for "labor" (*melakha*) on Shabbat is stated in Exodus 20:10 and applied to the tabernacle by the juxtaposition of the instructions for building the tabernacle with a repetition of the need to keep Shabbat- see Mekhilta and Rashi on Exodus 31:13.

⁶⁸ There is a debate in the Babylonian Talmud (Shabbat 74a) as to what act in constructing the Tabernacle entailed the tying and untying of knots. Rava links these laws with tying the pegs of the tents together. The Talmud points out that Rava fails to explain untying and then cites Abaye's explanation as the weaving of the curtains together that might snap and entail retying. But here too the Talmud points out Abaye's failure to explain untying. The final explanation offered is attributed to Rava by some and to Rabbi Illai by others is that the trappers of the *chilazon* snail [needed for the purple dye] would tie and untie their nets.

“these are the knots” as follows: “This refers to a permanent knot which is never untied such as the knots of the [*mishkan*] curtain when a thread breaks.” In the following Mishnah [Shabbat 15:2], examples of temporary knots by laypeople are presented as permitted.

These are the knots for which they are not culpable as they are for the camels’ knot and the sailors’ knot. A woman may tie up the neck-opening of her shirt, or the cords of a hair-net or breast-band, or the straps of a shoe or sandal or leather-bottles of wine or oil, or a pot of flesh [by a cloth tied to the mouth of the pot]. Rabbi Eliezer ben Ya’akov says, ‘They may tie [across a doorway or entrance] before cattle in order that they do not stray.’ They may tie a bucket to a belt [temporarily], but not to a rope [permanently]. R. Yehudah allows it [a weaver’s cord, although not an ordinary rope]. Rabbi Yehudah states the general principle, ‘Any knot that is impermanent is not culpable.’”

In the ensuing discussion in the Babylonian Talmud [Shabbat 112a] there is a distinction made between forbidden knots for which a sin offering [*hattat*] must be brought and other knots that are prohibited by rabbinic decree, but no sin offering is required. The major codifiers of Jewish law- the Rif, Rambam,⁶⁹ and Caro⁷⁰- clarify as follows: A sin offering is required only when it is both a craftsman’s knot and the intention is that it is permanent;⁷¹ if it is either a craftsman’s knot or intended as permanent then it is a [rabbinically designated] Shabbat violation.⁷² But, if it is neither a craftsman’s knot nor intended as permanent, these *posekim* concur that no violation of Shabbat has occurred.

The question that then needs clarification is, what is the specific time limit that determines permanence? The Rema [Moshe Isserles] comments on the *Shulkhan Arukh*⁷³ that there are two possible time frames that would constitute permanence: “Some say that any knot which is not intended to be untied on the

⁶⁹ Mishnah Torah, Shabbat 10:1

⁷⁰ Shulkhan Arukh 317:1

⁷¹ Note that Rashi and Rosh take a different position on Shabbat 117a from the cited *posekim* commenting that for purposes of *hattat*, it makes no difference what kind of knot if it is permanent.

⁷² Note that Rashi, Rosh, and the Tur take a more stringent position, holding that any permanent knot, even an unskilled one, is obligated to bring a sin offering.

⁷³ Orech Hayim 317:1

same day is considered permanent⁷⁴ and some are more lenient and say that a knot is only considered permanent if it is intended to be left tied for seven days.”⁷⁵ And the Rema adds that the same law applies for untying as for tying. In contemporary practice widely used temporary knots on Shabbat include the tying of shoelaces, a woman’s scarf, or a man’s tie.

Both Rambam and Caro⁷⁶ comment that it is permitted to tie a knot for purposes of a *mitzvah* as long as it is not a permanent knot, offering the example of measuring the Torah’s dimensions. This helps explain the common use of a wimple to tie a Torah’s scrolls, although the wimple’s bow might remain until the following Shabbat or even longer. Rambam in discussing the tying of knots for a *mitzvah* adds “a harp string that broke is tied in the Temple, but not in the country [at large] and is not tied at the outset [for the first time] even in the Temple.”⁷⁷ The implication is clear. It is forbidden to tie musical strings, such as a broken guitar string, on Shabbat. Tuning, however, is another matter, a topic that we shall return to later.

D. Boneh (building) and soter (demolishing)

Boneh (building) and *soter* (demolishing) are opposite activities that relate to constructing the tabernacle. The Jerusalem Talmud describes *boneh* as the placing of the beams in their sockets (*Yerushalmi, Shabbat 52b*). The *Bavli* (*Shabbat 102b*) states that *boneh* applies to even the most minimal amount of work that has a quality of permanence.⁷⁸ The *Shulkhan Arukh* (314:10) distinguishes *boneh* from temporary construction (*binyan l’sha’ah*), defined by the intent to disassemble the same day as built. Examples of *boneh* are making a

⁷⁴ Kol Bo and Hagahot Maimoniot

⁷⁵ Tur and Mordechai

⁷⁶ Mishneh Torah Shabbat 10:6; Orach Hayim 117:1

⁷⁷ Mishneh Torah Shabbat 10:6; the *Bavli* provides a debate on whether the string can be tied with a knot or only a loop- see *Eruvin 103a*

⁷⁸ J. T. *Shabbat 87:2* There is a debate in the Jerusalem Talmud whether *boneh* applies to temporary structures. Rabbi Yosi holds “no” since the timing of the taking apart of the *mishkan* was solely at God’s behest it could be considered as if permanent. Rabbi Yose the son of Rabbi Bon holds yes. This debate continues through the Ahronim [See discussion and footnotes in “*Boneh*,” *Encyclopedia Talmudit*, vol. 3, p.4]. Examples from the *Bavli* of *boneh* are as follows: adding a cover to a specially arranged poles on a boat, but adding to an occasional tent is permitted (*Eruvin 102a*); filling a hole indoors (Rabbah- *Shabbat 73b, 81b*); fitting a rock into place in a wall (*Shabbat 102b*). If screws or nails are used that implies that intent is permanent and such work is forbidden.

hole in a structure;⁷⁹ digging a hole;⁸⁰ filling in a gap in a wall;⁸¹ or leveling a surface on the ground, whether indoors or outdoors.⁸² It is also forbidden to attach a structure to the ground, with an example from the Talmud (Shabbat 102b) of assembling a tripod on the ground over a fire for placing a pot on top.

At the same time, there is a concept of *derech tashmisho*, an anticipated use, which would not be forbidden. Examples include opening and closing a door or a window that is on hinges.⁸³ Rabbis debate in the Mishnah (*Beitzah* 2:6) whether the category of *boneh* applies to vessels, specifically the setting up of a candlestick on *Yom Tov* that has fallen down. Hillel holds no and Shammai holds yes.⁸⁴ The Gemara explains that the concern is with putting parts back together.⁸⁵ Rashi explains Hillel's position, "A person does not violate unless some other *melachah* was done, such as smoothing, cutting, weaving or sewing was performed in the process. There is no prohibition on merely assembling, because the *melachah* of *boneh* applies only to houses and tents." Maimonides records Hillel's more lenient view as the majority rabbinic opinion and will hold that *boneh* does not apply to vessels.⁸⁶ Yet, a difference of opinion will persist among *posekim* over whether a forbidden act is categorized as *makeh b'patesh* (the final hammer blow) or a rabbinic safeguard against *boneh*.⁸⁷ An example of this debate in the Talmud relates to categorizing the act of putting a handle into a spade, although all agree that doing so is forbidden.⁸⁸

⁷⁹ B.T. Shabbat 102b; Maimonides, M.T. *Hilchot Shabbat* 10:16.

⁸⁰ B.T. *Shabbat* 73b; *Chagigah* 10a.

⁸¹ B.T. *Shabbat* 102b describes forbidden act of filling lead in termite hole in wood or fixing a damaged wall.

⁸² B.T. *Shabbat* 73b; Maimonides, M.T. *Hilchot Shabbat* 10:12.

⁸³ B.T. *Eruvin* 101a; see *Shulkhan Arukh, O.H. 313:3*.

⁸⁴ M. *Beitzah* 2:6; B. T. *Beitzah* 21b.

⁸⁵ B.T. *Beitzah* 22a: Rav Chanina bar Bisna said: "Here we are dealing with a candlestick of parts [that are separated from each other when it fell down]....Beit Hillel holds that there is no [prohibition of] building with regard to utensils and there is no [prohibition of] demolishing with regard to utensils."

⁸⁶ See Rambam, *Shabbat* 22:26 and *Holydays* 4:13; for additional cites see *Encyclopedia Talmudit*, "Boneh," p. 6, fn. 139. As a rule, with a handful of exceptions, Hillel trumps Shammai in halakhic disputes—See B. T. *Berakot* 36b; *Beitzah* 11b; *Yevamot* 9a.

⁸⁷ By and large the following three distinctions are made between these two categories of forbidden labor:

1. *Boneh* violation may take place even short of completion of an item; *makeh b'patesh* is identified with completion;
2. *Boneh* entails creating shelters or assembling parts; *makeh b'patesh* is broader.
3. *Boneh* relates to only solid structures; *makeh b'patesh* includes fabrics and loose construction.

⁸⁸ *Shabbat* 102b. Rav and Shmuel debate in the Bavli whether inserting a wooden peg into a spade, is a violation of *boneh* (Rav's categorization), or violates *makeh b'patesh* (the final hammer blow);

Since the concept of intentionality and permanence remains relevant under the rubric of *boneh*, playful construction of legos would be permitted as impermanent construction, according to some contemporary halakhists.⁸⁹ At the same time, there is a particular sensitivity to acts that have the appearance or even function that suggests a tent. For instance, the rabbis in the Talmud (Shabbat 138a-139; Eruvin 101a, 102a-b) debate the permissibility of setting up of certain kinds of beds and hammocks that are “tent like.”⁹⁰ By extension, contemporary *posekim* have forbidden the opening and closing of an umbrella on Shabbat.⁹¹ Tellingly, none of the discussions in the Talmud or Codes identify *boneh* and *soter* as potential problems with musical instrument playing on Shabbat, probably due to *boneh*’s focus on structures, rather than vessels. Nonetheless, the category of *boneh* is relevant regarding the setting up and taking down of stages.

E. The Final Hammer Blow (*Makeh B’Patesh*)

We return to the key concern in the Talmud and Codes, which is “the final hammer blow” and the extent to which we should retain the protective prohibitions, *shevut*, relating to the subcategory of “fixing.” “The final hammer blow” is originally identified with the tapping of gold sheeting that had already been attached to the acacia wood of the *mishkan* in order to smooth or finish the wood.⁹² While *boneh* is constructing any part of a building, *makeh b’patesh* focuses on the final act and includes construction of objects (*Shabbat* 75b). In

Samuel’s holding). Maimonides will hold with Samuel (See Maimonides commentary to Mishnah, Shabbat 12:1). Some understand the example of the spade as referring to a pin passed through the handle and made to fasten to the blade (Rashi); chiseling is the other examples of the dispute of categorization between Rav and Shmuel.

⁸⁹ R. Yehoshua Yeshaya Neuwirth, *Shemirat Shabbat Kehilchatah*; R. Sternbuch, Chief Rabbi of the Edah HaChareidis in Jerusalem, see

<http://www.shemayisrael.com/parsha/ostroff/archives/shabbos37.htm>

⁹⁰ Under the rubric of “erecting tents” is the halakhic discourse on the wearing of a hat with a brim wider than one *tephach* [hand-breadth]. Rabbi Karo (Sh. Ar. 301:40-41) records the law, based on B.T. *Shabbat* 138b that “it is forbidden to put on a hat whose brim is beyond a *tephach*, even inside a house.” Interestingly, Rashi indicated his comment to the *sugya* that the real concern was the hat blowing away and risking carrying. Commenting on the *Shulkhan Arukh* contemporary *posekim* will say that this rule only applies to certain materials that are quite stiff (Rach); others will distinguish between primary intent as covering the head rather than protection from the elements (Taz); and one will say that based on Rashi’s analysis we are lenient in our day (Elijah Rabbah).

⁹¹ I Gruenfeld, *The Sabbath: A Guide to Its Understanding and Observance* (Jerusalem: Feldheim, 1972), p. 49; *Noda B’Yehudah* 2:30; yet the Chofetz Chaim in his *Biur Halacha* (315:8, *Tefach*) notes that umbrellas of old were tied in place to remain open and were therefore different than the “collapsible *ohel*” [let alone spring loaded umbrellas post Chofetz Chaim], yet the Chofetz Chaim forbade the umbrella due to the appearance of impropriety [*mar’it ayin*].

⁹² See B.T. *Shabbat* 103a.

regard to the prohibition of the final hammer blow, a distinction is made between putting something back together and fixing it for the first time. Rav Chisdah in the Talmud permits replacing the stuffing of a pillow if it fell out, but not to stuff a new pillow.⁹³ By extension, more recent *posekim* have permitted putting a leg back on a doll that has fallen off, but forbid putting a leg on a doll for the first time.⁹⁴ Similarly, the *Shulkhan Arukh* states that reinserting shoelaces is permitted, implying that inserting them for the first time is forbidden.⁹⁵

Putting an object back together warrants closer examination because of the implications for musical instruments, such as a clarinet. The Gemara (B.T. *Shabbat 46a*) says that all opinions agree that it is forbidden on Shabbat to assemble the parts of a menorah (*menorah shel choliot*) and the rabbis in the ensuing discussion went even further, forbidding the carrying of such a menorah lest it fall, which might lead to reassembly. And on the next page of the Talmud (*Shabbat 47a*) a *Baraita* is presented that forbids sticking the leg of a bed back into its groove (*hiduk*) as a rabbinic decree and if you hammer it back into place with nails (*takha*) than you have violated the Biblical injunction. Yet, in the Codes, there is difference of opinion as to the applicability of this prohibition. Although the Rema in the *Shulkhan Arukh* (313:6) holds according to the above stated *Baraita*, the Chazon Ish [R. Avraham Yeshaya Karelitz, 1878-1935; Belarussia and Israel] disagrees and permits restoring when it would not entail the possibility of using nails and is impermanent.⁹⁶

The Chafetz Chayim notes that some *posekim* define “loose fitting” to mean something that does not require force [even if it fits snugly once inserted] and notes that when there is a doubt regarding a rabbinic decree we may be lenient

⁹³ B.T. *Shabbat* 48a.

⁹⁴ Such a holding regarding a doll is approved by Rabbi Moshe Sternbuch, Chief Rabbi of the Edah HaChareidis in Jerusalem- see <http://www.shemayisrael.com/parsha/ostroff/archives/shabbos37.htm>

⁹⁵ *Orach Hayim* 317:2; See explanation of *Mishneh Berurah* 317:16; *Shulkhan Aruch HaRav* 317:5- if both the shoes and the shoelaces are old may string even for the first time.

⁹⁶ Chazon Ish, *Orach Chaim* 50:9-10, permits loose assembly, because it is impermanent. A related *mahlaket* concerns a cup composed of parts that fit together. Some *Posekim* hold that since this vessel never reaches the level of “firm assembly,” identified with the tightness of nails, it is permitted to assemble (Chazon Ish, *Orach Chaim* 50:10); others (Chafetz Chayim, *Mishnah Berurah* 313:6) hold that since it is assembled relatively tightly by pushing the pieces together, it should not be done at the outset [*l'chatichila*] except for a Shabbat need [*tzorech Shabbat*].

[*safek d'rabbanan l'kula*].⁹⁷ In contrast to the *menorah*, the parts of the clarinet fit inside each other and are not intended to remain permanently.⁹⁸ The putting together of a clarinet's sections is *derech tashmisho*, a normal part of its intended use. Putting in a section of a clarinet is not dissimilar from screwing on the top of a jar, a common practice on Shabbat. We will now examine more of the practical considerations in the use of musical instruments, including: tuning and fixing; electrical instruments and the plugging in of cords.

IV. Practical dimensions of the use of musical instruments

A. What Constitutes Fixing?

Repair of an item, whether old or new, that has a quality of permanence constitutes a violation of *makeh ba-patish*, "hitting with a hammer," also called *makot ha-aharon*, "the final hammer-blows."⁹⁹ Among the forbidden acts discussed in the Talmud are banging a hammer on an anvil to straighten it, sharpening a knife, raking out an oven, fixing an instrument, and bending a needle. The Rambam defined fixing as "Every matter that is a completion of work is prohibited under the category of 'the final hammer blow.'"¹⁰⁰

When the Tosaphot say of themselves, "we are no longer expert in the making of musical instruments," their definition of fixing is more than putting two pieces of wood together to make a knocking sound. Rather, the prohibition seems to be the actual building of a sophisticated instrument. Certainly with regard to the organ, piano, accordion, or other keyboard instrument, we can safely say that as listeners and normal users, we are also not expert in the making of such instruments. Hence, playing them would not pose the risk that we might be prompted to repair them on Shabbat or another holy day for use on that day.

A more difficult question is that of the changing of musical strings on guitars and similar stringed instruments. The Mishnah permits tying a broken

⁹⁷ *Biur Halacha* 313:6 "*darka*." The original statement in the Talmud [B.T. *Shabbat* 122b] is Rava who states a consensus against reassembling a vessel that has come apart in a firm way [*hidduk*] lest a person comes to together with nails.

⁹⁸ There is also a greater leniency regarding rabbinic decrees in the context of performing a *mitzvah*, which includes bringing honor to Shabbat. As an example, while there is a tendency to forbid winding a working watch on Shabbat, Rabbi Neuwirth permits doing so if winding is for the sake of a *mitzvah* [such as tending to the ill or getting to synagogue on time]. Neuwirth, *Shemiras Shabbos K'hichasa* 28:20.

⁹⁹ M. *Shabbat* 7:2; 12:1; Tosaphot to B. *Shabbat* 102b, s.v. *makeh ba-patish*.

¹⁰⁰ M.T. *Laws of Shabbat* 23:4.

string on an instrument in the Temple on Shabbat, but it is forbidden outside of the Temple.¹⁰¹ In the ensuing talmudic discussion, the majority holds that the *kinor*, a type of harp, may not be repaired on Shabbat, while Rabbi Eliezer argues that it is permitted. Rashi explains that music was a *makhshir*, a necessary requirement in the rite of making a public offering (*karban tzibbur*) and for that reason the repair of the *kinnor* was permitted.¹⁰²

The average guitarist can and does change musical strings on a regular basis. That is less true for players of the string bass, but cello, viola, and violin players also find themselves changing strings from time to time. A musician might ask, how is putting on a string different from tying shoelaces or a tie, which is permitted on Shabbat by most *Halakhic* authorities? The key difference is that a knot on a shoelace or a tie is temporary, widely defined as being of use only for that day.¹⁰³ In contrast, the knots employed to position a musical string are intended to last longer than a day and thereby have some sense of permanence. When the string is tied with a secure knot, it is an element of the making of the instrument and is thus a forbidden activity on Shabbat, as held by the majority even in the discussion of tying a knot on the Temple instruments. Unlike the use of the *kinor* in the Temple, the instrument is not a necessity. Consequently, those using a musical instrument on Shabbat must not fix the strings by the tying of the requisite secure knots.

The tuning of a musical instrument, such as a guitar, is another matter. A tuning is an adjustment of tautness. It is not building and is not akin to the “final blow” of making something. By analogy, tying a shoelace is not the final act of making a shoe even though it is necessary for the shoe to fit. A tuning by definition is temporary for the instrument to sound right and is regularly done in the playing of a guitar or other string instrument. We would prohibit tuning of an organ, piano, or other keyboard instrument, precisely because it is done on a more infrequent basis and is more permanent in nature, but tuning string instruments is temporary in character and therefore permitted.

¹⁰¹ M. *Eruvin* 10:13 and B. *Eruvin* 102b-103a; Tosaphot, *Sukkah* 50b, s.v. *verabban*.

¹⁰² Rashi, B. *Eruvin* 102b; Rashi on B. *Eruvin* 104a prohibits music as a *nolad*, “a new creation.” This focus on the melody itself is not used by other *posekim*, probably because singing is permitted and not tangibly different as than the same melody performed on an instrument.

¹⁰³ Rav Yohoshua Y. Neuwirth, *Shemirat Shabbat* (New York and Jerusalem: Feldheim, 1984), 15:52, page 179, defines a permitted knot on Shabbat as constructed to last for less than twenty-four hours.

Similarly, wind instruments (including clarinets, oboes, flutes, bassoons, trumpets, trombones, French horns) may be tuned on Shabbat for use on that day because wind instruments need to be tuned before each use - and sometimes even during use - and thus their tuning is temporary. Likewise, wind instruments may be assembled when it is not the first time. On the other hand, clarinet or oboe players may not change the reed on their instruments on Shabbat, because that is intended to be, and usually is, a more permanent alteration of the instrument. Regarding the insertion of electrical cords for purposes of amplification, it is those acts of setting that cross the line into the area of *boneh*, building.

B. Carrying from One Domain to Another.

Carrying an item on Shabbat from one type of domain to another, *hamotzi m'reshut l'rashut*, is prohibited as one of the thirty-nine foundational prohibitions. The CJLS in its previous *teshuvot* dealing with musical instruments has not addressed this concern. In earlier Halachic writings, the rabbi's caution against "carrying" was so great that even the Biblically mandated mitzvah of blowing the shofar was suspended when Rosh Hashanah fell on Shabbat. Let us examine the precedent of the shofar both to appreciate the importance of the "carrying" concern and to determine how we should deal with the blowing of Shofar on a Shabbat, even if a synagogue might otherwise use musical instruments.

1. Shofar

The Torah calls Rosh Hashanah *Yom Teruah* (Numbers 29:1), the day of the [shofar] blast, and *Zikhron Teruah*, a memorial of the blast (Leviticus 23:24). The silence of the shofar on a day of Rosh Hashanah that falls on Shabbat is thus a dramatic statement that the sanctity of Shabbat takes precedence even over the biblical command of hearing the sounding of the shofar.¹⁰⁴ The Mishnah (M. *Rosh Hashanah* 4:1) tells us of the history of the blowing of the shofar on Shabbat:

When the holy day of Rosh Hashanah commenced on
Shabbat, in the Temple they would blow [the shofar], but

¹⁰⁴ Maimonides lists the "hearing of the shofar" on Rosh Hoshana as positive mitzvah 170 in his *Sefer HaMitzvot*.

not in the country [at large]. After the destruction of the Temple, Rabban Yohanan ben Zakkai decreed that they would blow in each place that had a court. Rabbi Elazar said that Rabbi Yohanan ben Zakkai did not decree except for Yavneh alone. They said to him: The same [decree] that applies to Yavneh applies also to any place that has a court.

Thus, once the Sanhedrin ceased to exist, the sounding of the shofar on Shabbat was discontinued.¹⁰⁵

The Mishnah is silent on why the shofar, among the oldest and simplest of musical instruments, was not blown on Shabbat outside the Temple precincts. At that time, the blowing of a shofar was widespread as an individual's *mitzvah*, just as in our own day people often shake their own *lulav* and *etrog*. According to the Talmud, the making of the sound itself is permitted on Shabbat, but is not done lest someone carry the shofar on Shabbat to an expert for last minute instruction in its sounding:

Rava said: If the prohibition [on Shabbat] is from the Written Law, how may the shofar be blown in the Temple? And besides, [the blowing] is not work such that a text should be needed to exclude it. For it was taught in the school of Samuel: [When it says] "You shall do no *melakhah*" [of work on Rosh Hashanah- Numbers 29:1], this excludes the blowing of the shofar and the taking of bread from the oven, these being kinds of skill and not work!

No, said Rava. According to the Written Law it is allowed, and it is the Rabbis who prohibited it as a precaution, as stated by Rabbah; for Rabbah said, "All are under obligation to blow the shofar but not all are skilled in the blowing of the shofar. [Hence] there is a decree [against blowing it on Shabbat] lest one take it in his hand [on Shabbat] and go to an expert to learn [how to blow it] and carry it four cubits in the public domain [which was not forbidden within the Temple precincts but was elsewhere].

¹⁰⁵ Hayyim Herman Kieval, *The Holy Days*, edited by David Golinkin and Monique Susskind Goldberg (Jerusalem: Schechter Institute, 2004), book one, p. 114.

When Rabbi Joseph Caro codified this law in the *Shulhan Arukh*, he gave the same reason for not blowing a shofar on Shabbat – namely, fear of carrying the instrument on Shabbat to learn how to blow it.¹⁰⁶

Yet, there is another facet to refraining from blowing the shofar on Shabbat. The shofar is more than a musical instrument. It is also a symbol of the holyday, which is subsumed under the sanctity of Shabbat. Similarly, *tefillin* are not worn on Shabbat and the major festivals because *tefillin* are a “sign upon your hand,” which is subsumed under the sign of the holydays themselves.¹⁰⁷ In that light, the *Tanaim* (the early rabbis), identify language in the Torah that directs calling to mind the sound of the shofar on Shabbat rather than actually hearing the instrument outside the Temple precinct. The midrashic discussion in *Vayikra Rabbah* (29:12) is as follows:

Rabbi Yohanan and Resh Lakish [leading rabbis and study partners of first-century Israel] were once sitting and puzzling over the following difficulty. They said: We have learned that when the festival day of Rosh Hashanah fell on Shabbat, the shofar was blasted in the Temple, but not in the rest of the country. Now if blowing is commanded in the Torah, let it override Shabbat in the rest of the country, too. And if it is not prescribed in the Torah, it should not override Shabbat even in the Temple. While they were sitting and puzzling over the problem, Kahana passed by. They remarked, “The master of traditional laws comes. Let us go and ask him.” They went and put the question to him. He answered them, “One verse says, ‘A memorial of the blast of the horn’ (Leviticus 23:24) and another verse says, ‘It is a day of blowing the horn unto you’ (Numbers 29:1). How can this be? [A memorial implies memory, rather than actual blowing as stated in the second verse.] At a time when the festival comes on a Shabbat is “A memorial of the blast;” [to signify] we recall the act of blowing by memory, but we do not blow.¹⁰⁸

We support the rule of not blowing the shofar on Shabbat in deference to the long-standing practice and as a statement of the pre-eminence of Shabbat as a holy day.¹⁰⁹ We recognize that at first impression there is an inconsistency in our

¹⁰⁶ S.A. *Orah Hayyim* 588:5; also see the language of *Mishnah Berurah* 588:13.

¹⁰⁷ B. *Eruvin* 96a; S.A. *Orah Hayyim* 31:1.

¹⁰⁸ 29:12 is the cite in the Mirkin edition; cited as 29:14 in the Margaliyot version, where the order of the verses is switched.

¹⁰⁹ On a first day of Rosh Hashanah that falls on Shabbat, the rabbi may evoke the memory of the sounds of the shofar by imitating the sounds and inviting people to close their eyes and to listen from within themselves to the respective sounds when the shofar calls are chanted. This variation

permitting musical instruments on Shabbat, but refraining from blowing the shofar. We choose to make a distinction so as to emphasize the centrality of Shabbat. The shofar is more than a musical instrument. Like *tefillin*, the shofar is a symbol of connection to God that is contained and subsumed in the observance of Shabbat itself.¹¹⁰ When the first day of Rosh Hashanah falls on Shabbat, there is still the opportunity to hear the shofar sounded on the following day. In agreement with a 1978 ruling of the CJLS, we affirm that the shofar should not be blown on Shabbat.

At the same time, we would not prohibit the playing of musical instruments on Shabbat lest one carry it to consult an expert. We are once again dealing exclusively with an issue of *shevut*.¹¹¹ Carrying from one domain to another or more than four cubits in the public domain is, of course, one of the thirty-nine categories of prohibited acts on Shabbat, but prohibiting an activity lest one be tempted to carry in violation of that law is a *shevut*. The countervailing interest in having musical instruments enliven our Shabbat services on a regular basis may, in the judgment of the local rabbi who decides to use instrumental music in the synagogue's Shabbat worship, overrule the long-standing caution against misleading people into carrying. As noted in another context of the *Shulhan Arukh*, Rav Yitzhak of Kolon taught that a "custom that is performed for the honor of the Torah pushes off a *shevut* enacted by the rabbis."¹¹² When music is well done, it serves to honor Torah and tradition.

2. Bringing Instruments to Synagogue

How, then, may portable instruments be used at the synagogue for Shabbat services without violating the law against carrying? There are several halachically permissible possibilities:

1) If there is a valid *eruv*, a space delineated as private by a clear marker, enabling a theoretically larger private space in which to carry, musicians are permitted to carry their instruments to the synagogue for use during Shabbat

in "hearing the sounds of the shofar" both elicits the sounds of the shofar in a personal way and reinforces the sanctity of Shabbat.

¹¹⁰ Tefillin are not worn on Shabbat, because as the Talmud explains: Tefillin are a "sign upon they hand"; since Shabbat and festivals serve as such signs, tefillin are not necessary on these occasions. See B. Eruvin 96a; S.A. *Orah Hayyim* 31:1.

¹¹¹ Mordechai, B. *Beitzah* 513 reports that Rabbi Joel HaLevi allowed a Jew to request of a gentile to bring an *etrog* on *Hag* even if was outside of the city limits.

¹¹² Rav Yitzhak of Kolon's statement is originally made in response to the dancing on Simkhat Torah and is found in S.A. *Yoreh De'ah* 214:5.

services and the *oneg* Shabbat and back home again thereafter. Similarly, within an *eruv* private individuals who wish to play their instruments with other people may carry them to someone else's home or some other agreed-upon meeting place within the *eruv* for that purpose.

2) Absent an *eruv*, we would ask musicians who will be playing at the synagogue to keep their instruments in the synagogue during Shabbat. Simultaneously, synagogues should provide a safe space for the storage and make it easy for musicians to deposit their instruments at synagogue before Shabbat and retrieve them after Shabbat.

3) We recognize that instruments are personal possessions and valuable.¹¹³ Some musicians may well be reticent to leave their instruments at the synagogue, even in a locked facility. Another permissible way to fulfill the law in this regard, then, is for the synagogue to own and store the instruments that will be used on Shabbat, just as it owns and stores a piano, organ, or other stationary instruments that it uses.

C. The Playing of Electrical Instruments and Pre-Recorded Music.

In a large sanctuary, amplified, electrically-generated sound allows speech, singing, and instrumental music to be heard more clearly. A 1950 majority responsum of the Committee on Jewish Law and Standards approved the

¹¹³ In one of his concert albums, John Denver speaks of the old, beat-up 1910 guitar his grandmother gave him when he was twelve years old, the one that accompanied him throughout his life until he lost it one day and found it five years later. Finding it and playing it again prompted him to write the song, "This Old Guitar," in which he expresses the special feeling that a musician can have for his instrument as it effects him personally, romantically, and professionally:

This old guitar taught me to sing a love song;
Showed me how to laugh and how to cry.
Introduced me to some friends of mine,
and brightened up some days.
Helped me make it through some long and lonely nights,
What a friend to have on a cold and lonely night.
This old guitar gave me my lovely lady,
It opened up her eyes and ears to me.
It brought us close together,
I guess it broke her heart.
It opened up a space for us to be,
What a lovely place and a lovely space to be.
This old guitar gave me my life, my living,
All the things you know I love to do.
To serenade the stars that shine from a shiny mountain side,
but most of all to sing my songs to you.
You know I love to sing my songs for you.

use of electricity for enhancing the enjoyment of Shabbat or helping in performance of a *mitzvah*.¹¹⁴ For those who agree with that part of the responsum -- whether or not they agree with its reasoning on driving on Shabbat - and even more so for those who agree with Rabbi Arthur Neulander's responsum at the same time on the subject, which would allow the use of electricity for anything not otherwise forbidden on Shabbat, there is no technical objection for Jews to use a microphone, electrical instruments, or pre-recorded music. After all, the whole point of those who wish to use such electrical devices during Shabbat services is to enhance the observance of the *mitzvah* of Shabbat. The requirements of the majority position and Rabbi Neulander's minority decision are fulfilled when the use is clearly not using electricity for a purpose that is prohibited by other parts of Shabbat legislation (such as laundry or cooking). The same issues regarding carrying, discussed above, would apply to those who plan on bringing their own equipment on Shabbat, whether an electrical instrument or the means to play pre-recorded music, and the same ways to resolve such issues would apply.

Yet, there are several cautions that lead us to discourage the use of electrical instruments, particularly in the context of a band. Electrical instruments are often too loud and too high in energy tone to experience Shabbat rest. As we noted earlier the Ta'naim emphasized the need for quiet as part of the distinctive culture of Shabbat. This orientation toward quietude has a place in our observance, too, by enabling inner reflection and calm. An additional concern is engineering assistance for electrical instruments, which all-too-easily leads to fixing the equipment on Shabbat by for instance the changing of a fuse or circuit-breaker. There is also an increased probability that electrical instruments and percussion instruments that are part of a band entail set up and take down that cross the boundary of Shabbat rest, whether in a technical sense or in the spirit of the day. It is left to the *mara d'atra* to ensure that the electrical instruments or stereo systems to be used will not be "fixed" on Shabbat, except for temporary adjustments for current use but not affecting future uses; that the set up and take down do not entail deliveries and physical labor; and that the music produced

¹¹⁴ In the 1950 CJLS responsa composed by Rabbis Morris Adler, Jacob Agus, and Theodore Friedman, they write: "Therefore, in the spirit of a living and developing Halachah responsive to the changing needs of our people, we declared it to be permitted to use electric lights on the Sabbath for the purpose of enhancing the enjoyment of the Sabbath, or reducing personal discomfort or of helping in the performance of a *mitzvah*. 1950 *Proceedings of the Rabbinical Assembly of America*, p. 130.

contributes to a service or a Shabbat experience that is spiritually uplifting for the prayer community.

D. Qualifications and pay of musicians

Musicians are similar in their role to choir members, facilitators of communal prayer. For over fifty years, this committee's leadership has consistently held that only Jews are permitted as choir members, who are seen as an extension of the prayer leader.¹¹⁵ The goal of playing musical instruments is to aid communal worship. The challenge for musicians, which is the same as for a choir or a cantor, is to enhance communal participation and instill religious feeling. There is the risk of performance becoming more about the presenter's needs for recognition than the audience's inner response.

Another potential issue is the hiring of musicians for work on Shabbat and holydays. Playing music itself is not a form of *melakhah*, but rather a skill. In hiring musicians for services, Jews are therefore not hiring other Jews to do forbidden work on Shabbat. Professional musicians playing during a Shabbat or holyday service are analogous to our current practice of paying Jewish teachers or luncheon servers. The performance of their duties during Shabbat or holydays is not halachically treated as work; arrangements for pay are made in advance and are viewed as part of a larger relationship with the synagogue community.

E. Overarching Caution about Using Musical Instruments during Services.

When conducting *tefillah* for our communities, we must honor the sanctity of Shabbat and provide the essential prayers of a traditional prayer service. Attendance is not the primary goal. We do not seek to draw as many people to our sanctuaries as would attend a championship basketball game or a rock concert in

¹¹⁵ CJLS minutes in unanimous vote that "the practice of having non-Jews in synagogue choirs is not in keeping with Jewish standards," (CJLS minutes, August 31, 1954); Rabbi Philip Sigal wrote "Choirs are regarded as extension of the cantor's voice and it is deemed therefore, incorrect to use non-Jewish singers" (Letter from Philip Sigal to Tzvi Porath, June 3, 1958); Steering Committee of CJLS unanimously affirmed that only Jews are permitted to sing in synagogue choirs, which are an extension of the *shaliach tzibbur* (CJLS Steering Committee minutes, July 6, 1978); The limitation of non-Jews singing in the choir and actively leading the normal flow of the service was noted in a more recent teshuvah, which went on to hold that a non-Jew may participate from the bimah by doing special readings, including psalms, or giving an address (Rabbi Jerome M. Epstein, "The Role of the Non-Jewish Parent in Blessings for Bar/Bat Mitzvah," EJ 16.1993, Responsa of the CJLS 1991-2000, pp. 602-620).

our larger culture. Rather through *tefillah* we seek to evoke core values, self-reflection, and awareness of God's enduring presence. Rabbi Abraham Joshua Heschel described the distinctive nature of communal *tefillah* as follows:

What does a person expect to attain when entering a synagogue? In the pursuit of learning one goes to a library; for aesthetic enrichment one goes to the art museum; for pure music to the concert hall. What is the purpose of going to the synagogue? Many are the facilities which help us to acquire the important worldly virtues, skills and techniques. But where should one learn about the insights of the spirit? Many are the opportunities for public speech; where are the occasions for inner silence? It is easy to find people who will teach us how to be eloquent; but who will teach us how to be still? It is surely important to develop a sense of humor; but is it not also important to have a sense of reverence? Where should one learn the eternal wisdom of compassion? the fear of being cruel? the danger of being callous? Where should one learn that the greatest truth is found in contrition? ... It is in the synagogue where we must try to acquire such inwardness, such sensitivity.¹¹⁶

Musical instruments should not be the center of attention in a worship service. They may be used to enhance unity in worship, marked by the forging of community and a refocusing of the individual inwardly, outwardly toward his or her community, and upwardly toward the Divine. When not used well, musical instruments can serve as a distraction, as poor entertainment, or as an ego-oriented showcasing of talent. If a community chooses to use musical instruments for services on Shabbat, they must be used skillfully and humbly in service of God.¹¹⁷

We affirm our Conservative colleagues' decades-old decision: instrumental music in and of itself is not a violation of the spirit or integrity of Shabbat. A rabbi as the *marah d'atra* of her or his community may choose to remove the *shevut* to enable the playing of musical instruments on Shabbat. Using instruments on Shabbat or other holy days, would require that the rabbi take an

¹¹⁶ Abraham Joshua Heschel, "The Vocation of the Cantor," *The Insecurity of Freedom* (Philadelphia: Jewish Publication Society, 1966), pp. 242-243.

¹¹⁷ We recommend regarding Friday night services that if instruments are used to do so to accompany *Kabbalat Shabbat*, rather than *Ma'ariv*. The former part of the service is introductory, mood-setting, and focused on communal song, while the *Ma'ariv* service emphasizes individual *kavanah*, particularly during the *Shema* and *Amidah* prayers.

active role in determining what kind of music is played in services to ensure that it enhances the Shabbat and worship experiences rather than diminishes them. This *teshuvah* intentionally focuses on music as part of religious services rather than music in other Shabbat contexts, such as at a celebratory lunch. We do so knowing that it is far easier to control the choice of music at a service as consonant with the spirit of Shabbat. We offer a strong caution about expanding this teshuvah for the use of music in other venues appreciating the enormous challenge on the *mara d'atra* of controlling or conveying the limits of musical choices that will maintain the spirit of refined, inner uplift that is the hallmark of Shabbat.

Although many Conservative congregations may choose to use instrumental music, a congregation may choose to retain traditional prayer practice. A *cappella* singing can provide the same benefits of forging communal participation, providing spiritual uplift, and keeping the focus on prayer. The use of musical instruments in services entails significant challenges for avoiding the *av melachot*, the work restrictions that enable preserving the sanctity of Shabbat and *hagim*.

IV. Holydays (*Hagim*)

The general rule stated in the Mishnah is that “Every act that is culpable on a Shabbat due to *shevut*...is also culpable on a festival” (M. *Beitzah* 5:2). Nonetheless, the rabbis were consistently more lenient in enforcing the concerns with clapping, slapping and dancing on holidays than on Shabbat. On Simchat Torah, permission was given during the Geonic period to dance on Simchat Torah, despite the *shevut* against dancing on Shabbat and holidays.¹¹⁸ The removal of the *shevut* was justified as dancing in honor of the Torah. Accordingly, the *Mishnah Berurah*¹¹⁹ and more recently Rabbi Ovadiah Yosef affirmed the permissibility of clapping and dancing on Simkhat Torah.¹²⁰ Among

¹¹⁸ Teshuvot HGeonim Shaarei Teshuvah, 314-yet, it should be noted that this liberalism was initially justified for the ninth day of *hag*. This “liberal practice” was codified by Yitzchak ben Yehudah ibn Ghayyat (Spain, 1038-1089), *Hilkhot Lulav*, p.159 and cited in the response of Yosef ben Shlomo Colon (Italy, 1420-1480), claiming that the author of the original responsum was Hai ben Sherira Gaon (Pumbedita, 939-1038).

¹¹⁹ *Mishnah Berurah* 538:8.

¹²⁰ *She'elot u'teshuvot Yehaveh Da'at*, Part III, #49, s.v. *ve'inah d'shappir*.

some writers in the Orthodox world, this leniency was extended to clapping and dancing at a Shabbat or festival meal or service.¹²¹ Just as we have affirmed our willingness to put aside the *shevut* of playing musical instruments on Shabbat in order to enhance communal prayer, we affirm that we would also permit such music during services on other holy days, too (including the High Holy Days).¹²²

While the concern of carrying the instrument affects the use of musical instruments on Yom Kippur as well as Shabbat, it does not affect their use on the other Biblical holy days (*Yom Tov*) – including Rosh Hashanah – because then Jews are allowed to carry. The rules of fixing instruments, though, would apply equally to *Yom Tov* as they do to Shabbat.

V. Closing Thoughts

Many of us who did not grow up with instrumental music in services have powerful experiences of communal singing *a cappella*. We acknowledge the joy that comes from communal prayer that is informed and skilled and the empowerment of voice when there is a reliance on participation for song. We affirm that the synagogue is a model Jewish home that needs to preserve a standard of observance that conforms to *halakhic* norms and informs our congregants as to the ideal conduct in their personal lives. We also recognize that some of our congregations have chosen to use musical accompaniment to draw people to synagogue services and to enhance the musicality and participatory nature of services.

Many of our people are convinced that musical accompaniment adds joy, emotional openness, and participation to their religious services. No doubt a part of music's appeal for many of our congregants is that it is a familiar part of the larger American scene. Churches, for example, widely use musical accompaniment in services. Mega-churches may offer simultaneous services that differ by their type of music, including electrical instruments, folk-instruments, gospel, or *a cappella*. Finding that music is part of the larger culture is not a reason to reject it. We saw a similar controversy close to four hundred years ago in the Jewish community with the rise of choral music, which was initially

¹²¹ See Simcha Bunim Cohen, *The Shabbos Home*, vol. 2, pp. 535-536.

¹²² We concur with our colleagues on the Committee on Jewish Law and Standards who stated in 1970, when giving permission for musical instruments on Shabbat, added, "The reply would also indicate that there would be no distinction between the Sabbath and Yom Tov" (Minutes of the meeting of June 23, 1970) – except that the issue of carrying dissolves with regard to Yom Tov. See the next paragraph of this responsum.

opposed as a change and foreign intrusion¹²³ and is now accepted across denominational lines. The key question is not who else uses music or the sources of the music, but whether the musical instruments enhance our worship and Shabbat experiences.¹²⁴

Another expressed concern is that in permitting instrumental music we are giving into a cultural fad that will fade. Yet, music in Jewish worship already has a history that shows its durability. In 1810 an organ was used to accompany prayer in a synagogue in Seesen, Germany, led by Israel Jacobson. It set the precedent for the New Reform Temple in Hamburg, which installed an organ in 1818. In a short time, the organ became normative among Reform congregations. In the Austrian-Hungarian Empire toward the middle of the 19th century, a movement that became known as Neolog made two changes from the Orthodox service, moving the reader's stand from the middle to the front of the sanctuary and adding the organ.¹²⁵ The rabbis of the Neolog movement, which gained a wide following before World War II, formally joined the Rabbinical Assembly toward the end of the 20th century and their Rabbinical school in Budapest is formally affiliated with the Jewish Theological Seminary. Beginning with the second half of the 20th century, organs found a place in many Conservative synagogues and are still widely used on Shabbat. Although the choice of musical instruments varies and changes, the enjoyment of, and desire for, musical accompaniment to prayer persists and has even grown.

This *teshuvah* is written in response to the reality on the ground: our congregations are using musical instrument on Shabbat and Yom Tov and the prevalence of the use is growing. We have tried to draw lines and offer cautions in order to simultaneously permit the use of instruments and to control how they are used in order to preserve the sanctity of our holy days. We take the guidelines of *halakhah* seriously and acknowledge that there is room to reinterpret the rabbinic protective devices, the *shevuyot*. We encourage congregations that wish to use musical instruments to limit the use to services and to avoid electrical instruments

¹²³ Rabbi Leone de Modena wrote in the Introduction to Salomone Rossi's 1623 collection of synagogue music that nothing in the Talmud prohibited choral music. See his *she'elah u'teshuvah* prefaced to De Rossi's *Ha-Shirim*; cited in *The Jewish Encyclopedia* (New York: Funk and Wagnalls, 1901, 1912), "Music," 9:132.

¹²⁴ We are reminded of Hasidic masters who applied popular, drinking-song melodies to *tefillah*, explaining that they were elevating the holy sparks contained in the musical notes.

¹²⁵ See *Encyclopedia Judaica*, "Neology," 12:952-954. We would like to express our gratitude to Rabbi Henry E. Kraus, a member of the Rabbinical Assembly, a graduate of the Budapest Seminary, and formerly a Neolog rabbi for pointing this out to us.

with their greater demands for set-up and control. Yet, for those rabbis who choose to permit musical instruments in their communities, we acknowledge your authority to do so and encourage you to keep in mind that the standards that you set in the synagogue, our collective home, represent the Jewish ideal for our congregants in their private lives, too.

We fully support those rabbis who choose not to use musical instruments on Shabbat. Some may do so out of *halakhic* concerns that the conditions we have described in this *teshuvah* for using musical instruments cannot be ensured and that in permitting even limited use of musical instruments there is a progressive relinquishing of the needed protections of the sanctity of the day. Others will do so for aesthetic reasons, maintaining that in modern times we are bombarded daily with instrumental music and often at high decibels. Additionally, as expressed by Rabbi Bokser, instruments may dampen congregational participation. Those are all reasonable positions to take. The permission to use musical instruments under the conditions that we have described definitely does not constitute a requirement that instruments be used, nor even encouragement to do so. Each rabbi must make that determination for his or her own synagogue. Our goal in this *teshuvah* is to clarify what is involved *halakhically* for those who choose to use instruments while adhering to Jewish law.

Piskei Halakhah:

Nothing in this *teshuvah* should be construed to demand or even to encourage the use of musical instruments on Shabbat. Rabbis may legitimately refuse to use them out of *halakhic* concern that the conditions for preserving sacred time cannot be fulfilled or out of an aesthetic judgment that Shabbat worship's participation is encumbered or more in the mood of Shabbat without instruments. The intent of this responsum is only to describe the requirements for those who wish to use instruments within the bounds of *halakhah*.

In light of the establishment of the modern State of Israel and the gradual acceptance of music, clapping, and dancing over the centuries, we do not prohibit music in remembrance of the destruction of the Temple. The removal of the *shevut* against possible fixing or carrying is removed and the playing of musical instruments during Shabbat and Yom Tov is permitted, with the following limitations:

- 1) **Repairing instruments**, such as changing strings and reeds, is not to take place on Shabbat, Yom Kippur, or *Yom Tov*.

- 2) **Tuning** on Shabbat or *Yom Tov* of string and wind instruments where the tuning is temporary and necessary each time the instrument is played is permitted; tuning of a piano, organ, or other keyboard instrument, for which the tuning lasts for many rounds of playing, is not permitted on Shabbat or *Yom Tov*.
- 3) **Musical instruments** and, for those who use electricity on Shabbat or *Yom Tov*, electrical instruments and listening devices for pre-recorded music are permitted in the context of worship. Arrangements must be made to ensure that the music chosen and the volume used are appropriate to the spirit of the holy day.
- 4) **Carrying** is forbidden on Shabbat from one's home to synagogue unless there is an *eruv*. Therefore, if there is no *eruv*, a synagogue that wants to use instruments as part of its Shabbat or Yom Kippur worship should make arrangements to store musicians' instruments in a safe facility at the synagogue or should ask musicians to use instruments belonging to the synagogue and stored there.
- 5) The **shofar** should not be used when Shabbat and Rosh HaShanah coincide. We maintain the *shevut* for shofar on Shabbat due to the opportunity to blast the shofar the following day, the way this restraint conveys the sanctity of Shabbat, and the symbolic character of shofar blowing in contrast to the use of other instruments.
- 6) **Qualifications and pay of musicians.** Musicians performing as part of a traditional religious service must be Jewish, as they are extensions of the prayer leader. Like professional staff, any arrangement must be made in advance regarding future earnings.