

TESHUVAH: MARRIAGE ON SHABBAT

Rabbi D'vorah Lynne Rose, MA, RN

Acknowledgements: I offer great appreciation and kavod to Reb Daniel Siegel for his teaching, knowledge, patience and commitment to the transmission of our sacred texts. Reb Daniel's editing helped clarify aspects of halachah and minhag as well as organization of this responsa. He required that this project be approached from most recent to the most ancient. This has granted me a wonderful tool for shaking halachah loose, allowing me to see more clearly the exceptions and minority opinions that are too often hidden by the accumulation of majority decisions and minhag.

Reb Eliot Ginsburg co-wrestled this question with me at a critical juncture and helped me develop a framework of engaged relationship with Judaism and halachah that became the turning point in this teshuvah's process and has continued to inform much of my rabbinate. That conversation will always be one of the highlights of my rabbinic training.

I thank Rabbi Sheldon Lewis for his assistance with translations of text – not only with some of the words, but also their halachic constructs and applications; and Rabbi Lori Klein for discussing many of these ideas and the teshuvah's structure with me over many months.

While there is more editing to be done, mostly in organization, enough people have requested this responsa that at this time I have chosen to let it stand in its current form. I look forward to having the opportunity to work with this material more in the future. For now, may the material contained within be of assistance to anyone wrestling with this question.

She'alah/Question: Is it permissible to conduct a wedding on Shabbat?

Who is asking: Joe Levi and Gabriella Bloch are in their mid-20's. They met at university and became engaged twelve months ago. They have been responsible in setting up their wedding plans and have in place written contracts and down payments with various vendors and the venue. They both grew up in marginally-affiliated Jewish families and both feel positively about their Jewish identity. However, it is only in the last couple of months as they have gained wider exposure to life post-university that they are starting to become interested in learning more about Judaism and Jewish life. They are becoming curious about what a Jewish home-life together might look like.

They have approached me on the referral of a local congregational rabbi whom they initially asked to officiate their wedding. While this rabbi wishes to support the couple, because they scheduled their wedding for 2 p.m. on the third Shabbat in November, he feels he cannot officiate at their wedding. As I am not affiliated with a congregation, he thought I might have greater flexibility in responding to the couple's needs.

In meeting with the couple for the first time, I am impressed by their sincerity in wishing to explore Judaism further and to cultivating their positive identification with the religion

and its people.

This is a first-time marriage for both partners. Neither one has any children.

They are on a tight financial budget and do not have family to turn to for financial assistance. They have made sizable down payments for the wedding and breaking those contracts would cause serious financial disruption for them.

How I conducted my research: I conducted my research moving both horizontally and vertically through time. I initially read the most contemporary teshuvot on the question of Shabbat weddings. I found only a few even on this topic, as most posekim simply quote the Shulhan Aruch as being opposed and therefore there is no further discussion.

As I read the various sources referenced in these teshuvot, I read back to the TNKH. There are majority and minority opinions about this issue, and there are a number of key halachic principles which stand in active tension with one another. These will be reviewed and discussed further on in this teshuvah.

So vertically, I read present to past, or one might argue – from the derivations of the laws to the originating laws. Horizontally, I read teshuvot written in the same time periods. These also represented both majority and minority opinions and applied a variety of halachic principles to derive their particular answers.

As there has not been a lot written on this topic and because in these contemporary times we are dealing with issues not present during earlier times, I researched teshuvot on related topics, to find a broader halachic and historical perspective. These will also be discussed in this teshuvah. These include such issues as the permissibility on Shabbat of playing music, cooking, conducting business, driving, and conducting bar and bat mitzvahs.

Where I looked: I reviewed literature from a wide variety of resources. I conducted a far-ranging internet search which brought a rich variety of sources, primarily contemporary. I reviewed many of the primary and secondary sources in those teshuvot and discussions.

I also conducted primary searches throughout the halachic literature. Overall, I found myself moving across time periods. For instance, I would read a contemporary teshuvah, and this would stimulate a question about a reference. I would go back to the referenced medieval commentator, which would then take me to one of his contemporary's, who would then quote something from Talmud. And once at the Talmud, I read the TNKH original so I could understand the context from which the Talmudist was quoting....which would then lead me back to the contemporary writer so that I could see the halachic process over time.

I also conducted a lot of primary searches, using such key words as erusin, nisuin,

kidushin, chuppah, wedding, marriage, wife, and Shabbat throughout the literature, from TNKH to the internet. I used many resources, including book and CD-ROM forms of the TNKH, the Talmud (primarily Bavli), Rashi on Talmud, the Tosafot (especially Rabbenu Tam), the Sefer ha'Aggadah, the Mishneh Torah, the Arba'ah ha'Turim, the Shulchan Aruch, the Mishnah Berurah, and contemporary teshuvot written across the current Jewish denominational spectrum. Of the CD-ROMs, the ones I used most were the Bar-Ilan and Davka programs offered through Spertus Institute.

Issues to examine in order to answer the question of permissibility: The question of the permissibility of kidushin on Shabbat is recorded as early as the Talmud, and is mentioned throughout the rabbinic literature up to and including the present time.

While this is an “old” question, the principles applied and concerns expressed by the rabbis vary through time and across denominations.

Also, the basic assumption upon which this question rests has shifted significantly since it was first asked. The teshuvot written in the last 100 years or so (Modern Era) assume that a Shabbat wedding could be layl Shabbat (Friday evening, post-candle lighting) or Shabbat day, though most of them seem to assume Shabbat day. Up until the Modern Era, a Shabbat wedding appears to have referred only to a wedding which began during the day on Friday (erev Shabbat), and which, due to unforeseen circumstances, continued past the candle lighting that marks the beginning of layl Shabbat. These different assumptions present profoundly different worldviews and sets of expectations, resulting in very different arguments which are reflected in the contemporary teshuvot (I found no teshuvot written on this question within the contemporary Conservative or Orthodox worlds).¹

I have to assume that, based on the concerns presented in the earlier teshuvot, a layl Shabbat wedding was the result of (a.) incomplete negotiations over the ketubah/dowry such that the discussion pushed beyond candle lighting time (b.) the bridegroom had to leave town immediately after Havdalah for an extended period of time (for business, study or war) and thus the mitzvot to “be fruitful and multiply” and “to not be alone” outweighed the prohibitions to not perform kidushin.

We have, then, the same question, but based on very different assumptions. In the pre-modern world, a Shabbat wedding would be held only due to unforeseen circumstances, basically an emergency of some type. In the Modern Era, the teshuvot wrestle with individual Jews' desire for Shabbat weddings at the height of Shabbat-time, not because of unforeseen circumstances but rather for convenience. The Modern-Era question arises from assimilation to a non-Jewish society.

¹ Note: While it is common for contemporary Jews to refer to Shabbat after candle lighting as “erev Shabbat”, this is actually "layl Shabbat." "Erev Shabbat" is Friday all day until candle lighting.

Ultimately, this she'alah queries how we will practice Shabbat in this current, post-Temple period.

What are the consequences of violating the prohibition of kidushin on Shabbat: Within the contemporary period, while there is a “normative” answer across all the movements, the principles applied vary.

While there is no overtly acknowledged hierarchy of halachic principles applied to this question, often the principles to “not shame HKBH’s creatures,” “to be fruitful and multiply,” and “to not be alone” outweigh all other principles and prohibitions. There is a flexibility in how some of the rabbis have thought about and responded to this question, in which they balance the weight of halachic practice with the reality of minhag. Thus, the question this teshuvah is considering is an “old” question in that weddings sometimes inevitably, due to circumstances beyond the couple’s control, run into layl Shabbat. And it is a “new” question, in that this couple is planning -- in advance of their wedding date - - to be married on Shabbat day.

In this teshuvah, I have attempted to

- a.) recognize the halachic principles related to the question of marriage on Shabbat
- b.) recognize the weight of minhag as related to this question
- c.) offer an answer which provides an innovative way of balancing halachic and minhagic concerns, such that the tradition and its people feel respected, upheld and recognized, while allowing essential principles underpinning Judaism to be allowed to speak to the actually very old needs of this particular contemporary couple.

In summary, before entering detailed analysis, how this question may have evolved: The TNKH states we must keep and guard the Shabbat and we must not work on Shabbat. Later, the Second Temple is destroyed. In the Talmud, the question arises about marriage on Shabbat, secondary to other concerns such as issues about commerce, the marriage contract, and first intercourse on Shabbat. Over time, as the issue of the protection of Shabbat becomes more central, anything related to “violating” an av m'lacha/any of the 39 Prohibitions is used to determine all other activities. As we move into the time of Rambam, there are by now multiple layers of minor prohibitions built up to protect the original 39, and this process continues up to the Modern Era. In spite of the obvious concern about violating Shabbat to make a kidushin, in every generation major halachic voices argue for exceptions to allow a Shabbat wedding to be permissible. This leniency is to the extent that, b'di'avad, a Shabbat wedding is completely valid and there is no obligation for any of the participants.

Or, to look briefly at the question from the most recent teshuvot and working backward: Contemporary rabbis argue for or against Shabbat weddings from the assumption that the wedding will be held on Shabbat day, at the shul; no mention is made of emergency situations. In this assimilated Jewish world, weddings are arranged well in advance, with convenience for the couple and their guests in mind. Shabbat as a separate holy time does not enter the couple’s decision-making process. Clearly Shabbat is not a central point of reference for these modern assimilated couples.

From the Mishnah Berurah and back in time, the rabbis consistently argue that kidushin should not be held on Shabbat. There are a few dissenting minority voices, presenting particular circumstances in which it could be permissible, but not required. Clearly Shabbat is the central point of reference for these rabbis and these couples.

Because it is specifically the issue of Shabbat and how Shabbat is held, recognized, and practiced in contemporary Jewish communities, a Shabbat wedding is a perfect question for Integral Halachah. The leniencies cited by the pre-modern rabbis simply do not apply -- in the same form -- to a Shabbat wedding which has been pre-planned to fall on Shabbat.

The key halachic issues are:

Keep/guard Shabbat

Remember Shabbat

Do not celebrate two simchas at the same time (and especially do not participate in a simcha which would overshadow celebration of Shabbat)

Do not conduct business on Shabbat

Do not write on Shabbat (not conducting business is often paired with writing: do not conduct business because it can lead to writing contracts, records or other business-related records)

Do not make acquisitions on Shabbat (ie: a traditional wedding is based upon legally binding business contracts, from the time of the engagement, the tena'im, to the huppah and possibly the first time of yichud/intercourse)

Do not participate in judging on Shabbat (ie: being a witness to the wedding)

Do not violate any of the avot m'lacha (writing, tearing, acquiring, carrying)

Do not desecrate the "spirit" of Shabbat

The importance of procreation by the Jewish male

As serious as it is for an individual to violate a Shabbat prohibition knowingly, how much more so to cause another person to violate it (ie: asking someone to be a witness to the huppah on Shabbat which then requires them to judge, to write, and to participate in a business transaction)

Do not make vows/take oaths; do not consecrate (while these originally related to the Temple service, the huppah includes the groom consecrating the bride to himself)

How Modern-Era writers view the importance of Shabbat.

Shabbat, in contemporary Jewish thought, has not lost its importance, but outside of very traditional communities, there is an on-going wrestling with how to observe it. The following teshuvot and halachic rulings demonstrate a spectrum in recognizing the struggle modern era assimilated Jews have in maintaining Shabbat as a separate holy time.

Grunfeld and Heschel represent well two ends of the modern-era continuum:

“We have seen the fundamental importance of the prohibition of m'lacha on Shabbat. We have seen that even one m'lacha-act on Shabbat strikes at the roots of the whole

Torah, and is an arrogant denial of Gd and His mastery of the world.” (Grunfeld, p. 2)

“The meaning of the Sabbath is to celebrate time rather than space...on the Sabbath we try to become attuned to *holiness in time*. It is a day on which we are called upon to share in what is eternal in time, to turn from the results of creation to the mystery of creation; from the world of creation to the creation of the world.” (Heschel, p. 10)

Contemporary Teshuvot/Halachic Rulings

Conservative: “Weddings may not take place on the Sabbath even if the ketubah is not written on the Sabbath.” Klein (p. 93)

Of note, while the Conservative movement has many teshuvot on issues related to relaxing the avot m'lacha (such as the permissibility of driving to shul on Shabbat and on clapping while at shul), I found none directly addressing the question of weddings on Shabbat.

Reform: CCAR 43: Sabbath Observance; CCAR 136: Marriage on Shabbat or Yom Tov; CCAR 5762.6: Bar/Bat Mitzvah on a Festival

The CCAR (#136) writes that Reform rabbis should not conduct Shabbat weddings because (a.) this would diminish the focus on Shabbat, itself; (b.) this would continue the tendency in Reform life to privatize the Shabbat. The example used is the bar/bat mitzvah – that these days, unless related to the child or family, congregants do not attend shul on the Shabbat when a bar/bat mitzvah is occurring; that families request mincha instead of shaharit so that it will be more private; and that the service itself becomes a celebration of the child instead of the community; (c.) Reform Jews already have such difficulty observing Shabbat as it is, to throw weddings into the mix would make it that much more difficult to hold onto Shabbat time as a set-aside time. The conclusion is that the practice of prohibiting Shabbat weddings should be upheld. The decision is ultimately based on the concern for protecting Shabbat: The Jewish community tends not to honor Shabbat/attend shul anyway. So if a wedding is held on Shabbat, the authors believe it will send the “wrong” message – that it is permissible to not be in shul, to hear the Torah, etc.

The CCAR (5762.6) writes that “although technically A marriage may reflect only a minor infringement of Shabbat, it is a major matter, especially when related to the general level of Shabbat observance.” (p. 2) They further argue that there is such minhag behind not having weddings on Shabbat that this should be respected and upheld; that because Shabbat observance is so lax Reform does not support weddings after Havdalah since this would cause people to be involved with work on Shabbat to get ready for the wedding; the wedding would only be due to convenience; and while the ketubah in a Reform wedding does not have specific economic content, the wedding inherently carries economic factors since once married, the groom’s and bride’s finances change.

Review of the Reform position: While they begin their arguments by invoking the precedents set by the traditional halachic material (Shulchan Aruch, etc.) they ultimately base their decisions not on halachah per se but upon their desire to bring more Jews into

the shul and to maintain communal liturgical life.

Critiques of these teshuvot: (#136) Would it still be a conflict if the clergy officiated Shabbat weddings at or away from the synagogue, during the afternoon or early evening when typically there is no religious activity at the synagogue? If the shul did not allow for wedding set-up until after services and related activities had ended, would Shabbat weddings then be permissible?

The CCAR argues in #5762.6 that there should not be the mixing of simchas (p. 1) and there should not be a mix of the personal/familial festival with the communal festival (ie: wedding with Shabbat; p. 2). Yet, in general, Reform has allowed both of these to occur through the individualized attention focused upon the b'nai mitzvah on Shabbat, and the long-standing minhag of celebrating Confirmation on Shavuot. When they argue that confirmation helps to reinforce Shavuot, why could not a wedding reinforce Shabbat?

The teshuvah ignores the practice of leniency demonstrated by earlier rabbis. The Reform teshuvot fail to recognize that there might be mitigating factors which would support a lenient minority opinion

Further, they argue that the avot m'lacha should not be violated unless necessary. Yet, Reform is based upon the thoughtful violation of many of the avot m'lachah. While I understand the impetus behind the teshuvot, I find the arguments to be specious.

Reform/Progressive: Rabbi Gershon Winkler and Rabbi Eugene Mihaly (HUC-JIR): Winkler and Mihaly highlight the fact that it is a rabbinic prohibition against conducting weddings on Shabbat. Thus, if we now allow clapping and the making of music on Shabbat (also rabbinic prohibitions), why are we still prohibiting weddings? Moreover, they suggest that this would in fact be a deeply meaningful way to celebrate and honor Shabbat and they encourage frequently officiating weddings on Shabbat.

Sabbath observance: Jews are to delight in Shabbat, “oneg Shabbat” which includes “refreshment of the soul, perfect freedom, hallowing of life, projection into the messianic.....the spirit of a religious marriage ceremony is thus in perfect consonance with the spirit of the Sabbath.” (Winkler, p. 6)

Marriage on the Sabbath: Rabbi Gershon Winkler further cites the lenient precedents allowing for marriage on Shabbat; these precedents are based upon the principles of the promotion of peace and the protection of a person’s dignity (ie: Isserles and Rabbenu Tam; Winkler, p. 1 – 2)

Rabbi Eugene Mihaly argues that marriage on Shabbat should be encouraged because it fulfills the mitzvah that man should not be alone; that Shabbat is a day for delight and elevation of the soul; that the prohibition against writing is not upheld elsewhere in Reform life, so why here; that a Reform wedding does not require a ketubah so the prohibition against acquisition is a non-issue; and that the preparation can be done in a way mindful of Shabbat spirit.

My Critique: While I understand their line of argument and use of precedents, they ignore that these precedents were based on particular emergency situations. For halachah to continue to be meaningful, the precedents cited need to support the conclusions drawn in terms of arguing the same thing (“apples to apples”). I do not feel comfortable with these rabbis’ citing principles used to make a minority opinion in response to very particular situations and then applying those principles broadly to support now making the atypical the typical/norm.

Rabbi Freehoff, writing in his essay *Modern Sabbath Violator*, makes the following general adjudication of the state of Shabbat observance in the United States: When speaking of the apostate as one who publicly violates Shabbat prohibitions, he recognizes that this is a problem of modernity: “It was indeed difficult to proclaim that a regular attendant at synagogue services was an apostate because he believed that necessity compelled him to work or do business on the Sabbath.” (Freehoff, p. 257)

Further, Freehoff discusses the issue of violating laws due to l’hakh’it (provocatively or with the purpose of desecration; ie: spiteful behavior) versus l’teavon, (because of needs or desires/a “passive disregard of the requirements of Jewish law”) (ibid, pp. 258-259) “In many cases it is a sheer case of ignorance. Often young people simply do not know what the procedure is. Many of them are so far removed from Jewish life....The violators of the Sabbath that are found in our day are not to be classed as “provocateurs” for they do all that they do because of their livelihood. Although they may violate the Sabbath even in such matters which do not concern their business, ...it seems to them by now as if it were all permissible....one cannot consider these Sabbath violators as men who have thrown off the yoke of the Torah, since all the sins which they do are committed because they are not accustomed to obey the commandments, and they are by nature and mood not easily taught and guided.” (ibid, p. 10)

My Critique: I find the principles which Freehoff applies to Shabbat observance in general to be quite useful. I find his process to be meaningful and useful because he recognizes the culture in which Jews today in the U.S. find themselves creates a very different way of being Jewish than did life in earlier times. He does not suggest that one way is more superior to the other, and he does not hold the current generation to blame for the way in which they understand the world in which they live.

The Mishnah Berurah

Rabbi Yisrael Meir Kagan (The Chofetz Chaim)

(Mishneh Berurah, *Helek Shlishi, Dalet; Shabbat; Simanim 325-344*)

338(1): One may not intentionally make any type of music on Shabbat – this includes clapping and singing. However a shinui is permissible, ie: clapping back-handed.

338(2): It is not permissible for a non-Jew to play music on Shabbat, even for a newly-wed couple.

339(3): It is prohibited to make any form of music on Shabbat, including clapping.

339(3): Marriage on Shabbat is prohibited, including nisuin.

339(22): Nisuin is prohibited on Shabbat, because even if erusin is completed before Shabbat, nisuin/huppah requires acquisition/business transactions, which are prohibited by the avot m'lachah.

Review: The Chofetz Chaim appears to take the strict position in all of his rulings about Shabbat practice, and pointedly opposes the leniencies proposed earlier by the Rema. His rulings match those strict commentators who came before him (primarily Yosef Caro's Shulhan Aruch, as the Mishneh Berurah is a commentary/elucidation of the Shulhan Aruch). Considering the social-political environment in which he was living and that he was a pillar of the newly-forming Orthodox movement which was a direct response to modernity, it is not surprising that he took a strict stance.

Responsa ha'Rema #125 **Rabbi Isserles (The Rema)**

The Rema writes that a layl Shabbat wedding is permissible in case of an emergency. In this responsa, he provides the example of an orphan bride whose in-laws and groom were haggling over the ketubah and dowry for so long that he was unable to commence and complete the huppah before the start of layl Shabbat.

He argues that for the sake of protecting the dignity of the bride (kavod ha'briyot, "human decency") it was permissible for the bride and groom to enter the huppah on layl Shabbat; to protect her from further humiliation, he chose to wait until the contract was settled, rather than making her wait until Sunday. To further support his argument, the Rema quotes Chaye Adam (Section 38, paragraph 6), that it is permissible to conduct the wedding on layl Shabbat if the contract negotiations continue to nightfall, the bridegroom has not yet born children, the celebratory meal has already been prepared, and there would be great financial loss to and emotional humiliation of the groom and bride. The Rema also notes that he did not bring in Shabbat through prayer until the wedding was completed.

Review: The Rema tends to take a lenient, somewhat expansive approach to the halachah of the avot m'lachah. As further seen in the next source, he seems comfortable using minority precedents and principles which focus more on care of the individual's emotional well-being than upon maintaining an av m'lachah.²

² Notes on the Rema's interpretation: The Rema makes a case for a young man who has to leave for the army on Sunday. He mentions (and I am not sure if this is an independent issue or part of the same scenario) that the meal has already been prepared, and that this is a factor in his decision since canceling or postponing the wedding would cause a significant financial loss. (This argument derives from the Talmud in a discussion of rescheduling a wedding in the case of the death of a parent immediately beforehand). Finally, he uses the expression "sh'at d'chak," meaning that in doing the wedding on Shabbat he is not setting a precedent but is only responding to an unusual situation which

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The Shulchan Aruch

Rabbi Yosef Caro

Orach Chayim 339 Saiyf Gimel-Dalet (see translation attached)

and ha'Mapach

Rabbi Isserles (the Rema)

Orach Chayim 339 Saiyf Gimel-Dalet

R. Caro: On Shabbat, there is no clapping or slapping of the thigh; no dancing; no playing with a baby's rattle, as any of these might lead one to making a musical instrument and thus violate the avot m'lachah.

R. Isserles: Since people dance, clap and the like all the time these days, and no one knows how to make musical instruments anyway, it is unlikely they will suddenly start making instruments. Also, it is better to not inform them of these rules, as "it is better to err unintentionally than to intentionally violate the law."

R Caro: There is no judging on the Shabbat.

R Caro: On Shabbat there is no kidushin/betrothal (including nisuin and erusin).

R. Isserles: If the bridegroom does not yet have children or a wife, then entering the huppah on Shabbat is permissible. Here he references Rabbenu Tam's argument for leniency, although he also acknowledges that Rabbenu Tam's ruling "has not stood the test of time." R. Isserles goes on to argue that in an emergency situation, for the dignity of HKBH's creatures, and for their financial well-being (if the festive meal has already been prepared) sometimes it is permissible to make the huppah on layl Shabbat. However, he is careful to note that special care should be taken from the outset to do everything possible to prevent this situation from arising.

Review: As noted above, the Rema tends to take the lenient precedent where it helps support his concern for the emotional and spiritual well-being of his community. (I would argue that preventing congregants from "knowingly violating a commandment" is spiritual care-taking). This is a decidedly expansive halachah when compared to Rabbi Caro's decisions in the Shulchan Aruch. Writing after the Tur who has a strict halachic approach while allowing for some variety in minhag, Rabbi Caro upholds the strict interpretations of the Rambam in his Mishneh Torah.

The Shulchan Aruch

Rabbi Yosef Caro

Orach Chayim and Even ha'Ezer

requires an appropriate response. The decision does not extend to other cases. (Editorial comment by Reb Daniel Siegel).

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A person should not be paid for doing things on the Sabbath (O.C. 306). It is forbidden to prepare to go outside the Sabbath boundary immediately after the Sabbath except for religious purposes or to prevent loss (O.C. 306), but it is permitted to prepare to do other things immediately after the Sabbath (O.C. 307). It is forbidden to discuss plans for doing things after the Sabbath that are forbidden on the Sabbath (O.C. 307).

A person should not think about his affairs (O.C. 306).

It is forbidden to arrest, judge, or punish, to marry or divorce (except on a deathbed) (O.C. 339).

Even if only the huppah is made on Shabbat, it is not permitted because this is the point at which the groom acquires/takes full ownership of the bride. Thus this is acquisition/buying and selling – a business transaction – which is forbidden on Shabbat because it is an av m'lachah (O.C. 339).

Review: Rabbi Caro composed the Shulchan Aruch as a condensation of the Tur. While the Ba'al ha'Turim tends to be more expansive in his allowance for minhagic interpretations, Rabbi Caro tends to be more aligned with the strictness of the Rambam and his Mishneh Torah. When considering halachic decisions these days, most Jews will turn to the Shulchan Aruch or the Mishneh Torah for guidance, thus the tendency toward a strict and narrow halachah.

Rabbi Jacob Ben Asher (the Ba'al ha'Turim)

The Arba'ah ha'Turim: Even ha'Ezer Hilchot Kidushin 63-64

In considering the question of weddings on Shabbat, the Tur writes:

(1.) No wedding may be held on Shabbat because marriage is an acquisition and the establishment of a long-standing business-arrangement. When the bride is a virgin, the moment of the huppah itself is the koneh/kinyon/acquisition as well as the sealing of the agreements regarding the long-standing business assets that the bride will bring “by the work of her hands” to the groom. When the bride has been married before, the moment of intercourse is the koneh/kinyon/acquisition, so yichud on Shabbat is prohibited. However, since the acquisition of the virgin bride is at the moment of huppah, yichud/intercourse on Shabbat is permissible. Apparently he does not consider the tearing of the hymen to be of concern in relation to the avot m'lachah.

(2.) A secondary reason for prohibiting Shabbat weddings is that the beit din does not gather on Shabbat to hear cases, so the groom would be unable to bring claims against his new wife.

(3.) A wedding immediately motzei Shabbat is prohibited because there would inevitably be preparations for the celebratory feast during Shabbat.

Review: The Tur's decisions leave little room for exceptions or leniencies. It is

interesting how he defines the actual moment of acquisition and that he should distinguish between a virgin and a previously married woman. His primary concern is about conducting business and acquiring during Shabbat.

Maimonides, the Rambam

The Misneh Torah: *The Book of Seasons/Sefer Zemanim, Hilchot Shabbat*

Ch. 1(1) and (2) “Abstention from work on the seventh day of the week is a positive commandment.” (Exod 23:12, 34:21) Consequently, whoever does work on the seventh day disregards a positive commandment, and also transgresses a negative commandment, for Scripture says, “You shall not do any manner of work” (Exod 20:10, Deut 5:14).

What is the penalty for doing work? If one does work voluntarily and deliberately, he is liable to extirpation; if witnesses were present and a warning was given, he is liable to be stoned; if he does work inadvertently, he is liable to a fixed sin offering.” (Gandz and Klein, p. 1) (Yet since the time of the Talmud, the rabbis were in reality practicing b’di’avad in regard to Shabbat weddings)

Ch. 1(3) “Wherever it is stated that one who does a certain thing is exempt, the term “exempt” signifies that although the offender is exempt from extirpation, from death by stoning, or from a sacrificial offering, the thing done is nevertheless forbidden on the Sabbath, the prohibition resting on the authority of the Scribes who introduced it in order to prevent real work from being done. If one deliberately performs this forbidden action, he is liable to a disciplinary flogging.” (ibid, p. 3) (Again in practice, though, b’di’avad was applied).

Ch. 6(1) “It is forbidden to tell a heathen to do any work for one’s own benefit on the Sabbath....” (ibid, p. 32)

Ch. 6(2) “If a heathen does work on the Sabbath on his own initiative, the rule is as follows: ...no benefit may be derived from it until after the Sabbath and until sufficient time has elapsed for the work to have been done after the Sabbath....” (ibid, p. 34)

Ch. 7(7) “Whether the prohibited work is of a principal kind or of a subsidiary kind, one is liable to extirpation – or to stoning, if there are witnesses – if the work is done deliberately, or to a fixed sin offering, if the work is done inadvertently.” (ibid, p. 42)

Ch. 21(1) ‘When Scripture says, “But on the seventh day you shall rest” (Exodus 23:12) it implies that one must refrain also from doing things which are not actual work. Such activities were prohibited by the Sages on the ground that they conflict with the spirit of Sabbath rest.....’ (ibid, p. 129)

Ch 23(12) “Writing is one of the principal kinds of prohibited work...It is forbidden to buy or sell, hire or let, lest this, too, should lead to writing. One may neither himself hire employees on the Sabbath nor ask someone else to do the hiring on his behalf.” (ibid, p. 152)

Ch. 23(13) “Both verbal sales and sales by delivery are forbidden.” (ibid, p. 152)

Ch. 23(14) “One may not try a lawsuit, nor betroth a wife on the Sabbath, lest he should be led to write...it was forbidden to dedicate property to the Temple, or utter a vow of valuation...because these actions resembled sales.” (ibid, p. 152)

Ch 23 (19) “Ordinary documents may not be read on the Sabbath, lest one should proceed as on a weekday and be led to erase writing. One may count his delicacies or his guests orally, but not from a written list, in order to avoid reading ordinary documents...if the names are inscribed on a tablet or on a wall, they may be read out, since one would not confuse a tablet or a wall with an ordinary document. An inscription under a picture...may not be read on the Sabbath.” (ibid, p. 154) (So, reading from the ketubah violates both reading ordinary materials and under a picture since most ketubot are decorated).

Ch 24(10) “If an act is forbidden because it conflicts with the spirit of Sabbath rest, the prohibition...is permissible during twilight, if it is needed for some religious duty or other urgent reason...if one is overwhelmed by urgent business affairs, and needs to do during twilight something forbidden on the Sabbath itself because it conflicts with the spirit of Sabbath rest, he may do it.” (ibid, p. 160)

Ch 24(12) “The Sages have forbidden the moving of certain articles on the Sabbath in the way they are moved on weekdays.” (ibid, p. 161)

Ch 30(12) “It is forbidden on the Sabbath to fast or to cry out to Gd in supplication for grace and mercy.” (ibid, p. 197) (This is opposite to the Aggadic literature supporting fasting on Shabbat; see below under “Aggadic Literature”)

Ch 30(15) “Observance of the Sabbath and abstention from idolatry are each equivalent to the sum total of all the other commandments of the Law. Furthermore, the Sabbath is an eternal sign between the HKBH and ourselves. Accordingly, if one transgresses any of the other commandments he is merely a wicked Israelite, but if he publicly desecrates the Sabbath his is the same as an idol worshipper.” (ibid, p. 197)

Review: The Rambam stays very close to the Bavli’s majority opinions on issues related to Shabbat practice in general, including the question of kidushin on Shabbat. The principles he uses are the same ones cited by the Talmud. Of course, since he does not cite the Bavli’s minority opinions nor provide references, his strict and narrow interpretations must now be wrestled with and responded to by those coming after him.

Further, it seems reasonable to question just how often the Rambam’s rulings were actually followed. From the Talmud on, b’di’avad was used as a way to accept and recognize those who did marry on Shabbat and who had thus violated the avot m’lachah. If the Rambam’s halachah was actually applied, there would have been the punishment or execution of newlyweds. It seems perhaps his halachah was more his personal ideal since it actually is more strict than the Bavli’s halachah.

And as was said earlier in this teshuvah, when considering halachic decisions these days, most Jews will turn to the Shulchan Aruch or the Mishneh Torah for guidance, thus the tendency toward a strict and narrow halachah. Interestingly, while the Rambam's halachah includes overtly assigning specific punishments to laws violated, those following him perhaps do not actually expect there to be punishment if the law is violated (as there appears to be no discussion of this). Rather, they merely record whether kidushin and the like is prohibited or permissible.³

The Aggadic Literature

The Aggadic literature references Talmud and TNKH. Within the Aggadic material, the theme is repeated often and strongly that Shabbat is precious; it is a sign of the special relationship between HKBH and the Israelites; and that profaning it is the worst of sins. Within this literature, there are also many statements about the importance of marriage. Along with the Talmud and TNKH, the Aggadic material demonstrates the foundational views held about Shabbat.

“That you may know that I the Lord sanctify you (Exod. 31:13). The Holy One said to Moses: Moses, in My treasury I have a precious gift – it is called the Sabbath, and I wish to give it to Israel. Go and make it known to them (B. Shab 10b; B. Betz 16a). (Bialik and Revanitzky p. 486)

‘The Holy One said to Israel: If you succeed in keeping the Sabbath, I will account it to you as though you had kept all the commandments in the Torah. But if you violate it, I will account it to you as though you had profaned all the commandments. Thus Scripture: “He that keeps the Sabbath from profaning it is as one who keeps his hand from doing any evil deed” (Isa. 56:2; P. Ned 3:9; Exod. R. 25:12).’ (Ibid, p. 486)

‘On Sabbath eve, R. Yannai would put on his festive garments and say, “Come, O bride! Come, O bride!” (B. Shab 119a)’ (Ibid, p. 489)

‘R Eleazer said: A man who has no wife is not a [complete] man, for Scripture says, “He created them male and female...and He [only then] called their name *man* [Adam] (Gen 5:2, B. Yev 63a).’ (Ibid, p. 614)

Rabbenu Tam, Rashi The Babylonian Talmud (the Bavli)

BEITZA 36b-37a

Part One:

³ Note: Rabbi Soloveichik and other Modern Era Orthodox thinkers have written eloquent essays reflecting on the primacy of the written halachah over inherited custom, which leads people toward a stricter [halachah] approach. (Editorial comment by Reb Daniel Siegel)

Mishna: States there should not be kidushin on Shabbat. There is no adjudicating on Shabbat. Kidushin is in the category of reshut.

Gemara: But is not marriage in the category of mitzvah? Why say it is in the category of reshut?

Part Two:

Mishna: There is no clapping, slapping the thighs, dancing, or adjudicating.

Gemara: Because the first three (clapping, slapping, dancing) might lead to making a musical instrument. The prohibitions against kidushin and adjudicating, because they would lead to writing (because the ketubah or decree would need to be written down, violating one of the avot m'lachah). The Gemara explains further that the mitzvah is for the male Jew to marry and to procreate. Since he has already accomplished both, kidushin on Shabbat is forbidden. The conversation ends here, leaving unexplored the question of permissibility if the Jewish male does not currently have/has not had a wife, or produced children.

Subsequently, **Rabbenu Tam** takes advantage of this incomplete conversation to find a legal leniency. He argues that if the groom does not yet have a wife and/or children, it is then permissible to marry on Shabbat. He writes that it is permissible, but he does not say it is mandatory. If there is any alternative to kidushin on Shabbat, it should be taken. This lenient precedent is then quoted by generations of rabbis after Rabbenu Tam who are searching for a way around the commonly-understood prohibition of all marriages on Shabbat.⁴

Review: One could certainly argue that Rabbenu Tam did not find a loophole. Rather, if one believes that the Talmud is Oral Law and is as directly received from HKBH as the TNKH, then if the Talmudists did not overtly decree against Shabbat weddings for grooms without a current or prior wife and progeny, Rabbenu Tam's decision was not a loophole/lenient/minority opinion, but rather merely completing/making overt the logical completion of the Gemara's conversation. Ie: If the Talmud decrees prohibited a Shabbat wedding for a groom who has already been married and born children (primary mitzvot), then obviously if he has not accomplished these mitzvot, a Shabbat wedding is permissible, possibly even mandatory. Interestingly, the force of Shabbat practice and the avot m'lachah have been so powerful throughout Jewish history that Rabbenu Tam's opinion "has not stood the test of time" (Rabbi Isserles, ha'Mapach O.C. 339). Rather, when leniency is required, the issue of unforeseen circumstances, an emergency, or protecting the dignity and/or finances of the bride and groom are utilized.

⁴ Note: Rabbenu Tam is talking only about kiddushin, not nisu'in, since it is at least technically possible to do kiddushin without transgressing Shabbat. However, in the case presented at the beginning of this teshuvah, the argument could be made that nisu'in will not be complete until after havdalah if yichud is postponed. (Editorial comment by Reb Daniel Siegel)

Writing a generation before Rabbenu Tam, **Rashi** elucidates the Talmud's conversation. He clarifies that the argument is whether or not one can make kidushin on Shabbat, and that the mitzvah is to have a wife and children. He clarifies that the Gemara states that these categories are in relation to the groom. In the cases cited, the groom already has a wife and children, so the mitzvah of procreation and of not being alone has already been fulfilled. Therefore kidushin on Shabbat is not permissible.

The importance of keeping Shabbat and of marrying Talmud (Babylonian)

As with the Aggadic literature, the importance of Shabbat is highlighted throughout the Talmud. For instance, in discussions related to commerce, the marriage contract, and intercourse on Shabbat, the sages begin to work out the best days for marriages to occur and which parts of the celebration and of the yichud can occur on or near Shabbat. Issues raised include how the community will keep and protect Shabbat in post-Temple times (which resulted in the rabbinic prohibitions of the avot m'lacha); what it means to work and to rest on Shabbat; what it means to delight in Shabbat; and if procreation is a mitzvah which should only occur within marriage, is it permissible for a wedding be held on Shabbat?

“Whoever is careful with the observance of Shabbat will be forgiven for all his sins, even idolatry.” (Mas. Shabbat 118b)

If an act is culpable on a festival how much more so on Shabbat. (Beitsa 36b-37a)

Marriage occurs when a woman is legally acquired by a man. This may occur through three different means: The woman is acquired by purchase (the woman's father accepts a dowry from the groom, or the bride accepts a ring or other object of value); the woman is acquired by deed (a ketubah); or the woman and man have intercourse/cohabit together. (Mas. Kidushin 1 – 3b)

A man should marry on the 4th day so that any legal issues which may arise will have been resolved by the time of Shabbat. And throughout, the Talmud instructs that there should not be preparation for a secular event while it is still Shabbat unless it is an emergency. (Ket. 2a) Further, the Talmud states that a virgin bride and her groom are to be separated on layl Shabbat because the tearing of the hymen is considered to be making a wound, an av m'lachah, which is prohibited on Shabbat. (T.B. Mas Ketubot 3b, 4b)

It is prohibited to earn money on Shabbat. (Bava Me`tzia 5a)

An apostate is someone who breaks the Shabbat laws in public. (Er. 69a)

One is prohibited to rejoice in two simchas at the same time (ein me'arvin simchah ba'simchah; Mas. Mo'ed Katan 8b – 9a). Thus, if one is prohibited from taking a wife during chag then how much more so is one prohibited to do so during Shabbat. Further, a man must celebrate a festival but may not take a wife during that time. (Chagigah 8b)

Again, how much more so for Shabbat.

“To rejoice” originally meant bringing to the Temple sacrifices and participating in those practices. In the post-Temple period, it came to mean participating in a religious celebration. Just as the Shabbat dinner and Shabbat liturgy replaced the sacrifices and practices of the Temple, “rejoicing”-- participating in the particular holiday through liturgy and minhagim -- replaces the sacrifices and activities of the Temple. (Chagigah 2b-3a)

The Mishnah presents three different categories of activities related to Shabbat as decreed by the rabbis: (1) *Shevuth*: Activities that are prohibited on Shabbat. They are prohibited because they might lead to engaging in one of the avot m'lachah or because they violate the spirit of Shabbat. They contain no element of mitzvah observance. (2.) *Reshut*: A secular/voluntary act which, while not prohibited, is nonetheless prohibited on Shabbat; an act which contains elements of a mitzvah but in fact is not a mitzvah; or a religious act which is prohibited on a festival. *Shevuth* includes clapping hands, slapping one's thighs and dancing. *Reshut* includes betrothing a wife. A *mitzvah* is an activity which is an “outright mitzvah” and is therefore appropriate or mandatory to participate in during Shabbat. (Mas. Beitzah 36b; Epstein)

The Gemara goes on to explain that clapping, slapping the thighs and dancing are prohibited so that one might not accidentally begin repairing musical instruments. It then asks, is not marrying enacting a religious duty (a *mitzvah*)? How could it then be in the category of *reshut*? It explains that marriage on Shabbat is prohibited only for a bridegroom who had already been married and had children. (Mishnah Yeb 61b)⁵ Further prohibitions on levirate marriage or on yibbum exist because these activities would lead to writing a ketubah or related contract on Shabbat, one of the avot m'lachah (a primary religious prohibition as decreed by the rabbis). (Mas. Beitzah 37a1; Epstein, Beitzah 37a1)

The Gemara further explains that the TNKH requires a man to procreate. There is debate as to whether this means one son and one daughter (Bayt Hillel, Yev. 61b) or two sons (Bayt Shammai). Beyond this number, it is a “quasi-mitzvah” to produce further offspring (Eccles. 11:6). It is interesting to note that the Gemara states both progeny and a wife are required, which leads to the Gemara arguing that even if the groom already has children, he is still required to marry because “it is not good for man to be alone.” (Gen 2:18; Mishnah Yeb 61b; Mas. Beitzah 37a1; Epstein, Beitzah 37a1) And, “any man who has no wife lives without joy, without blessing, and without goodness.” (B. Yev. 62b)

These are the arguments which were clarified by Rashi and used for leniency/elucidated by Rabbenu Tam.

⁵ Note: To clarify this interpretation -- the g'mara is asking, “Shouldn't kidushin be prohibited on Shabbat because it is a prohibited mitzvah, rather than prohibited because it is r'shut?” There is no question that it is prohibited. (Editorial comment by Reb Daniel Siegel)

Later commentators/posekim made the field of argument much narrower than the original conversation seen here. As proposed earlier in this teshuvah, while Rabbenu Tam's decision is typically quoted as the "lenient" position, I believe this demonstrates a narrowness of interpretation by later posekim. Perhaps they were seeking to prove that there is "only one right answer," which is that marriage on Shabbat is prohibited. These later posekim do not even consider the issues of number/gender of children and having a wife, nor do they allow that Rabbenu Tam was simply stating what was logically the unstated final part of the Gemara's discussion.

That the Gemara places kidushin not in the category of avot m'lacha but rather in *reshut* is discussed by Winkler and Mihaly and used as the basis for their decision that Shabbat weddings are permissible not only in an emergency but at any time. They argue that if these days it is permissible to clap, make music, etc. on Shabbat, why not marriages? Yet, they fail to acknowledge that while the kidushin itself might be in the category of *reshut*, the ketubah witnessing and signing, the receipt of the ring by the bride, and first intercourse fall into the avot m'lachah category.

The Talmud recommends marriage on Wednesday or Thursday. The beit din would sit on Mondays and Thursdays. This gave the groom the opportunity to present a claim against the bride immediately after the wedding and wedding night. (T.B. Mas Ketubot 2a)

The Talmud states that a virgin bride and her groom are to be separated on layl Shabbat because the tearing of the hymen is considered making a wound, an *av m'lachah*. (Mas Ketubot 3b, 4b)

The sages are concerned that if a wedding is held directly after havdalah, the groom would be thinking about the expenditures of the feast and celebration; "taking accounts" is one of the avot m'lachah. Further, marriage after havdalah is proscribed because the groom might be so focused on preparing for the feast that he would inadvertently slaughter a fowl before havdalah; an *av m'lachah*. However, it is permitted to discuss tena'im and ketubot on Shabbat. This would be permissible only if the discussion results were not recorded nor if any money/property changed hands; discussing a mitzvah on Shabbat is permissible, writing and conducting business is not. (Mas Ket 4b)

The Talmud is the conversation amongst the rabbis about how to actually apply the mitzvot/commandments found in the TNKH. Since Shabbat is so essential to Jewish life, much of their attention was focused upon how to translate the minimalist instructions from the TNKH into a meaningful practice, especially since the Temple in which much of Shabbat and festival practice was held was now destroyed.

The TNKH commands the Israelites to "remember the Sabbath day and keep it holy." (Ex 20:8) It tells them that, "the seventh day is the Sabbath of the Lord your Gd; in it you shall not do any work, nor your son, nor your daughter. . . ." (Ex 20: 8 – 11) Further, the Israelites learn that, "you shall keep My Sabbath, for it is a sign between Me and you

throughout your generations, that you may know that I am the Lord who sanctifies you. You shall keep the Sabbath therefore; for it is holy to you; everyone who defiles it shall surely be put to death, for whoever does any work on it that soul shall be put to death.” (Ex 31:12-17)

At the same time, the Israelites are instructed to “...call the Sabbath a delight” (Is 58:13) and to also be “fruitful and multiply.” (Gen 1:28)

Thus, for the rabbis a number of issues had to be worked out, including: (1) What precisely constitutes *remembering*, *keeping*, *working*, and *delighting*? (2) for a Jewish man, is either *procreation* or *not being alone* a greater mitzvah than *remembering*, *keeping*, or *delighting* in Shabbat or *not working* on it?

Focusing primarily on the question of “work/m’lachah.”

(1.) Some specific forms of work are clearly prohibited in the TNKH (ex: kindling a flame, Exod 35:3; baking and cooking, Exod 16:22; buying and selling, Neh. 13:15 – 17). (Klein p. 78) These become the avot m’lachah.

(2.) In other cases, it is up to the rabbis to decipher what constitutes “work.” They base their categories upon the following passages,

(a.) “on the seventh day, Gd ceased from His work of creating” (Gen 2:2)

(b.) “six days may work be done, but on the seventh day there shall be a Sabbath of complete rest....” (Ex 31:13-17)

The rabbis note that *m’lachah* is used in both passages, so they apply the meaning of *the act of creating* to both texts. (Klein, p. 78)

(c.) Further, the rabbis note that in Exod 35:21, *li’me’le’chet* refers to skilled workmanship in the construction of the tabernacle. The instructions for building the tabernacle immediately follow a statement by Moses about the importance of Shabbat. Thus proximity in the TNKH indicates related importance and any act involved in the construction of the original Mishkan becomes an av m’lachah. (Mishna Shabbat 73a)

The avot m’lachah ultimately include: agricultural activities; working with clothing/fabric; working with leather or parchment, writing; catching game/hunting; construction; working with fire; and carrying. (Robinson, pp 82 – 84)

Initially, these 39 prohibitions were considered severe enough to execute the transgressor. But, the rabbis of the Talmud provide multiple examples of why transgression of a law which should lead to capital punishment should instead be responded to with clemency.

Over time, minor prohibitions became associated with each of the original 39. Prohibitions to protect the “joy of Shabbat” were also derived from these individual 39. (Klein, p. 78)

Muktzeh is a particular type of Shabbat prohibition which offers Shabbat protection because the particular prohibited activity

a.) Appears to resemble an av m’lachah and so could be confused with them

b.) Is linked with *avot m'lachah* in everyday life

c.) Itself normally involves or easily leads to an *av m'lacha* in practice

In sum it is the “prohibition against handling any object which, for one reason or another, was not intended by us for use during the Sabbath day” (Klein p. 83)

Muktzeh is a category of items which may not be moved or possibly even touched during Shabbat because they “belong” to non-Shabbat time. (Ie: from Is 58:13, “And you shall honor it [the Sabbath], not doing your regular work, nor pursuing your business, nor speaking of it.”) “This admonition...was understood by the rabbis as an indication that to honor the Sabbath, one must withdraw from the spirit of weekday activities and not simply cease to work. The mood of holiness is best promoted by a complete severance from the tenor of the weekday life (B. Shab. 113a).” (Klein, p. 83).

Violations of *shevut* prohibitions are considered less severe than infractions of the *avot m'lachah*, and thus do not incur stoning as punishment.

Jewish Renewal: Paradigm Shift

Paradigm Shift: Paradigm Shift is not about restoring the former practices and communal structure of Jewish life, especially not a romanticized version of European Judaism pre-Shoah. Rather, it is about recognizing the reality of our current place and time and crafting a Judaism which, while connected to prior Jewish life, allows for evolution and metamorphosis as well as for the voice and experiences of the individual. (Singer, p. xix)

When I describe Paradigm Shift to others, I present that Paradigm Shift and Jewish Renewal is much more in line with the Judaism of the Talmud, in particular, as well as with certain other times of major change in the Jewish pre-modern era. Throughout Jewish history, while the rabbis attempted to offer some degree of a container to their communities through promulgating halachic practice, there was recognition that each community had particular needs and approaches to Jewish life, and that these were all legitimate. (For instance, this is well demonstrated by the popularity of the Shulchan Aruch and ha'Mapach being published and studied together).

Granted, until the modern era, Jews were forced to live together, thus communal expectations, responsibilities and reciprocities helped to create a more uniform Judaism in each particular community than is typically found today. However, Jews have been so spread about geographically and the history has been so long that, clearly, there have been multiple Judaisms. Paradigm Shift recognizes this multiplicity and the influences from forces outside the immediate Jewish world and seeks to make overt the process of these shifts so that today, we may create a Judaism that speaks to who we are now (both locally and across the globe) while still being deeply rooted in who we were in the past.

Paradigm Shift recognizes that at particular critical points in Jewish history, the entire religion and culture has shifted and readjusted itself to new historical, social, political and economic factors. The first classic example is after the destruction of the Second Temple and the gathering of the rabbis at Yavneh (true or apocryphal, it represents a profound

shift). Judaism was consciously (or perhaps not consciously, we do not know) transformed from a religion practiced at one site and mostly conducted by priestly elites to one celebrated in the home, where at least the adult males of each family became priests within their houses. Perhaps the transitions from that period to the present have been more subtle, yet for Judaism to have survived outside of the European ghetto, in new countries, and under the persecution of the Inquisition, it would seem that Jews have been constantly transforming Judaism to fit their current circumstances. Paradigm Shift and Jewish Renewal are an honest recognition of these shifts. Further, Paradigm Shift recognizes that this process has helped Judaism survive and offers a process to help Judaism yet again transform.

Thus, Paradigm Shift allows us to “adapt to new situations and maintain continuity with [our] past” (Schachter-Shalomi and Siegel, p. i) And further, that today “we are now challenged to create a modern Judaism which is compelling without being fanatical, magnetic without being dogmatic” (Ibid, p. i)⁶

Jewish Renewal: Integral or Psycho-Halachah

The essential question is how does one understand the purpose of halachah? Is Judaism about obedience? If it is, it is possible that a strong connection to Judaism will develop for the individual. The risk is that in this modern era, most Jews are not willing to invest the time and energy required to follow a classical halachic life, and especially not one in which obedience to the rules is paramount. However, if one approaches halachah as a path of meaning, one in which the participant is encouraged to seek out meaning, to engage with the instruction manual, and to wrestle with the manual to recognize his/her own life in it, this offers a more inclusive and open model of being Jewish. Ideally, this approach teaches the participant both the tradition and how to make it relevant for him/herself. This then becomes a potent knowledge and skill set to offer the next generation. “We ...need to drop our fear of modernity as the destroyer of Jewish practice and adopt a more collaborative relationship with the present.” (Schachter-Shalomi and Siegel, p.102)

“Psycho-halachah...is a halachah which incorporates and accepts the validity of personal experiential data in determining what changes from past practice have value. Whether a practice “works” or not is a legitimate consideration to add to those which are already present in the classical process....It recognizes that we are all Jews by choice and our communities are voluntary ones.” (Ibid, p. ii) In responding to this particular couple I have applied the principles of psycho-halachah and formulated a discernment process for both myself and this couple. Through both the use of this discernment process and the

⁶ Note: The core of Paradigm Shift is not about Judaism in particular but about our whole world view: Reb Zalman’s favourite example is looking at the earth from space. Jews who are participating in a paradigm shift which, if acknowledged, requires rethinking Judaism to take into account inclusivity, universality, and the legitimacy of factoring in whether the mitzvah is working for the practitioner. (Editorial comment by Reb Daniel Siegel)

application of Integral Halachah principles, I have been able to determine that I will officiate this couple's wedding on Shabbat.

"I believe that what comes through the grandmothers are the forms by which we live life. These are laws; not laws decreed, but laws discovered....no tradition can continue in its form unless...it is a functional tradition. There is something good built into this path that carries life on." (Ibid, p. 118) I would add that in some ways, the people lead and the rabbis help the community and the individual figure out how to make their lives work within a Jewish framework.

In responding to this particular couple's request, Integral Halachah guides me in my job as their Officiant to help this engaged couple find meaning, connectedness, and a sense of the sacred in Jewish practice, and to guide them in cultivating this and entering into meaningful practice. My goal is to help them make this connection, with the hope that they will ultimately experience more contentment in their lives -- spiritual and communal- - which they will then bring into the Jewish community and into the world as a whole.

The halachic 'model is inclusive and....new concepts need to be "backward compatible" with the classical practice of Judaism (which we must recognize varies culture to culture and community to community).

The concerns presented in Integral Halachah that are particularly relevant to this couple's she'alah include:

- * Does the proposed teshuvah "flow from a meaningful theology to which we can give credence?" (Schachter-Shalomi and Siegel, p. iv) By inviting the couple into a Jewish process rather than rejecting them, I am expressing the aspect of HKBH which is expansive, compassionate and all-inclusive; the aspect of the divine which welcomes home all the children with open arms.
- * Does the proposed teshuvah "produce a doable halachah in harmony with the social agreements implicit in our society?" (Ibid, p. iv) As I will discuss in the next section, this teshuvah works from the principle that one is not excluded for ignorance, the recognition that there is a spiritual development process which some people undergo, and that we live in an assimilated society so clergy expectations must engage with that reality.
- * Does the proposed teshuvah "address average people and provide a spiritual technology accessible to them as well as to advanced students and contemplatives?" (ibid, p. iv) By explaining and examining the halachah from present to the TNKH and explaining the original decisions and how they came about, this teshuvah educates and therefore both empowers and includes the recipients (the couple) of the teshuvah. At the same time, by deconstructing the halachic process and highlighting the halachic principles in the upcoming section, this offers to advanced readers of this teshuvah a novel way of thinking about halachah, about Jewish history, and hopefully introduces a more flexible mind-set toward Jewish practice.

* Does this teshuvah respond to the statement, “while it is clear that we need to emphasize and strengthen Shabbat observance in our social milieu, the original interdictions concerning work need to be updated by making some things more lenient and others more stringent?” (ibid, pp. iv-v) In the upcoming section, this teshuvah will discuss Paradigm Shift/Psycho-Halachah-framed halachic principles regarding Shabbat practice and Jewish Renewal-framed approaches to Shabbat. My primary concern in this teshuvah is to expose the couple and their gathered kahal to the joy of Shabbat; to not humiliate the couple for their ignorance; and to make transparent the fact that Shabbat weddings are not normative Jewish practice.

Principles I use in this teshuvah include those found in Integral Halachah

* Teaching for the hour

* Do not legislate what the community cannot practice

* For the ways of peace

* Recognize the weight in classical halachah of minhag ha'makom -- the “communal norm, the consensus of the committed/pious.” (ibid, p. 7) In other words, a community can legislate for itself using local standards in a way that is binding. In this teshuvah, I recognize that in northern California, Jewish institutional affiliation rates are very low. Thus, what is local normative Jewish practice here, including the practices of the committed and the pious, must be considered in writing this teshuvah.

* Her ways are pleasant. Torah and halachah are understood traditionally as a path for religious life that should bring peace and contentment to its practitioners. So this principle asks, “What is the effect of the particular halachic ruling upon the people?” (ibid, p. v) This teshuvah is influenced by my concern that when this couple, who sincerely seeks a Jewishly-influenced wedding, is turned away by a rabbi -- they may feel so humiliated that they turn away from Judaism. The foundational principle of this teshuvah is that a couple looking to connect Jewishly should be welcomed. It is my job as the rabbi to help them do so while upholding the authenticity of their spiritual search, my spiritual and communal integrity, and the integrity of the tradition.

* In Integral Halachah, it says that halachic principles are used “to be lenient. On the other side, a chumra/stringency which we endorse is that of actualizing the messianic transformation on the personal level now.” (ibid, p. vi) As stated just above, this teshuvah is framed by my understanding that meaningful Jewish practice can help bring the couple to a messianic (transformed) consciousness. As long as this couple is willing to enter into process with me (to be discussed in the upcoming section), I have a sacred obligation to work with this couple.⁷

⁷ An additional relevant source comes from Eichah Rabbah: A rabbi says that he could “out” several mamzerim from prominent families, but why bother since, when the Mashi'ach comes, mamzerut will be abolished. Here is a case where the messianic

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* “How do we connect to joy, to purpose....” within the Jewish context. (ibid, p. vi) If this couple wishes to craft a wedding and a life that cultivates joy and purpose derived from Jewish involvement, why would I decline to marry this couple?

* “What was the purpose of this ritual and what was its effect on us supposed to be? It is one thing for a ritual to lose its meaning, but losing what that ritual was supposed to accomplish is much more serious....If the old ritual can no longer transform us, and we have no replacement for it,” then that is a very serious concern. (ibid, p. 2) There are two issues at play in this teshuvah: (1.) A classical Jewish wedding offers many opportunities for transformation; to deny this couple this opportunity could well be a shanda. (2.) To fail to recognize that it is being held on the day on which weddings have traditionally been prohibited could also be a shanda. (3.) So in the upcoming section I address how to acknowledge both of these issues yet still have a Shabbat-day wedding.

* Focus on *torat umecha*, “her ways are ways of pleasantness;” rather than on *torat avicha*, “rules and regulations.” For many Jews, coming to Jewish practice with a sense of autonomy is grounded in our modern mind-set. If Judaism is engaged with through autonomy, contemporary Jews are more likely to feel invested and to develop a sense of ownership. (ibid, pp. 5-6) This teshuvah offers this couple and their witnesses the opportunity to engage in Jewish practice without feeling shamed, while also teaching the value of creating a Jewish container.

* “The transformative quality of the mitzvah is what we are looking to preserve...this can require us to rethink an old practice....we need to be able to ensure that the relationship which makes the transformation possible can happen.” (ibid, p. 10) The goal of a Jewish wedding officiated by a rabbi is, in part, to forge a deeper connection with Jewish practice and to set the foundation for a Jewish home. Thus in this teshuvah, I consider it essential as a rabbi to officiate the wedding for this couple, even if at the present time they are only marginally interested in/connected to Jewish life.

* Reframe *avot m'lachah*. (ibid, p. 20) The *avot m'lachah* were established to prevent the potential outcome of an activity rather than the activity itself. Many of the proscriptions set a fence around an activity which would cause others to work (such as a professional scribe) on Shabbat. When considered from this perspective for this teshuvah, the witnesses present are themselves literate and it is not inherent that the witnesses and I, as the Officiant, write only for our livelihoods. Thus the signing of the ketubah can be reframed as sacred writing: The recording of sacred covenant being established between the couple and HKBH. This being a sacred act, I do not wish to designate to someone else the tending to and sealing of this covenanted relationship, nor do I wish for this writing to be designated to anyone else (which is one of Reb Zalman’s markers for what is *shabbosdik* activity; ibid, p. 27).

* “And now, Israel, what does Gd want from you?” (Deut 10:12; ibid, p. 34) It seems clear that this couple knows what HKBH wants of them. And through my personal spiritual discernment process which has included the preparation of this teshuvah, I have

expectation is used to guide behaviour in the present. (Editorial comment by Reb Daniel Siegel)

come to understand what HKBH is asking me to do: To push beyond my own personal comfort zone and to act on behalf of HKBH and to officiate the wedding of this couple. This is my sacred obligation.

* Shinui, for instance, turning the pen backwards, while “not exactly permitting one to write on Shabbat, it at least is not forbidden.” (Shabbat 104b; *ibid*, p. 74) This classical principle allows for planning the Shabbat wedding without completely moving outside of the tradition. This is one of the ways in which I can use the tradition to bring transparency and teaching to the couple and their witnesses, while offering kavod to Shabbat and upholding my own integrity and practice.

* “Part of kashrut...demands that practice should be transparent enough that people will not make mistakes when they emulate what they see others do.” (*ibid*, p. 128) It is critical that I be transparent about this wedding process with the couple, their witnesses, and with my colleagues. In this way I do not bear the responsibility for someone else saying that it is permissible in all cases to officiate weddings or to be married on Shabbat.

* “Ein adam meisim atzmo rasha; A person does not make himself evil.” (*ibid*, p. 143) Through the discernment process undertaken with this couple, I have determined that this couple respects both my clerical role and the Jewish tradition. This meets my leadership obligation of responding to the individual needs presented by those in my community.

In concluding this section, these two quotes support my arguments and teshuvah:

‘Halachah is the field in which we live with one another. Another form of the same word as halachah is ta’halich/process, which becomes the name of the way, the field in which we are with each other.’ (*ibid*, p. 174) “Jewish DNA” is composed of the practices, rituals, etc. that make up the meta-Jewish organism. This “DNA does not mandate the shape of the next phase...it determines what ingredients will be used to construct this form, but how they shape it depends more on what this organism has learned in its evolution.’ (*ibid*, p. 174)

This teshuvah provides guidance for the couple and for me. This approach proves recognizable from the tradition, yet allows for an expansive and more inclusive perspective than for what some would allow. In allowing for this more expansive approach, this couple is invited into active and joyful engagement with Judaism.

Is the existing halachic system sufficient to answer the she’alah?

It is possible to answer this couple’s she’elah by combining the principles and self-awareness of Paradigm Shift and Integral Halachah with the more expansive, lenient, and flexible classical halachic principles.

In some cases Integral Halachic and classical halachic principles are the same. Integral Halachah provides a way to recognize and legitimize the frequently denigrated “minority/lenient” rulings. Yet, it has often been that these minority rulings are the more compassionate, expansive and inclusive ones; the ones most understanding of human nature, frailties, and needs. (This is easily seen in the earlier review of the various

halachist's decisions about the permissibility of Shabbat weddings). By bringing together classical and Integral Halachah with the understanding of Paradigm Shift, I am able to derive meaningful support and guidance for this contemporary couple that is clearly grounded in classical Judaism and which provides for transparency and spiritual integrity.

The inherent flexibility of classical halachah

“The words of R. Hayyim David Halevi, who serves as the Sephardic Chief Rabbi and head of the Rabbinical Courts of Tel Aviv, writes in his essay, “*On the Flexibility of Halakha*”: As it is extremely clear, that no law or edict can maintain its position over a long period of time due to the changes in the conditions of life, and that the law which was good in its time is no longer suitable after a generation or more, but requires correction or change....the Sages of Israel were given permission in every generation to innovate in matters of halakha in accordance with the changing times and situations....there is nothing so flexible as the halakha....” (Sperber, p. 7)

“It is appropriate to observe the behavior of the community to decide difficult halachic questions.” (T.Y. Ma’aser Sheni 30a; Levinson, p. 8)

“Her ways are ways of pleasantness and all her paths are peace.” (Proverbs 3:17; Ibid, p. 5) And “the Torah in its entirety exists for the sake of the ways of peace.” (T.B. Gitten 59b; Proverbs 3:17; ibid, p. 5)

The ultimate desire of the Jewish community that halachah should support is the welcoming of anyone who desires to practice Judaism: “...and there is hope in the end, the word of YHVH, and the children will come back to their borders.” (Jeremiah 31:16, ibid, p. 1). “The word of YHVH who gathers the outcasts of Israel and will gather more to those already gathered.” (Isaiah 56:7-8) (ibid, p. 2) And “welcome is the one who comes in the name of YHVH, we bless you from the house of YHVH.” (Psalms 118:26; ibid, p. 3). This she’elah is a superb example of where Integral Halachah and classical halachah meet.

* “Halakha is the application of the Torah to life. But since there is no such thing as life in general, since it is always a certain form of life at a specific time of history, in a specific situation, Torah application means application to a specific time in a specific situation.” (Berkovitz, pp. 1-2)

* “Halakha face[s] the practical needs of human existence, and Halakhah teach[es] the application of ethical principles in the midst of the daily life of the Jewish people.” (Ibid, p. 8)

* Heikha de’efshar, efshar; heikha de’lo efshar, lo efshar -- “Where it is possible, it is possible; where it is not possible, it is not possible.” (ibid, pp. 9-10) “According to Talmudic understanding the Torah does not command anything that man, because of his intrinsic nature or the prevailing conditions, would not be able to do....Given human nature, as the rabbis knew it in mishnaic times, the biblical commandment was not realizable. Therefore....according [to one commentator] a biblical prohibition was

abolished; according to the other [commentator] it was greatly reduced in meaning and importance.” (ibid, p. 9)

* The “possible” applies to what is “reasonably feasible” when taking into account human nature and “proper attention to human needs.” (ibid, p. 15)

* The rabbis may place restrictions on activities which may lead to “transgressions of commandments of the Torah (G’zeira).” At the same time, if these restrictions would create a situation in which “most of the people could not fulfill them,” then these restrictions would “lose their validity automatically.” This may apply to only “rabbinical interdicts” or may even include biblical commandments. (ibid, p. 12)

* “Leave Israel alone; it is better that they should transgress out of ignorance than that they should do it intentionally.” (ibid, p. 13) If remonstrating is assured of changing the person’s ways, then do so; if not, better not to even bring it up. (A principle invoked by the Rema, O.C. 339)

* Halachah “gives priority to the ethical demand...[and this principle] even renders explicit biblical commandments inapplicable.” (Berkovitz, p. 19)

* “K’bod ha’briot, respect for the individual, is an authentic halachic principle. Great is the importance of the honor of the person that it overrules a biblical commandment.” (Ibid, p. 22 and Rambam, *Hilchot Shabbat* 26)

* “Halachic Judaism was mindful not to allow practices that would put to shame the ignorant and, especially, the poor.” (Berkovitz, p. 23)

* In many examples, ‘the rabbis went against the law or beyond it because of the importance of the Ways of Peace...the entire Torah is “for the sake of the ways of peace” and “leniency and generosity toward fellow human beings are urged upon the Jew by the rabbinical interpretation of certain passages in the Torah.”’ (Ibid, p. 26)

* “You shall do the right and the good” were understood as an additional commandment. (ibid, p. 27) “This means that it is sometimes necessary to go beyond the law in order to do what is right and good.” (ibid, p. 62) “If there is a reason for it [doing a particular act] it is ‘right and proper’ to deviate from a biblical regulation in a case that is similar to the one presumed in the Torah; thus one does not obliterate the regulation, but expands its meaningful applicability.” (ibid, p. 62)

* The “interpreting away” of many laws was based on an understanding that the laws were designed strictly to “impress the importance of an idea upon the consciousness of the Jewish people” and were not intended to ever be carried out. For example, a law is studied for the sake of the learning process itself and for the consequent moral, ethical and/or spiritual development of the individual. (ibid, p. 37)

* Hora’at sha’ah, a decision for the hour. This is a “momentary and passing arrangement

that no longer has any authority behind it.” (ibid, p. 38) For instance, this teshuvah is appropriate for this couple in this particular place and this particular time. This teshuvah is not a formulaic statement to now be applied to all couples everywhere who wish to wed on Shabbat.

*’In matters that depend on common sense, “the judge has to rule by what he himself perceives.”” (ibid, p. 39) In this teshuvah, I have applied my common sense and discernment to adjudicate the permissibility of officiating this couple’s wedding. Further, there is permission for a qualified halachic authority to “uproot” a biblical commandment if the fulfillment of it would lead to an “unacceptable consequence in a specific situation.” (ibid, p. 58) Even Rashi explains, ‘At times one abolishes the words of the Torah in order to do for Gd...For it is written, “Seek peace and pursue it.” It is permissible to dissolve the Torah and do what appears to be forbidden.’ (ibid, p. 66)

* “These and those are the words of the living Gd.” (ibid, p. 58)

*The case of Rabbi Elazar ben Ya’adob, in the Talmud: “...the beth din may punish...in order to build a fence for the Torah.” This is a case in which a Jew who consistently rode his horse on Shabbat was ruled to be executed. This adjudication was made during the Hellenistic period, when there was much tension between the different practice factions in the Jewish community. The beit din ruled as it did because these rabbis believed this Jew was purposefully violating the Shabbat laws in a most flagrant manner. (ibid, p. 65) This is why I do not think it is permissible to conduct a Shabbat wedding for a couple who make it clear in that they are aware of the prohibition yet do not care about it or are even purposefully violating the prohibition.

*“It is time to do for Gd...[A]t times it is permitted to suspend a biblical law even by an action whose purpose is altogether humanly social.” (ibid, p. 66)

*Berkovitz lists three types of extraordinary situations in which the Jewish community might find itself, in which the traditionally accepted rules do not apply. These are when: (a.) “an evil practice...must be stopped – *l’midgar milta, to fence a thing*. Here, one could argue that this principle is not relevant, as I am not arguing to institute a fence but to remove one; (b.) the need arises to *safeguard a national or social value*. This becomes a *time to act for Gd*; (c.) there arise moments or situations of unique significance in the history of the Jewish people when *hora’at sha’ah, the law of the hour* must be applied. (ibid, p. 69). I would argue that all three could fall under the concerns about a rabbi or cantor turning away a positively Jewishly-identified couple. We must recognize that we live in extraordinary times and the traditionally-accepted rules about social engagement and knowledge are not necessarily at all relevant right now. One could also argue that turning away anyone who wants to be held by the Jewish community is perpetrating a negative act. Further, one may argue that accepting this couple into the arms of the community is a safeguarding of great national and social value.

*Halachah as the “wisdom of the feasible...Halachah safeguards the effective pragmatic functioning of the economic and social structure of an autonomous Jewish society...the

ethical element is given sufficient authority to modify or curb the applicability of the law.’ (ibid, p. 73)

* ‘Halakhah’s two guiding ideals, as presented to it by the Torah: “Thou shalt live by them [by Gd’s commandments] and not die by them,” and “Her ways are ways of pleasantness, and all her paths are paths of peace.”’ (ibid, pp. 77-81)

* “Whenever a mitzvah or a public need is involved, the prohibitions of shevut are waived.” (O.H. 306:1) Klein notes that the “whole area of shevut has to be mapped out anew because...what was in the spirit of the Sabbath a generation ago may not be considered so today.” (Klein, p. 85)

* Rebuking violators of the Shabbat laws. As Freehoff reflects in *Modern Sabbath Violator*, those who violate the Sabbath out of ignorance should not be adjudicated as provocateurs who are violating the laws due to l’hakh’it, the desire to desecrate. (Freehoff, p. 258-259) This couple falls into this category. Further, the fact that the couple wishes to have a rabbi officiate their wedding and are willing to craft their huppah to offer kavod to Shabbat indicates they are not provocateurs.

* In Tosafot 55a, it is written that if the law-violator will not listen to a rebuke, it is better not to address him/her about the prohibition. However, if there is any chance that he/she will “change his/her ways” then there is an obligation incumbent on the person present to challenge the behavior. The Rema (O.C. 608:2) builds on this, arguing that if a person is involved in a prohibited activity that is not explicitly identified in the TNKH, then the obligation to intervene depends on whether or not the person will respond to being corrected. If the law broken is explicit in the TNKH then one is obligated to rebuke the individual, even if we are certain the transgressor will not change his/her ways.

Classical Jewish ethical principles supporting my interpretation of the halachic process:

The ethical foundations of Judaism which support the halachic process highlight the importance of self-insight and self-knowledge. This is reflected in such statements as Rabban Gamliel’s, “Do not judge another until you have occupied his place.” (Mishnah Avot 2:4; Lewis, p. 25) This supports the flexible and compassionate side of halachah.

R. Nahman of Bratslav ‘teaches that one should seek out and raise up the “good point” in every other’; R. Abraham Kook “stated that every human being should be honored as a container of the Divine image;” and “Martin Buber [taught that] genuine dialogue must include mutual confirmation of the other where he or she is.” (Ibid, pp 27-28)

Jewish practice suggests that we are each responsible for the other. ‘The reason for the giving of the half-shekel as an offering [Exodus 30:11 – 15] is that “Gd...hinted that the soul of every Jew is bound to one’s fellow, for they are all from one Source. And the souls of all the Jewish people are considered as one. Therefore everyone should bring a half-shekel to demonstrate that each person (when joined) with every other person becomes one. Thus they are responsible for each other.” (Moshe Alshech *On Torah*:

Exodus -- “Kee Tissa”, #13; Lewis, pp. 43 – 44)

There are potentially serious consequences to refusing to engage with a couple who are sincerely seeking to connect to Judaism, despite their ignorance. The tradition offers three examples of the consequences of refusing conversion that are applicable to refusing this sincere couple.

(1.) Timna asks Abraham, Isaac and Jacob to convert her; they all refuse. She then becomes the concubine of Eliphaz, the son of Esau, and from her offspring arise Amalek. In the text, the sages teach this happened because she was pushed away by the Israelite patriarchs. (T.B. Sanhedrin 99b)

(2.) The teaching story told by Hazal, that those who were left behind by the Israelites as they fled Egypt became Amalek.

(3.) There are multiple reminders in TNKH to include the gerim.

By ignoring this couple’s sincere desire to connect Jewishly despite their ignorance and violations, rebuffing, rebuking or “leaving them behind” may well cause them to become gerim, to fall away from Judaism completely, or to become hostile toward Judaism and the Jewish people.

And lastly, “Reb Isaac said: Let respect for the community always be with you, for you will note that [when blessing the worshipers], the priests’ faces were turned toward the people and their backs were toward the Presence.” (Bialik and Revanitzky, p. 722).⁸

Conclusion: Is it permissible for this couple to wed on Shabbat?

I. Values and Principles of Classical Halachah, Paradigm Shift and Integral Halachah

(a.) What value(s) were the original prohibitions meant to serve? As explored earlier in this teshuva, there were first the TNKH-based Shabbat prohibitions. Then later came the development of the avot m’lachah and their subsequent derivatives as designed by the rabbis. The overarching values were to obey the commandments given through the TNKH: To observe, remember and delight in the Sabbath. Over time, this became one of the primary sources of connection between the Jews and HKBH. This is the overt religious aspect of the avot m’lachah.

For the people themselves, the prohibitions provided for very important individual and

⁸ Note: I have not structured this section to place Classical and Integral Halachah in comparison to one another as though each is a complete system with some overlapping aspects in relation to this she’alah. Rather, Classical Halachah is included within Integral Halachah, and Integral Halachah is called upon when the presenting situation cannot be resolved otherwise. In this case, the she’alah presents a situation that was barely considered until contemporary times. While there is much in Classical Halachah that points in the same direction as Integral Halachah, my conclusions cannot be fully drawn without invoking Paradigm Shift. (Based on editorial comment and clarification by Reb Daniel Siegel)

communal needs: The opportunity to weekly learn about and experience Jewish practice; a weekly time of rest and relief from physical labor, business activities and travel; an opportunity for reflection and offering gratitude; an opportunity to express needs and yearning; an opportunity for the entire community to be together; an opportunity for families to be together.

(b.) What value(s) underlie my proposed change?

(1.) Cultivating and honoring Shabbat: Shabbat-time and practice, for all the reasons listed above, is essential to Jewish life. I recognize, however, that for all the realities of life in this post-modern era, most Jews in northern California do not live bounded by Jewish communal institutions, geography/living space, and expectations. Thus, the question becomes how to uphold honoring and practicing Shabbat while welcoming in those who are least knowledgeable of Jewish life? To respond, I draw upon the principle that Jewish practice should be one that supports “all her ways are ways of peace.” For, what is the point of a religious and spiritual practice that does not invite in those who are interested in it?

(2.) I am called to serve Jews who experience themselves to be marginal to/marginalized by the Jewish community/Jewish practice.

(3.) Halachah teaches us not to humiliate others due to their ignorance of law and practice. This couple sincerely wants to engage in Judaism. Should I punish them both for their own ignorance and for the Jewish community’s failure to find a meaningful way to engage this couple? “It is better to uproot the Torah than to let the Torah be forgotten.” (T.B. T’murah 14b) If I rebuke this couple and this pushes them away, I stand responsible if this couple loses Torah/Torah loses them. (Levinson, p. 29)

(4.) How can I expect this couple to grab hold of Judaism if I offer no handle they can recognize and to which they can respond? Calling upon Classical Halachah, Integral Halachah, and Paradigm Shift, I create a handle for them. This demonstrates the beauty and pragmatism of Jewish Renewal. By recognizing this couple for “where they are,” I can help them find meaningful and appropriate ways to enter into Jewish community and practice.

This couple wishes to have Jewish guidance and engagement with their world, beginning with their wedding. They should not be turned away because of their ignorance in scheduling their wedding on Shabbat. It is possible to construct meaningful boundaries by requiring the couple to honor Shabbat during their ceremony and requiring transparency with witnesses that this Shabbat wedding is atypical. This is the intersection of Classical Halachah in its flexible/expansive/inclusive state, Paradigm Shift (recognizing the new era we live in and that we can be purposeful in crafting a particular Shabbat wedding), and Integral Halachah (that I can find a way to work meaningfully and purposefully with this couple and their witnesses while staying grounded in the tradition through incorporating classical practices and calling upon the tradition for guidance and boundaries).

As demonstrated in this teshuvah, throughout Jewish history halachists have not agreed upon the laws. Sometimes they disagree on how the law should be practiced; sometimes they disagree on definitions of the law itself. Since there is no set agreement and the classical and integral halachic processes themselves allow for multiple interpretations and practices, it seems reasonable to apply the halachic principles which guide me to respond to this couple with flexibility and empathy. Even in TNKH we are instructed to go to the priests or judges of our time for adjudication. (Deut 17:8 – 10)

Ultimately, this is about pikuach nefesh of the soul. All things being equal, I would rather not conduct a Shabbat wedding. But pikuach nefesh of the soul is not a metaphor. This couple is sincerely seeking what their neshamot crave and are willing to work with the boundaries I have set. To turn them away could be destructive to their neshamot. I cannot turn them away only because they are ignorant of Jewish practice.

II. The nature of Shabbat in the post-temple and post-exilic world and what do Paradigm Shift and Integral Halachah have to say about how we make Shabbat now?

Mourning the loss of the Temple. I find these words from Rabbi Brian Field to be compelling, “[Making] music on Shabbat....Many of the psalms, including the psalm for Shabbat, talk about playing all sorts of instruments in the Temple, yet playing these same instruments is seen as a violation of Shabbat in many communities. This self-imposed denial seems to have been an expression of mourning over the destruction of the Temple and for what it represented -- the Jewish people’s clear...vehicle of spiritual connection to Gd. This is consistent with what Judaism teaches about mourning the death of a beloved. For a certain period of time, as an expression of grief, you deny yourselves many of the basic pleasures...of life. But these denials last a specific amount of time – then you are expected to resume your normal life-style. Shouldn’t the same principle apply to the destruction of the Temple?” (Siegel, p. 6)

The avot m’lacha and all of their derivatives clearly demarcate Shabbat in the Temple (where the avot m’lachah took place) and Shabbat outside of the Temple (where the avot m’lachah are prohibited). The avot m’lachah were a rabbinic response to the biblical commandments on how to “practice” Shabbat in an immediately post-Temple period. Should they have complete veto power 2000 years later? Further, Field points out that, “Shabbat itself in Rabbinic Judaism assumed much of the role the Temple played in Biblical Judaism....What we did to create the Temple, holiness in space, now is to be avoided to make Shabbat, holiness in time.” (Ibid, p. 7)

The destruction of the Temple itself and the ensuing diaspora caused permanent changes in how Shabbat would be understood. In this teshuvah, using the Classical and Integral Halachic processes, I suggest it is appropriate with this particular couple to release those prohibitions which are based upon mourning what has been lost. Using the halachic process and the process of Jewish Renewal, I recognize the wide breadth of ways to celebrate, engage, challenge, and offer devotion to HKBH and all of creation during Shabbat time and the multiple ways to create meaningful Shabbat space.

Causing others to violate Shabbat. This couple is not yet involved with a Jewish kahal, nor are their family or friends. If others in their lives were, they would have been made aware of the Shabbat prohibition long before speaking with me. Thus, overall these are unaffiliated Jews. For them, bringing in awareness of Shabbat will only serve to educate them. And Gd-willing, they will become engaged enough that they will desire to become more involved Jewishly. For those who might be violating their regular Shabbat practice to honor and witness their family/friends' marriage – how wonderful for them to walk into a space which overtly recognizes and works to honor Shabbat. As Rabbi David Ostrich queries “Does the spiritual connection inherent in certain activities override the traditional Shabbat prohibitions?” (ibid, p. 22) I would answer in this case, “Yes.” Even the Conservative movement recognizes the need to engage the halachic process on Shabbat practice: “Whenever a mitzvah or a public need is involved, the prohibitions of shevut are waived.” (Klein, p. 85) Klein notes that the “whole area of shevut has to be mapped out anew because....what was in the spirit of the Sabbath a generation ago may not be considered so today.” (Ibid, p. 85) This is evidenced in the Law Committee's decision to allow driving in automobiles on Shabbat. For many contemporary Jews, “attendance at services is their only contact with religious life and practically their only awareness of the sanctity of the Sabbath....participation in public services on the Sabbath is in the light of modern conditions to be regarded as a great mitzvah, since it is indispensable to the preservation of the religious life of American Jewry. Therefore it is our considered opinion that the positive value involved in the participation in public worship on the Sabbath outweighs the negative value of refraining from riding in an automobile.” (ibid, p. 86) How much more so to bring a taste of Shabbat to Jews who do not even attend synagogue.

We are commanded to delight in Shabbat and to make it a day of rest. With thoughtfulness and care, it is possible to make this Shabbat wedding a day of delight, rest, and nourishment of the neshamah for everyone present, by celebrating the themes of Shabbat as they are demonstrated by this couple and by their community of family and friends.

This Conclusion demonstrates how each halachic issue outlined in this teshuvah can be successfully and meaningfully responded to by applying Integral and classical halachic principles as well as an understanding of Paradigm Shift.

III. Summation

Maggid Larry Gerstenhaber writes about whether or not to sound the shofar on Shabbat, as traditionally we are prohibited. He suggests that we, “blow it twice as much and twice as hard,” to celebrate the confluence of Shabbat and Rosh Hashanah. (Siegel, p. 56) For this Shabbat wedding, I am encouraged to highlight the celebratory and loving relationship we have with HKBH, with Shabbat, and with our tradition.

Rabbenu Tam and the Rema model a halachic process that allows for focus on issues

other than the avot m'lachah. By establishing transparency from the outset, this couple is able to establish spiritual and emotional authenticity – an excellent basis for starting a marriage. As the Officiant, I am able to serve and guide from a place of my own authenticity and integrity. Thus, the wedding becomes a unique teaching moment, demonstrating how the tradition can respond with kavod to an unusual yet sincere situation while also making obvious that this is not normative.

Rachel Adler in Engendering Judaism suggests that when preparing a dish, the “practitioner’s skill is not how ingeniously she disguises what she is preparing or compensates for what is lacking, but how well she chooses and honors the resources at hand.” (Adler, p. xxiv) May I do as well in crafting the wedding for this couple.

Notes

Additional summary arguments for permitting this couple to marry on Shabbat:

1.) Significant expense has already been incurred by this couple (monies given as non-refundable down payments to their venue and vendors). This is clearly permitted to be an extenuating circumstance for permitting a Shabbat wedding. (2.) While I would prefer the couple not wed on Shabbat, invoking the Classical and Integral Halachic principle of hora'at sha'ah, I would make the exception for this couple. (3.) To work around the timing issue (a.) the ketubah may be signed before Shabbat; (b.) the kinyan via the ring exchange can occur on Shabbat itself as the wedding is being held on private property. This means carrying is permitted so the rings can be held and then worn; (c.) if the wedding takes place late enough in the day, it could be arranged that yichud itself happens later in the evening, after havdalah. (Based upon editorial comment by Reb Daniel Siegel)

Translations

The Shulchan Aruch

Rabbi Yosef Caro

Orach Chayim 339 Saiyf Gimel-Dalet

and ha'Mapach

Rabbi Isserles (the Rema)

Orach Chayim 339 Saiyf Gimel-Dalet

Caro: There is no clapping or striking palm to palm, and no clapping of the palm upon the thigh. And do not dance [it is a] fence lest he repairs a musical instrument. And even if striking with a finger upon the ground, or upon the table, or one against one [finger against another finger; ie: snapping] as [in the] way [of] singers or rattle with a nut for the baby [ie: a baby rattle], or play with him with a clapper in order to silence him [the baby] all [of these] and the like [anything similar] is forbidden; [it is] a fence lest one repairs a musical instrument. To clap with the hand in a different manner, it is permissible [ie: make a shinui].

Isserles: The given today is that we clap and we dance. We do not protest with him because rather, it is better [that] they will be unintentional sinners, etc. [Ie: Better that the Jew err unintentionally than to intentionally violate the law.] And there are those who say that [in] this time that every thing is permissible, that we are not experts in making musical instruments and there is no need to make a decree lest one repair a musical instrument -- that this situation is not common. And [it is] possible that on the basis of this fact, it is customary to be lenient in all of this. (Tosafot Sof [at the end of the chapter], Perek [beginning with] “bringing of wine vessels”)

Caro: There is no judging.

Isserles: And therefore it is forbidden to seize and to imprison in the jail one who has been adjudicated as guilty and is now obligated for a certain punishment, in order that he not flee [ie: even though he might be a flight risk, he cannot be placed in jail on Shabbos.] All the more so it is forbidden to whip him. All of this is in the category of judgement. And if he flees it is not upon us [we do not have liability for this.] (Beit

Yosef, at the end; Siman 263 in the name of the author)

Caro: And do not [make] kidushin.

Isserles: But it is permissible to [make] kidushin where he does not have a wife and children (references Rabbenu Tam). And it is possible that this is the law for allowing entrance to the huppah. It is permissible (references the SMAG) notwithstanding that this law has not withstood the test of time for us [ie: Rabbenu Tam's ruling]. In any case, we depend on this in the case of an emergency [just before Shabbat], also because of the importance of honoring the dignity of creatures. [For example] it happened that one time the people [groom's and bride's parents] were not able to agree on the bride's dowry on the sixth day until the night [ie: erev Shabbat], that they made the huppah [performed the ceremony] and the kidushin on the night of Shabbat, since they had already prepared the celebratory meal for the nisuin and [this would] shame the bride and the bridegroom if they did not enter the huppah. In any case, from the beginning [from the outset of preparing for the huppah] there should be care not to have weddings thus. (And see the Tur, Even ha'Ezer, Siman 43)

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