

Guidelines for Permitted Uses of Digital Devices on Shabbat and Yom Tov, v.1

Rabbi Mark Asher Goodman

Sheilah:

As digital devices become more ever-present in our everyday lives, and as they begin to take on functions that far exceed their original purposes as tools of business and devices that facilitate writing, how should Jewish law permit or restrict the various uses of digital devices in a manner that is suitable to the observance of Shabbat or Yom Tov?

Teshuvah:

The digital age of the 20th and 21st century has presented fundamental changes to the daily life of all people, including Jews.

Where once we paid bills and wrote letters by mail, today we visit a website online and pay with a set of keystrokes.

While shopping for a desired item, the groceries, or a pizza once necessitated a trip to a physical location, today it requires no more than pointing and clicking; and before you know it, the thing that you desire is charged to a credit card and delivered to your door.

Even simple activities like reading a book or checking the morning paper have begun to be replaced by a version that is delivered as a series of ones and zeros instead of as a bound volume of paper.

The fundamental response of Conservative Jewish law to this point regarding digital devices is to look at it as part of the evolution of other 20th century inventions. Namely, digital devices like smartphones, tablets, and computers use electricity and require typing information into a keyboard - actions that are derivative *Toldot* of the 39

Forbidden categories of Shabbat and Yom Tov. Typing is a form of writing; electricity is a form of fire, or creative labor, or the completion of a circuit. Therefore, they were not to be permitted on Shabbat and Yom Tov.

The 1950 teshuvah by Morris Adler, Jacob Agus, and Theodore Friedman entitled ‘A Responsum on the Sabbath’ began to alter that. In essence, Adler, Agus and Friedman presented two key suppositions:

- 1) Conservative Jews are overwhelmingly not adhering to the rules of Sabbath as laid down by *halacha* due to changes in modern life.
- 2) Where possible, Jewish law should be amended in order to facilitate the communal Jewish observance of the Sabbath.

Even my contextualizing their understanding of the challenge as ‘where possible’ is up for debate. As Rabbi Bradley Shavit Artson once succinctly framed the teshuvah in a class: ‘We have a teshuvah that explicitly permits making a fire on Shabbat - because that’s what an internal combustion engine does - it takes fuel and produces fire.’ Rav Artson was using this point to demonstrate the ingenuity and flexibility of Conservative *halacha*. Others, it has been observed, have stated the same thing in a more condemnatory nature towards the CJLS ruling on the Responsum on the Sabbath - the movement permitted the forbidden. To this line of thinking - those that do not hold by the Adler-Agus-Friedman teshuvah - the phrase ‘where possible’ does not include starting a car or flipping on a light. If one holds it is impossible to drive on Shabbat, no amount of logical rationalization will lead to a result which will allow driving ‘in order to facilitate communal observance’.

More recently, the CJLS has approved the teshuvah ‘Streaming Services on Shabbat and Yom Tov’ by Rabbi Joshua Heller, a brilliant, erudite, and thorough exploration of the whys and hows of using digital devices during the exigent circumstances of a global

pandemic to allow people to gather ‘virtually’ in a minyan on Shabbat. Rav Heller uses a variety of responses to deal with the specific halachic problems that are presented by use of an electronic device like a computer with its accompanying microphone and camera on the Sabbath.

This teshuvah, it will be noted, deals with the same halachic issues as Daniel Nevins 2012 teshuvah ‘The Use of Electrical and Electronic Devices on Shabbat’, but will ultimately reach the opposite conclusion in one specific area. Whereas Rav Nevins reached the conclusion that computers and tablets are *assur* - forbidden - on Shabbat and Yom Tov due to issues of *toldot koteiv* - derivatives of the prohibition on the category of writing, this *teshuva* will conclude that they are *mutar* - permitted. The fundamental reason is that our approaches to Jewish law are different. Rav Nevins builds his opinion starting from a basis of what is already forbidden and permitted, and whether there is a compelling reason to permit that which is currently forbidden.

This teshuvah begins in a different place. Namely, it asks these specific questions:

- What are the majority of Conservative Jews doing on Shabbat?
- Is it currently forbidden by the CJLS?
- Is that truly a function of the original intent of the 39 *melachot* of Shabbat - in letter and in spirit - or merely a byproduct of the methodical evolution of Jewish law along one specific path?

To some degree, what I am proposing is this: Conservative halacha has evolved along a strict set of paths that has rendered its current position regarding electronic devices vastly irrelevant to the majority of Conservative Jews. Pardon the pun, a hard ‘reboot’ of the system regarding electronics is needed along different ideological considerations in order for widespread Shabbat observance for Conservative Jews to continue. The alternative is for the Conservative movement to continue to draw only narrow parameters by which Conservative Jews can follow the rules of Shabbat, with the result

being that virtually no Conservative Jews find themselves within those narrow parameters.

The Parallel and Symbiotic Relationship Between Lawmaker and Catholic Israel

Solomon Schechter once wrote “Since … the interpretation of Scripture or the Secondary Meaning is mainly a product of changing historical influences, it follows that the centre of authority is actually removed from the Bible and placed in some *living body*. … This living body, however, is not represented by any section of the nation, or any corporate priesthood, or Rabbihood, but by the collective conscience of Catholic Israel as embodied in the Universal Synagogue.”¹ This principle is colloquially referred to by Conservative Jewish scholars as ‘Catholic Israel’, and fundamentally informs us that the practices of the vast majority of Conservative Jews is critical in informing the spiritual leaders of the movement in how they should proceed in the making of law.

A complementary principle exists in the Talmud, when Rabbi Yehoshua states

אין גוזין גזירה על הציבור אא"כ רוב הציבור יכולן לעמוד בה

‘one does not make a decree upon a community unless the majority of the community is able to uphold it’². This specific situation of permitting digital devices on Shabbat and Yom Tov is a mirror image of this - we are attempting to remove an existing decree around electronics in light of the reality that the vast majority of Conservative Jews are not following that law, rather than refraining from making a law that no one would hold by. Nonetheless, the importance of taking Conservative Jews out a halachic cul-de-sac that we have gone down cannot be understated.

The 1950 Responsum on the Sabbath further elucidates this precept. It states “In this spirit it is our consensus that riding to the synagogue on the sabbath and the use of

¹ Introduction to *Studies in Judaism*, First Series, (Philadelphia, 1896) as cited in Dorff, Elliot *The Unfolding Tradition*, pg. 65.

² Bava Batra 60b, Bava Kama 79b

electric lights in the course of this journey or for other purposes are comprised in the general category of oneg shabbat, the delight of the sabbath.”³ Conservative Jews are now using electricity for reading and communicating and to virtually attend synagogue when circumstances make it impossible to attend in person, all in ‘the general category of oneg shabbat’.

We have reached a point in time where digital devices have become wholly ubiquitous for most of modern life, and have become seamlessly integrated into every facet of our lives.⁴ Many of us no longer receive a physical morning newspaper, but rather flick our fingers over an ipad to read the news with our coffee. We can effortlessly talk to our parents or our children by yelling, ‘hey google, call mom’, or check and see if our friends a few blocks away want to come over for a playdate on Shabbat afternoon. These things are already part of ‘oneg shabbat’ for the majority of Conservative Jews. Where these actions are already in widespread use, where they do not explicitly violate *av melachot* of Shabbat, and where they contribute to oneg shabbat, it is logical for the Conservative movement to explore how best for Jews to use digital devices that is directed by Jewish spiritual and halachic practice.

Moreover, our entire Jewish community has reoriented itself digitally during the Covid-19 pandemic and quarantine. Many of us found solace and comfort in Zoom or Facebook Live⁵ services streamed from our local synagogues - and found that the

³ Adler, Agus, & Friedman, *A Responsum on the Sabbath* as cited in Dorff, Elliot *Conservative Judaism Our Ancestors to Our Descendants*

⁴ It is probably worthwhile somewhere in this paper to note that all cars today have many, many computers in them. The 1950 Sabbath Responsum permits driving to shul, and when one powers up their car to drive to shul, the electrical system of the car powers up computers that run the anti-lock brake system, the systems diagnostic, the emissions control system, the engine temperature monitor, your keyless entry, and your backup camera, not to mention the GPS system your car may have. Anyone that drives to synagogue uses not one but many computers on Shabbat.

⁵ ‘Zoom’ is an application that was created for business meetings and allows multiple participants to view one another and speak. ‘Facebook Live’ is a ‘one-way’ streaming service available over the Facebook social media site - the service is viewable by all the participants, but the participants cannot see one another.

electronic intermediary which facilitated the connection was not spiritually detrimental to us, but rather religiously beneficial. Technology on Shabbat did not deaden; it uplifted.

It is certainly possible to consider the halachic implications of ‘Catholic Israel’ by saying ‘if Jews overwhelmingly do X, and *halacha* informs us that they should rather be doing Y, we must redouble our efforts and revitalize stricter Sabbath observance.’ One must ask three questions off of this premise.

First, what are the chances that an effort to change the *halachic* behavior of Jews will be successful? We are reminded of the halachic principle ‘תְּפַזֵּת מְרֻבָּה לֹא תְּפַזֵּת’ - ‘the one who reaches for too much will grasp nothing’.⁶ An attempt to change pervasive behavior that is commonplace amongst Jews - behavior that has ritual implications rather than moral ones, mind you⁷ - must be an attempt that has some probability of success. It is hard to evaluate the possibility of success in swaying a large number of Conservative Jews to give up their digital devices on Shabbat, but suffice it to say the effort seems extremely daunting. Anecdotally, many of my colleagues have given what I would call the ‘take a break from your cellphone on Shabbat’ sermon over the past 10 years.⁸ It would seem from the data that I will present later in this article that those sermons have not swayed the majority of Conservative Jews.

Second, it should be asked ‘if the Conservative movement made a sincere effort to emphasize desisting from digital devices as a national education, religious, and spiritual

⁶ Yoma 80a

⁷ I say this because one could use an argument like this regarding moral principles to justify rabbis in the Southern United States defending slavery before emancipation, or any other manner of morally repugnant practices. ‘Everybody does it and it’ll never change’ is a profoundly different argument when you use it to discuss reading the newspaper on a ipad on Shabbat versus the enslavement of another human being, the systematic subjugation of women, or the denial of LGBT individuals their right to equal treatment.

⁸ An entire national organization exists (existed?) for this purpose. A group called ‘ReBoot’ envisioned a ‘Sabbath Manifesto’ that included a ‘national day of unplugging’ on Shabbat. This effort gained some national notoriety, but has been much less prominent over the past several years, and it seems the project has effectively folded altogether - there was no ‘national day of unplugging’ held in 2020. One could reasonably conclude that the failure of this widespread and well-funded effort to revitalize Shabbat observance through attempting to teach people to try and unplug should be seen as instructive.

effort, what other issues would need to be sidelined in order to make that effort?' In the first part of my rabbinic career, I was a day school educator and administrator. And on some level, the fundamental question the educator asks when they compose a curriculum or teach a lesson is 'why teach *these* things and not *those* things?' Time is finite, and you cannot teach everything. So should the movement prioritize the spiritual education of Jews of the 21st century to get Jews to put down their digital devices on Shabbat? If so, what will it mean that they will *not* be teaching or emphasizing in exchange? Kashrut education? The home rituals of Shabbat and Holidays? The centrality of Israel in Jewish life? The rich history of the Jewish people? The moral and ethical doctrines that are central to Judaism? Racial justice? Exploring the destruction of our environment and the onset of climate change? Every topic a rabbi chooses to teach - every sermon a rabbi gives - is a choice of something else that they are not going to discuss or focus on. Fighting to change the minds of Jews over digital devices, even if it is laudable and important, comes at the expense of some other important issue.

Third, is a full moratorium on digital devices truly the only halachic way in which to proceed? Is there a way to permit some usage of digital devices on Shabbat and Yom Tov that would both adhere to *halacha* and be widely practicable by Conservative Jews? If *halacha* truly forbids these devices completely, beyond any shadow of a doubt, then no attempt should be made to make them kosher on Shabbat.

My central premise is one many will reject out of hand: 'Conservative *halacha* says X, but people do Y; perhaps we should consider ways to make at least some of Y mutar.' This is an issue in the movement akin to the days before the so-called driving *teshuva* was passed: thousands of rabbis looking out at their suburban synagogues into a parking lot full of cars and saying 'they all broke halacha to get here... but I'll just pretend not to see.'

If the vast majority of Conservative Jews are using digital devices on Shabbat and Yom Tov, and there are ways of guiding that usage so as to capture as much of the spirit and letter of Jewish law while also helping them to experience Oneg Shabbat, it would seem the duty of the leadership of Conservative Jewish practice to guide Am Yisrael along that path. On this matter, Catholic Israel has lead the way - and we must understand how best to guide them onward within the boundaries of halacha.

This final point is important as a legal principle in and of itself - the idea that the citizens of a society subject to law are symbiotically involved in the crafting of those laws. For the lawmakers of a society to become estranged from the community they serve - to be too far ahead or too far behind the community for whom they are entrusted to legislate - places them in danger of becoming irrelevant at one extreme and authoritarian at the other. As Elliot Dorff framed it, “I … want Jews to adopt a form of Jewish belief and practice that integrates the best of tradition and modernity. … I participate in a *community* of people who are on the same quest, and we make those decisions as a *community*.⁹ Maintaining a parallel and symbiotic relationship between community and leadership should be of supreme importance.

Puk Chazi - Survey Results

Anecdotally, it had become apparent to me as both parishioner in Conservative shuls and as a rabbi of a Conservative synagogue that many of the people I knew used digital devices on Shabbat. However, it seemed apparent that a broader survey of Conservative Jews that I did not know would do a better job of collecting a cross-section of representative behavior from a wider group of Conservative Jews. To do so, I conducted a survey.

The survey asked the following four questions:

⁹ Elliot Dorff, ‘The Unfolding Tradition’, page. 467; italics are from the original text

Q1) Are you a Conservative Jew, or a member of a synagogue affiliated with the Conservative or Masorti movement?

Yes; No

Q2) Do you use digital devices on Shabbat and Yom Tov?

Yes; No

Q3) Which of the following devices do you use on Shabbat or Yom Tov? Click all that apply.

Smartphone or cellphone; Laptop/Desktop computer; Tablet/ipad; e-reader; None of these

Q4) For what purposes do you use digital devices on Shabbat or Yom Tov? Click all that apply.

Watching or Zooming Live Streamed Services;

Reading books;

Reading the newspaper, magazines, or websites;

Video chat with friends and family (Facetime/Zoom/Portal/Skype, etc.);

Texting /instant messaging with friends and family;

Internet shopping;

Watching tv or movies;

Checking email;

Writing emails, and/or other writing;

Playing video games;

Making phone calls;

General web surfing;

I carry a phone 'just in case';

I do not use or carry any digital devices on Shabbat;

Other

The survey was conducted anonymously using Google Forms, and was disseminated to rabbis that agreed to participate from the Ziegler School of Rabbinic Studies, as well as

to Conservative Jewish friends and colleagues on Facebook, with a request that a repost to a congregation be relayed back to me. Congregations in Pittsburgh, PA, Erie, PA, Bridgewater, NJ, Detroit, MI, and Denver, CO participated, as well as various individual rabbis and congregants.

The survey was conducted between June 10 and June 25, 2020. This is in the middle of the pandemic quarantine for Covid-19 that took place in 2020: for many Jews nationwide, the only way to participate in communal prayer, including the recitation of Kaddish with a Minyan on Shabbat or Yom Tov, was over a computer, tablet, or smartphone.

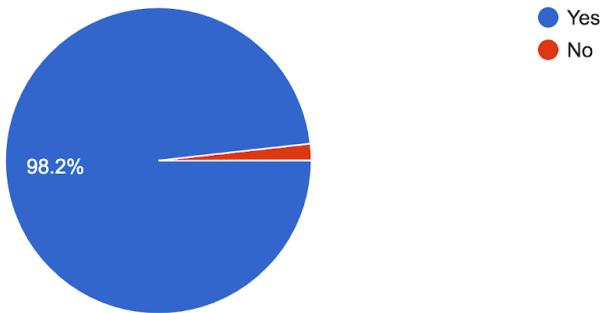
Because the survey was primarily disseminated over social media emanating originally from my account, it certainly does not conform to the standards of survey methodology that a trained sociologist might use. However, with a total of 340 responses tallied, the results may not be precise, but they are enlightening.

The results of the survey were as follows:

Q1) A total of 98.2% responded that they were Conservative Jews, or members of a synagogue affiliated with the Conservative or Masorti movement

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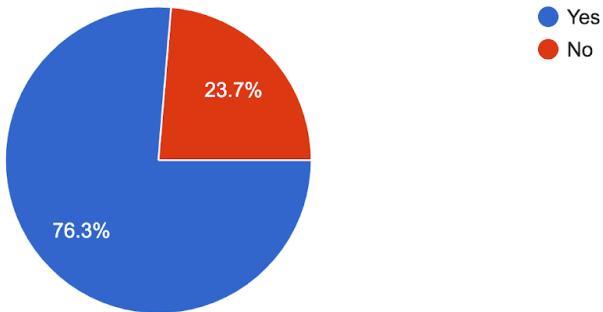
339 responses



Q2) A total of 76.3% of those surveyed responded that they used digital devices on Shabbat and Yom Tov.

Q2) Do you use digital devices on Shabbat and Yom Tov?

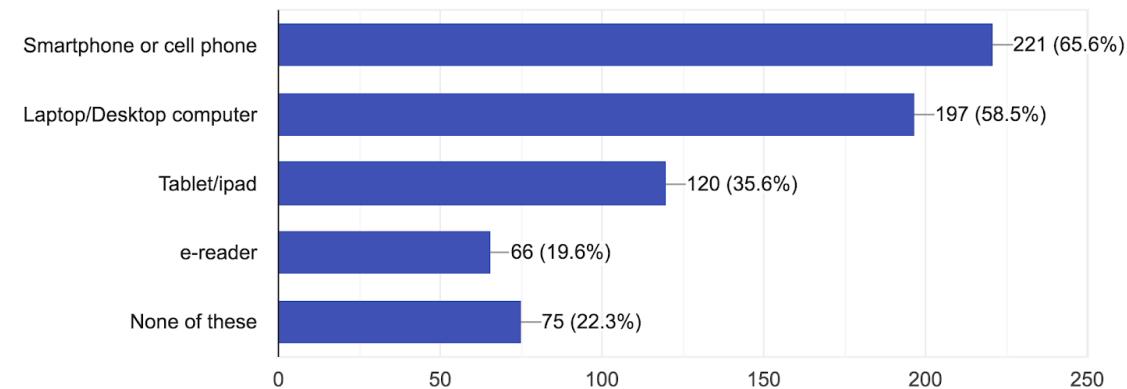
338 responses



Q3) A total of 65.6% of Conservative Jews said that they use their smartphone or cell phone on Shabbat or Yom Tov. 58.5% use their laptop or desktop computer. 35.6% use a tablet or ipad. 19.6% use an e-reader. 22.3% do not use any of these devices on Shabbat or Yom Tov

Q3) Which of the following devices do you use on Shabbat or Yom Tov? Click all that apply.

337 responses



Q4) Of those who responded to the survey, the largest single reason for the use of a digital device on Shabbat is watching a live stream or Zoom of Shabbat/Yom Tov services, which 62.3% of respondents used it for.

The next-most frequent use of digital devices on Shabbat/Yom Tov was the use of text messaging or instant messaging with friends and family, something 48.6% of respondents took part in. Checking email was something 47.1% of respondents did, but actually writing emails or other digital documents was something only 31.3% did: something significant to note, as it indicates that a significant number of Conservative Jews understand the distinction between permitted and forbidden uses of a digital device on Shabbat. Reading books online was something 40.4% of respondents did; 42.9% of respondents read magazines, newspapers, or websites online.

Another important distinction to note was that a significant number of Conservative Jews surveyed- 30.1% - carry a phone on Shabbat 'just in case'. Some of these individuals are certainly part of the larger category of Jews that find digital devices perfectly alright on Shabbat, and some of these individuals are certainly doctors or first responders that have halachic dispensation for any possible violation of *muktze*¹⁰. But

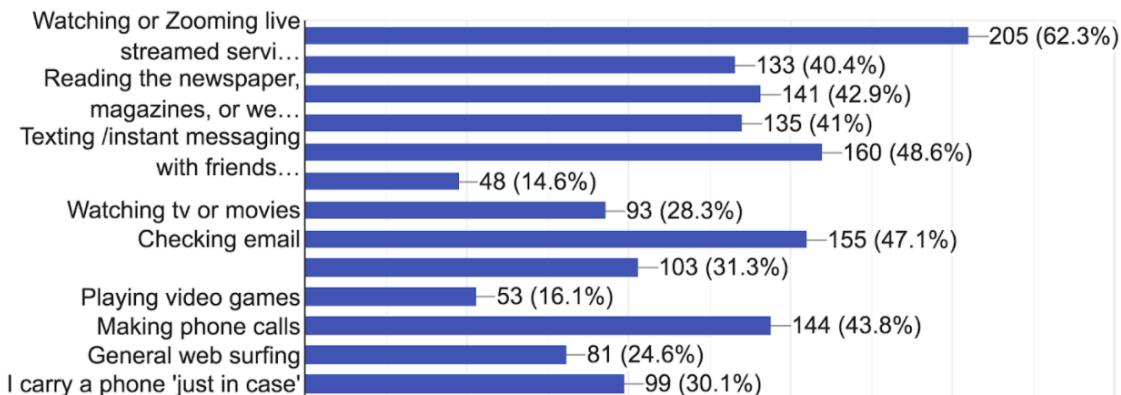
¹⁰ *Muktze* - מוקצה - is the 'setting aside' of items that are typically used for one of the 39 categories of labor which is forbidden on Shabbat.

some of these individuals are certainly people that do not otherwise use devices on Shabbat, but want a device to contact friends or family in case of an emergency, a topic we will return to later.

A smaller number of responses was recorded of individuals that took advantage of digital devices to do leisure activities like playing a video game or watching a movie: only 16.1% said they played video games, and only 28.3% said they watched tv or movies. Other results: 14.6% said they took part in internet shopping - something that will also be worthy of addressing further on; 43.8% make phone calls; and 4.8% responded with 'other'.

Q4) For what purposes do you use digital devices on Shabbat or Yom Tov? Click all that apply.

329 responses



The survey results could be interpreted a variety of ways. But they demonstrate a central tension that I had been attempting to investigate further: that a wide majority - 76.3% of Conservative Jews surveyed - use digital devices on Shabbat. Furthermore, a near majority, varying from 40.4% to 48.6%, use digital devices for leisure activities like reading and communicating via text with friends during Shabbat and Yom Tov.

Limiting Heschelian principles in order to better fulfill them

"He who wants to enter the holiness of the day must first lay down the profanity of clattering commerce, of being yoked to toil. He must go away from the screech of dissonant days , from the nervousness and fury of acquisitiveness and the betrayal in embezzling his own life. He must say farewell to manual work and learn to understand that the world has already been created and will survive without the help of man. Six days a week we wrestle with the world, wringing profit from the earth; on the sabbath we especially care for the seed of eternity planted in the soul. The world has our hands, but our soul belongs to someone else. Six days a week we seek to dominate the world, on the seventh day we try to dominate the self."¹¹

The principles that Abraham Joshua Heschel laid out in his master work 'The Sabbath' have become embedded in the Conservative mindset as much as any idea ensconced in the Shulchan Aruch or a commentary of Rashi.

Heschel's belief in a radical sense of awe; his notion of re-engaging with God's natural world on the day rest; his thesis that the labor of humans is to produce technology, and that engagement with technology distances us from nature and God; all these have become the essential commentary upon our understanding of the *melachot* of Shabbat in a time when weaving and winnowing, threshing and grinding, trapping and skinning are no longer apropos of our regular experience. To that end, modern humans have reoriented the central tools of 'work' to be those things which utilize computers. Working people today send emails and write documents and produce videos and design buildings - using the computer as a tool. And thus and rightly (for a time), it was decided that the computer was a tool of labor: a device of writing; a tool for work and craft. It was technology to dominate the world.

But we all know that computing devices are now much more than that. Your pocket-sized smartphone is more powerful than the most powerful supercomputer of the

¹¹ Abraham Joshua Heschel, 'The Sabbath', page 13.

1970s. The Cray-1 supercomputer had an 80-hertz processor that could perform 133 million operations per second; it was the size of three office cubicles and weighed 5.5 tons.¹² The iPhone 11's A13 microprocessor operates at 2.66 gigahertz - over a hundred million times faster. It can perform 1 trillion operations per second. The entire phone - battery, two cameras, screen, gyroscope, GPS tracker, metal case, circuit board and microprocessor, weighs just under 7 ounces. We are no longer talking about the same device.

Its uses are no longer for work. We play games on devices. We read books and magazines from the library. We call our parents and our friends and speak to them face to face. We listen to music and watch videos. We send quick notes to update our spouses where we are or to invite the neighbors to come over. We get emergency weather alerts, and updates about urgent domestic terrorism situations in our communities.

Our devices are a part of our everyday lives - and 'everyday' has come to include Shabbat.

As the survey above demonstrates, most Conservative Jews (76.3% in the survey) use these devices on Shabbat. The current halachic stance of the CJLS is 'they shouldn't' - or more precisely 'they may, if they use it only for Zoom services, and do not interact with the device in any way other than appearing on camera.' This position is broadly at odds with what people currently do - and what they are willing to do. And so ultimately, when a rabbi tells the majority of their congregation, using Heschel's beautiful language of 'Six days a week we seek to dominate the world, on the seventh day we try to dominate the self', to 'unplug' completely for Shabbat, the rabbi is overwhelmingly ignored, because for many individuals, unplugging is unrealistic for them. Yes, for some, desisting from devices is valued and valid, and for those individuals, they craft a

¹²

http://bitsavers.trailing-edge.com/pdf/cray/CRAY-1/2240004C_CRAY-1_Hardware_Reference_Nov77.pdf

Shabbat for themselves that is electronics-free. But to use a one-size-fits-all approach for all Jews; a Nazirite vow of sorts on all devices for Shabbat, no longer makes sense. We need, instead, to consider guiding Conservative Jews on how they might choose to use a device within halachic restrictions.

By telling Jews ‘the only way to “dominate the self” is a 100% moratorium on all devices’, we are applying Heschel’s principles in a fundamentalist way. ‘All or nothing’ results in a lot of people doing nothing. If halachically possible, it is time to permit devices to be used on the Sabbath and Yom Tov within halachic parameters that add to the sabbath experience. We want people to engage with the natural world, to connect to God, and to have a day of rest - and if all of that can be accomplished while a person also reads or talks to their grandchildren or goes to virtual synagogue without the hassles of setting up their streaming device 12 hours in advance, they should be permitted to do so.

...

“Labor is a craft, but perfect rest is an art.”¹³

To say ‘you can’t read a book on your ipad because technology is bad’ eliminates an entire category of Jews who would then equally disregard the advice to use the Sabbath to reconnect with nature, take a walk, enjoy a park, or admire a flower. Instead of saying ‘either/or’ to technology, this teshuvah posits the possibility of a ‘both/and’. In order to fully engage in Shabbat, if you want to read an article on your laptop, you should also remember to enjoy the shade of a beautiful tree, or take a walk and feel the crunch of day-old snow under your boots.

¹³ The Sabbath [find this source, somewhere between 13 and 26]

It is more compelling and more practical to tell a Jew ‘you may text your friend and meet up at the park for a walk’, reflecting a thing that they already and will also contribute to their oneg shabbat, than it is to tell a Jew ‘you may not text a friend on Shabbat. You should have made plans beforehand’, knowing full well that this suggestion will not be heeded. To those that care deeply about desisting from technology on Shabbat, their actions are holy and laudable, and their decision should be encouraged because it is spiritually relevant to their practice. But to condemn those that do behave in this manner, or to assume that they are ‘not sufficiently Shabbat observant’ because they used technology in part of their restful Shabbat experience is likely to result in Jews not bothering to observe any facet of the Sabbath at all.

We must not be Heschelian absolutists in our construction of the Sabbath experience. We must instead encourage the integration of Heschel’s principles of the Sabbath, the observance of Halacha, and the realities of Catholic Israel in the 21st century. If technology can be used to further the Sabbath experience and does not explicitly violate Shabbat, it should be considered.

Keeping and Breaking - Aseh and Lo Ta’aseh for Shabbat and Yom Tov

There are five commandments of Shabbat - two positive commandments (*mitzvot aseh*) and three negative commandments (*mitzvot lo ta’aseh*)¹⁴.

The first positive commandment is to rest - with the rabbinic understanding being ‘to desist from labor’- as the Torah says

וביום השביעי תשבח

“And on the seventh day you shall rest.”¹⁵

¹⁴ Maimonides, Mishneh Torah, *Sefer HaMitzvot*, positive commands 154 & 155, negative commands 320 321 & 322.

¹⁵ Exodus 24:12

The second commandment is to include special prayers for Shabbat to extoll, glorify, and bless the day, as the Torah says

זכור את-יום השבת לקדשו

“Remember the sabbath day and keep it holy.”¹⁶

According to the Rambam, the rabbis further elucidated this verse in the *Mechilta* by commenting

זכור את-יום השבת לקדשו - לקודשו בברכה

‘Remember the sabbath day to keep it holy - to keep it holy (is) with blessings’.¹⁷

The first negative commandment is to desist from any work, as the Torah says

לא-תעשה כל- מלאכה

“Do not do any work.”¹⁸

The second negative commandment is that one should not travel on Shabbat, as the Torah says

אל-יצא איש ממקוםו ביום השבעה

“Let no person leave their place on the seventh day.”¹⁹

The third negative commandment is for the community not to punish those that are due the capital punishments of the *Beit Din* on the day of Shabbat. Needless to say, this *mitzvah* is no longer operative.

There are twelve commandments regarding the cessation of labor on Yom Tov; six positive commandments to observe a *mikreh kodesh* - a sacred event - for Sukkot and

¹⁶ Exodus 20:8

¹⁷ *Mechilta*, Perek Yitro

¹⁸ Exodus 20:10

¹⁹ Exodus 16:29

Shmini Atzeret, the first and seventh day of Pesach, Rosh Hashanah, and Shavuot; and six negative commandments to do no work.²⁰

It seems worthy to raise the specific Toraitic *d'oraita* commandments of the days in order to center on the specific goal of each mitzvah - the cessation of labor, the recognition of holiness, and the importance of rest. This is both the spirit and the letter of the law.

It seems worthy of note that permitting the use of devices on Shabbat would not explicitly violate any of the Torah *mitzvot* of Shabbat.²¹ On the contrary: for the person that uses a device on Shabbat in order to Zoom to services, it would facilitate their ability to fulfill one of the positive commandments of Shabbat, the command to include special prayers for Shabbat to bless the day.

And for many Jews, the ability to use a device in part of their resting, refreshing, and relaxing from the week's labors would enhance their observance of the day.

Quarantine and the Heller Teshuvah

The quarantine of people worldwide for Covid-19 created a crisis for Jews in need of spiritual support. People in need of saying kaddish with a minyan; people with a desire for spiritual connection and prayer who needed the leadership of a Sheliach Tzibbur' people that were isolated and alone in quarantine and in need of seeing the faces of their friends from shul. And, synagogues quickly adapted to fill the need, streaming their services and uplifting their communities.

Of course, questions quickly developed on how best to do this, and questions were posed about whether a minyan can be constituted online and how congregations should

²⁰ Rambam attaches these commandments the phrase כל מלאכת עבודה לא יעשו בהם in Exodus 12:17 to Pesach and the phrase לא תעשו כל מלאכת עבודה in Leviticus 23:21 to Shavuot, Rosh Hashanah, Sukkot, and Shmini Atzeret.

²¹ As will be discussed further on, the potential violation of Shabbat is of *shvut* or a *toldot koteiv*, both of which are rabbinic injunctions.

set up their Zoom to best adhere to halacha. However, the guidance issued had two areas of difficulty: first, it placed unrealistic expectations upon congregants of how they should set up a device in advance in order to not come into direct contact with it, and second, the guidance predicated the rulings around streaming of services on the principles of *sha'at ha dahak* and *hora'at hashaa'ah* - essentially, that a pandemic quarantine qualified as exigent circumstances that would allow a temporary alteration of the law, but that things would revert after the quarantine was over. Neither of these cases seems likely or practical.

It is critical that halachic rulings be of practical application in real life circumstances. As the rabbi of a small synagogue, and as someone that has participated in digital minyan for several months, the difficulty of operating within the limitations of the Heller teshuvah have become readily apparent.

Digital minyan only functions effectively if volunteers or synagogue staff are able to use their touchpads, mouses, and keyboards during services. There are many instances in a Zoom service when someone needs to jump in. A few of those instances include: a pair of congregants are discussing the afternoon's shopping list, unaware that the entire *kehillah* now knows they need toilet paper, and needs to be muted; a new *shaliach tzibbur* needs to be unmuted; an uninvited and disruptive guest needs to be expelled; the volume needs to be adjusted; a service leader's internet connection crashes and a new *sha"tz* needs to be found; a congregant is running out of battery on their device and needs to plug it in; a microphone isn't working due to some software bug and a program needs to be closed and re-opened; a driver or app needs to be downloaded and an 'ok' must be clicked; the wrong URL link to the service was inputted and a person needs to go back to the synagogue website or email bulletin to find the right URL link; etc.²²

²² Many of these issues parallel challenges that have arisen from the Adler, Agus and Friedman teshuvah on Shabbat regarding driving, such as 'may one listen to the radio on the way to synagogue?'; 'if I am low on gasoline, may I stop at a gas station?'; may I use my smartphone to help with directions to shul?' No CJLS teshuvah was ever written as follow up covering these issues, and as such, *Marei D'Atra* have had to use reason to either permit or restrict the issues that result from driving to shul on Shabbat. The use of

In each and every one of these situations, the action taken to correct the problem for either the broadcasting synagogue staff or the congregant involves a click, a swipe, some typing, or some interaction with the power source of a digital device. None of the above listed interactions would be permitted under the strictures of the Heller teshuvah. If a person has a minor problem like the one above and has to stop and wonder ‘must we find a non-Jewish staff person to click that button?’ or ‘if I just click this button, I will be online - but is that permitted?’

For *halacha* to be compelling, widely adopted, and meaningful, it must be widely practicable. It is for this reason that the *Mishnah* in *Sukkah* permits one to build a *Sukkah* on a ship, or on a camel, or in a tree, or using trees as walls, or in a wagon, or as a lean-to, or using bedposts.²³ Judaism wanted those that desired to fulfill the *mitzvah* of *leysheiv basukkah* to be able to do it, even if they were sailors or merchants or on a journey, or if lacked the ideal physical implements with which to construct a *sukkah*. They wanted people to be able to dwell in the *sukkah*, so they tried to make the rules for constructing a *sukkah* flexible and logical.

In order to meet the needs of digital shul-goers, the same must be accomplished. There are compelling halachic reasons - for the needs of the community and the needs of mourners on Shabbat and Yom Tov that want or need to meet online, for the restful and *oneg* aspects of the Sabbath, and for the needs of maintaining widely accepted, straightforward, and logical standards regarding digital devices, *halacha* needs to evolve.

A further and more moral and personal issue regarding digital prayer services and communications has been revealed by the Coronavirus quarantine, and that is the

digital devices on Shabbat, like it or not, opens the same tangential and related questions - ‘if I can tune into a Zoom of my service, may I also also read a digital book from the library?’

²³ Mishnah Sukkah 1:8, 1:11, 2:2, 2:3, 2:4

degree to which it alleviates loneliness for isolated Jews. Rabbis have long framed one of the most important functions of a synagogue as ‘creating and maintaining community.’ We are all familiar with some version of exegesis on the verse

וְעַשׂ לִי מִקְדָּשׁ וַיֵּשֶׁתְּנִתְּנִי בְּתוֹכָם:

“And let them make Me a sanctuary that I may dwell among them”²⁴ which discusses the notion that God lives amongst the gathering of the people, not in the physical walls of the tabernacle which they have constructed. Coronavirus destroyed the physical ability to gather in person - and so people were sequestered for months at home, alone or with their families. Digital communication became the only way to see the face of other people and to combat loneliness. Although some synagogues and Jews engage in weekday prayer and therefore could use a digital device without halachic restriction to ‘meet up’ with friends, for many Jews, gathering with friends at synagogue occurs on Shabbat and holidays alone. For many single people, and for the elderly, disabled, and immuno-compromised, gathering on Shabbat virtually has become a critical link to maintaining human connection and combating isolation.

Some of these issues existed before Coronavirus and will persist afterwards. Judaism as a community must seriously consider the importance of helping people to gather and be together from far apart as superseding any possible bygone legal fences that may prevent digital devices which facilitate communication and connection.

The Critical Issue is Writing

The two clear-cut halachic issues regarding digital devices on Shabbat and Yom Tov as they have evolved to this point are the *toldot melacha* around electricity and the *av* and *toldot melachot* around writing.

²⁴ Exodus 25:8; see commentary of Or HaChaim, (Chaim ben Moshe ibn Attar 1696-1743)

Electricity has long been established as halachically permissible on Shabbat for Conservative Jews.²⁵,²⁶ The closing of a circuit does not truly count as *makkeh hapatish*, since as Rabbi Nevins put it, the term originally ‘refers to the permanent completion of a labor’, and not the completion of a circuit that allows electricity to flow. It is also not *Ma’avir* or *Ma’akeh*, igniting or extinguishing a fire, since no physicist would equate electricity, the conveyance of charged particles that flow from a source to a consuming device, with fire, the combustion of matter into energy which in turn produces light and heat.

The other various possible violations have been extensively covered, and dismissed, by the Nevins *teshuva* cited below.

The purpose of this *teshuva* is not to re-legislate matters of *halacha* that sages like Daniel Nevins, Arthur Neulander, and Jacob Agus have already legislated, nor do I presume to have the technical understanding of electricity that other rabbis have acquired in order to rule on this topic. We stand on the shoulders of giants, and as great Conservative rabbis of the past have determined electricity for the purposes of *oneg shabbat* should be permitted, I will rely on their rulings in the understanding of why the turning on of electricity is permitted on Shabbat.

The area to examine, then, is in regards to writing on Shabbat.

Writing is not permitted on Shabbat, as it is one of the 39 *av melachot* of the Sabbath.²⁷ The *av melachot* of Shabbat have been interpreted to be biblically prohibited *de’oraita* rulings, although with the exception of carrying and lighting a fire, the other 37 categories of forbidden labor are rabbinically derived from things that were done in order to build the tabernacle. They are not stated in the Torah as acts which are explicitly forbidden on the Sabbath.

²⁵ Daniel Nevins, *The Use Of Electrical And Electronic Devices On Shabbat* <http://www.rabbinicalassembly.org/sites/default/files/2020-05/ElectricSabbathSpring2012.pdf>

²⁶ Adler, Agus, and Friedman, *ibid.*

²⁷ Mishnah Shabbat 7:2

The fundamental understanding of what constitutes ‘writing’ at this stage of *halachic* understanding is the imprinting of ink upon a medium, like paper, that permanently acquires the ink.²⁸

Moses ben Maimon, based on verses in the Mishnah and Tosefta²⁹, further explains the concept of permanent writing thusly:

אין הכותב חייב עד שיכתב בדבר הרושם ועומד כגון דיו ושחור וסקרה וקומו וקנקנותם וכיוצא בהם.
ויכתב על דבר שמתקיים הכתב עליו כגון עור וקלף וניר ועץ וכיוצא בהם.

“The one that writes is not liable until they write with something that makes a lasting mark, for example ink or black (dye) or copper sulfate or red dye or gum and things similar to these. And one that writes upon a thing which is permanent; for example leather or parchment or paper or wood and things similar to these.”³⁰

The question as I see it is whether digital devices ‘write’ in the way that the Torah, Talmud, and codes understand as the definition of ‘writing’.

In his responsa on electricity, Rabbi Daniel Nevins considers that “The various forms of recording data to digital memory are the modern equivalent of writing with quill and parchment, and are often a more durable and effective medium for recording information.”

Rabbi Nevins continues to state his understanding of the topic thusly:

“However, we would clarify that the process does matter somewhat—writing to digital memory can be considered ‘*toledat koteiv*,’ a derivative form of writing rather than the original form or *av*. As such it remains biblically prohibited on

²⁸ Rav Natan Tzvi Friedman and Rav Tzvi Meir Rabinowitz expressed this as ‘the listing of two letters in ink or dye on a permanent surface.’ *Mishneh Torah, Sefer Zeraim, Hilchot Shabbat*, notes to Perek 7:1 (Mossad HaRav Kook edition, pg 54)

²⁹ Mishnah Shabbat 12:5, Tosefta Shabbat 11:8

³⁰ Mishneh Torah, Shabbat 11:15

Shabbat, but other concerns about writing and erasing divine names on digital displays and memory media are not involved. Digital writing performs the same function as conventional writing, though the process is different. As seen above in the discussion of cooking, an activity which shares the same purpose and result as a primary form of melakhah but via a different process is viewed as a *toledah*, a derivative form of the labor. This differentiation is significant, since the category of writing has other halakhic ramifications. If we were to consider ‘writing’ to digital memory or to a video display to be the exact equivalent of the *av* of ‘writing,’ then we would never be allowed to ‘erase’ a screen view or digital file which contains one of the divine names. The CJLS has already approved Rabbi Avram I. Reisner’s arguments against considering such erasures to be forbidden. For our purposes then, the issue is whether ‘writing’ with electronic devices is the functional equivalent of writing with pen and ink; if so, then it is forbidden as a *toledah*, a derivative form of the activity called “*כותב*.”

The computers of the 1970s, 1980s and 90s did perform some degree of ‘writing’ in the process of their regular operation. Many will recall that the basic operation of a computer involved the inserting of a disk into a floppy drive, or the accessing of a hard disk drive. Writing a document or changing data in a file and clicking ‘save’ meant that the computer quite literally ‘wrote’ on the disk in order to save the information. The computer converted the words or information you inputted to a computer language like Turbo C or Fortran, which in turn was converted by the Central Processing Unit into binary: massively long strings of data in the form of zeros and ones. The file was quite literally written onto a magnetically coated plastic disk, not unlike the magnetic video tape that is discussed in the various ‘Videotaping on Shabbat’ *teshuvot*, particularly Rabbi Mayer Rabinowitz’s statement:

“In rabbinic times, it was defined as writing in a permanent way on something that was permanent, i.e., *davar hamitkayyem*. Therefore, for example, using water or fruit juice instead of ink, and using vegetable leaves instead of

parchment would not be considered a violation of *hakotev*. It is clear that the prohibition was to prevent making a permanent record.”³¹

A hard drive (HDD) essentially does the same thing - a set of ultra-thin read and write heads inscribes information onto a magnetic disk. It would be fairly straightforward to define the act of writing to a floppy or hard disk as permanent inscription.

Technology, however, has evolved. Today’s modern devices do not use magnetic disks for the recording of data. Rather, they utilize so-called solid state drive (SSD) storage. SSD, flash, and RAM storage hold data by storing it on a series of billions of incredibly small transistors³² only a few microns in width. A charge of excited electrons is applied to a floating gate transistor, which gives it a value of zero or one. When a device repeats that act many billions of times onto many thousands of integrated circuits that make up modern flash or solid state memory, it then stores desired information. However, the memory is simply a stack of electronic gates set to a massive pattern of settings indicating ‘open’ or ‘closed’.³³ It is more akin to a massive room filled with switches flipped to ‘on’ or ‘off’ than it is to a large obelisk chiseled with data, as the previous generation’s hard drives might be liken to.

Another way to describe it more accurately, according to the definition of a computer scientist, is that SSD or RAM is akin to a room full of cats in boxes - you know there is a cat in each box, but until you inspect the box directly you have no idea what state it is in. This is exactly what the transistor gate is like, and without direct inspection there is no reference to it being “on or off”. It simply looks like a transistor, no matter what state it is

³¹ Rabinowitz, Mayer, An Addendum to “Videotaping on Shabbat”; <http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20012004/44.pdf>

³² A transistor when used in a digital circuit is essentially an on-off switch than can code a simple series of binary instructions- a string of 0s or 1s.

³³ Tyson, Jeff, ‘How Flash Memory Works’ <https://computer.howstuffworks.com/flash-memory.htm> . Integrated Circuits & Moore’s Law: Crash Course Computer Science #17, <https://www.youtube.com/watch?v=6-tKOHCqrI>. Memory & Storage: Crash Course Computer Science #19, <https://www.youtube.com/watch?v=TQCr9RV7twk> .

in. Thus, the SSD is Shrödinger's Storage Medium - both stored and not stored until you read it.³⁴

A Solid State Drive relies on some of the most complex concepts in physics; quantum mechanics and Shrödinger's theory of quantum superposition; which are clearly beyond my field of expertise.³⁵ Suffice it to say that a theoretical physicist would likely be dumbfounded if you attempted to describe the movement or location of electrons in a quantum state as 'writing' - that definition would be both crude and inaccurate.

SSDs are less "like writing", while magnetic media (such as HDDs) are more "like writing", because one is physical in directly manipulating the magnetic object, but the other is ephemeral, as it is a change of state, not a physical one. Scientifically speaking, we change electron states/charges all day long. To argue that changing a charged state is "writing" and thus "work" means that we would also have to classify breathing, cellular division, sight, and the human heartbeat under that same umbrella.³⁶

The question of course of what constitutes 'writing' according to *halacha*, though, is still outstanding.

The Shulchan Aruch states the following:

יש ליזהר שלא לכתוב באצבעו במשקין על השולחן או באפר:

"One must be cautious not to write with their finger in liquid on a table or in dust."³⁷

The Rema then quotes the Terumat HaDeshen as adding this:

אבל מותר לרשום באוויר כמוין אותיות :

"However, it is permitted to gesture in the air by way of the letters."

³⁴ This definition, provided by Christopher Harrold, a veteran Information Technology professional with a focus in SSD, additionally presents the fact that SSD memory has no physical properties. Unlike an HDD in which "the orientation of the ferro-magnetic coating determines N and S and is a physical object," there is nothing physical about the floating gate per se.

³⁵ To be fair, even theoretical physicists don't understand Quantum Mechanics.

<https://www.nytimes.com/2019/09/07/opinion/sunday/quantum-physics.html?searchResultPosition=3>

³⁶ This useful and clear-minded understanding of the change of electron states was provided by Christopher Harrold.

³⁷ Shulchan Aruch, Orach Chaim 340:4

We must then try and decide whether modern solid state drive storage is more like a table upon which letters are written in liquid or dust - semi-permanent but somewhat ethereal and also forbidden *d'rabbanan*, or more like a finger writing in air - indicative and non-permanent. Moreover, a question should also be asked about the media by which the writing is done according to the understanding the Mishneh Torah gave us in Shabbat 11:5 - which helps us to understand the halachic idea of writing: the transference of a stain or ink upon a medium that holds the ink. In writing onto magnetic media, a head inscribes zeros and ones into a tape or disk. In writing to a solid state device as exists in your cellphone, tablet, or computer, a series of electrons simply flip millions of microscopic switches on integrated circuits. An electrical pulse closed a gate. Is that writing? How is that like writing? It is clearly more than 'gesturing in air', and if the signal stays on your circuit board undisturbed for many years, one could make the argument that it is permanent. However, a text message that is sent from one user's phone to another may be seen and deleted in seconds. Both are digital files typed and received, and the creation and discarding of the message does not create or destroy any physical material thing, but rather involves the reorganizing of electrons inside a circuit. Nothing is written. Nothing is erased. And the length of storage of the thing does not really inform us as to whether we should categorize it as 'permanent' or 'writing'. I could have the temerity to call the thing, in the language of the kashrut of cheese, a *dvar chadash*, but I fear that intellectual avenue would only complexify an already perplexingly difficult problem.

To add to the questions of the halachic status of read-write versus random access memory are questions around clicking, swiping, and typing. In practice, they send electrical signals to the computer's processing unit that executes a program moving a mouse, selecting an icon, or writing a character. But one might also interpret any of those action as 'writing', since each one results in the encoding or writing of instructions

being transmitted digitally. And while moving a mouse or trackpad ‘doesn’t look like writing’, while typing a letter ‘does look like writing’, in reality, they both result in the same transference of a billion zeros and ones across a series of electronic circuits. To the computer, swiping, typing, and clicking are the same. Your smartphone is also constantly sending data from your pocket based on where you walk and your GPS data. It turns on the screen when you tilt it a certain way. It ‘unlocks’ and displays messages simply with a thumbprint or when the camera recognizes your face. To us, none of these actions is ‘writing’ - but to the phone, millions of ones and zeros are created, sent, and received in each act. In the digital age, it has become harder than ever to attempt to shoehorn all the actions of digital devices under the rubric of ‘writing’. As I said earlier, we have gone down a intellectual alley of attempting to remain rigidly bound within a halachic category of ‘writing’, which has become a cul de sac that has virtually no semblance of the original purpose of the law itself: to forbid the transference of ink to parchment.

If the permanent writing of data to memory is not writing, and the sending of data in the form of digital code is not an act of writing, then perhaps the simple act of typing onto a computer screen is writing.

The Terumat HaDeshen³⁸ explores the idea of impermanent writing in a manner which might shed light on the question. He writes

הא קמן דזוקא בעפר או משקין שרישומו ניכר לפי שעה, כהאי גונא אסור לכתチילה, אבל באוויר שאין רישומו ניכר אין צריך ליזהר. אדם לא כן משקינם ואפר נגוב למה ליה למינקט, תיפוק ליה משום משיכת ידו לפי צוור האותיות. אבל אין להביא ראייה ממتنני גופיה פ' הבונה, דתנן התם הכותב במשקינם ובמי פירות ובעבק דרכים פטור, והיינו פטור אבל אסור הכל פטורים דשבת, הא באוויר אף, אסור ליקא.

Before us we specifically deal with dust or liquid that has been used to write and is recognized within the hour, which is forbidden a priori. However in air, in which the writing is not recognized, one does not need to worry. And if it were not so

³⁸ Rabbi Yisrael Isserlein lived from 1390-1460 in Germany and Austria.

that liquids and dust can be wiped away, why would we include this as the take-away? The result is on account of the dragging of the hand in order to produce the image of letters. However, proof is not brought from the Mishnah itself, that it teaches there that the one that writes with liquids or fruit juice or dust, these ways are exempt; this is to say exempt but forbidden like all other exempted matters of Shabbat; thus we could not say that writing in air is forbidden.

The Terumat HaDeshen's understanding of what makes something writing, what makes writing permanent, and therefore what fundamentally constitutes 'forbidden writing' is threefold here. First, that the writing persists beyond an hour. Second, that the writing is recognizable. And third, that the forbidden act is the literal physical formation of letters - the movement of a hand to drag ink or liquid into a shape. Digital writing is only recognizable by the computer programs that read the data - they are 'writing in air' to one another. Also, the person typing in data or clicking a button is not forming letters - they send a signal to the CPU to execute a tiny program which sends a stream of ones and zeros from circuit board to screen that produces the letter 'aleph.' That letter can be shared to another person's device via text or by giving access to a shared public document like dropbox or Google Drive, or via email. No letter was physically formed by a hand. And to those to whom the message was not sent, there is nothing to read. It becomes more like communication - the pantomiming of a letter in air to another specific person - than permanent writing, available for all the world to see, for all time's sake.

And all that said, even if one were to conclude that digital writing is more like writing with liquid than it is writing in air, we are still left to exist in a doubtful state about a *toldot melachah* that was intended as a *shvut* which is *patur aval assur* and which is widely not practiced by Conservative Jews. Or in layperson's terms, 'we maybe shouldn't do this thing that is a fence around the law, which is exempt from punishment but you ought not to do, even though a large proportion of Conservative Jews do it.'

Both Rabbi Nevins and Rabbi Heller conclude that, although writing on a screen is not specifically writing according the halachic understanding of what would violate the Sabbath, one should not do it as it does constitute *toledot koteiv*, ‘derivative activities that may have a different physical process, but have the same purpose and result, and are therefore forbidden’.³⁹ They might also be forbidden rabbinically on the basis of *shvut*, a fence around Shabbat law that states that an action may not be done because although the act itself is not forbidden, it might easily lead to another act which is forbidden. Thus, Rabbi Nevins concludes that digital devices with keyboards or keypads may not be used on Shabbat, and Rabbi Heller concludes the same.

Rabbi Heller, however, ultimately permits the use of devices on Shabbat for the purpose of Zooming or streaming a service out of need during the Covid-19 quarantine of 2019-2020. Heller advises that the device be set up in advance; that the stream or link to the synagogue’s site be set to a timer; and that any adjustment of volume or muting/unmuting of the microphone done by congregants be done *k’leachar yad*, in a strange way or with the person’s non-dominant hand. Heller states this while also conceding ‘I recognize that this suggestion might not be widely adopted.’ In light of the survey results above, I would argue that only a tiny minority of Conservative Jews will adopt these punctilious practices for the use of streaming services on Shabbat. They will see an opportunity to attend services at their synagogue during quarantine and, after skyping with their grandchildren on their phone and reading the morning news on their tablet, will join their local synagogue’s stream of services.⁴⁰ So while Heller and Nevins do not permit the use of a keyboard to enter text onto a computer screen,

³⁹ Heller, *Streaming on Shabbat and Yom Tov*, pg 11.

⁴⁰ A significant point of the Heller teshuvah is its emphasis that Zoom and streamed services should be permitted only out of *hora’at sha’ah* or *sha’at ha’dahak* during the Covid-19 quarantine; when services may resume in person in a synagogue, the ability to say kaddish via Zoom would presumably be discontinued. And it would be reasonable to assume that some synagogues, when quarantine is over, will discontinue all streaming. This would be a shame - many elderly or physically limited individuals, as well as many Jews in remote communities, have been granted access to prayer that has never before been available to them. This is briefly discussed later in this teshuvah.

regardless of whether that text is saved to memory or sent over the internet or not, there are compelling reasons to permit it.

The typing of a URL or saved bookmark into a web browser is writing that both is and is not permanent. It is permanent because your computer automatically keeps a record of every site you visit for convenience of revisiting later. It is not permanent in that its intent is not to literally ‘write’ something, but rather to take someone from one digital place to another. This is akin to saying that one does not start their car on Shabbat in order to light a fire upon which one wishes to cook, but rather to get to synagogue.

The same can be said for a text message to a friend or family member. To type the phrase - “Wanna meet up at the park at 3pm?” - one does not intend it to become a permanent record, but rather they intend it to serve as a simple way to communicate quickly and efficiently.

The central problem for digital writing of messages is not permanence, but rather a blurring of the distinction between writing that might be OK in theory but should be forbidden because it would lead to certainly impermissible acts of writing, and actually forbidden writing. The problem with that is - many Conservative Jews are already doing those acts. Other than streaming services, text messaging is the most popular use of digital devices on Shabbat according to my survey. This implies that either they do not consider the use of those devices as forbidden on Shabbat, or they know that usage is forbidden, but they do not care. Meaning - the *halacha* has been rendered irrelevant. It would seem to me that the fence we have drawn around this specific law in the Torah - determining it to be *toldot koteiv* or *shvut* - has become antiquated.

It would make sense, then, to redraw the boundary of *shvut* for the use of digital devices in a way that considers the outcome of the individual using the device, and whether that ultimate outcome is a permitted act on Shabbat.

Thus, booting up a computer on Shabbat morning and typing into the search window to do a permitted, restful, and oneg related activity should be permitted. Those activities should include reading, video chat with family and friends, texting and instant messaging, streaming or joining a Zoom synagogue service, or streaming or Zooming a class or lecture. Other activities that might be restful and Shabbat-compatible for some may not be in the spirit of the day for others. These activities include playing online games, watching a movie or video, reading social media like Instagram and Facebook, and listening to music.

Some other activities that a person might use a digital device for on Shabbat have an ultimate end which is entirely contradictory to the restful, labor-free, and non-creative elements of the day that are beautifully detailed in the writings of our sages. Checking your work email, online shopping, online gambling, creative or employment-based writing, public posting to social media, and producing a hard copy of any digital writing to an ink based printer are still to be forbidden. All of these remind us of work. They move away from ‘dominating the self’ and instead seek to ‘dominate the world’.

In the case of writing work emails, redrawing the lines for the modern realities of Jews of the 21st century is an extremely important act of making a Shabbat law relevant again in a halachic sense. Your average businessperson is inundated with work. In the modern mobile office, there is no ‘home’ and ‘work’; no ‘on time’ versus ‘down time’. When your employer sends an email, often, one is expected to respond, even if it is Saturday or 10 pm at night or you are on your honeymoon in a remote village in the Andes. If your cellphone gets bars⁴¹, you are expected to reply as soon as possible.

It would be important and significant in the lives of Conservative Jews to be able to say as a movement that the digital cord between employer and employee should be cut for

⁴¹ A colloquial way to describe a device that is within range of a transmitting and receiving cell phone tower.

the 25 hours of Shabbat. Many Jews no longer see the relevance of saying ‘I don’t answer my phone on Shabbat’ when applied as a blanket decree against both work calls and your grandchildren’s calls. But logically, almost anyone can understand the simple phrase ‘I don’t do work on Shabbat’ to mean ‘no work calls, no emails, no texts from the company.’ This is where Conservative *halacha* should place the fence - not between device and user in a manner which no longer serves to make Shabbat restful and joyous, but between employer and employee; between humans recognizing their having been created rather than humans feeling our constant need to be creating.

On Shabbat we should be done with work. But we should not be prevented from connecting, reflecting, and relaxing in the manner that suits us because the device we use to do those things might also be used for labor.

Online Buying and Selling on Shabbat

Among the 39 *melachot* of Shabbat, one would not find a category explicitly prohibiting business which involves buying and selling. Nonetheless, it is forbidden to engage in buying and selling on Shabbat, due to the fact that it violates at least two different post-Torah *halachic* precepts. The first of these is related to writing: the purchase of an item inevitably leads to the creation of a receipt by the seller, which would make the engaged party the direct cause of Sabbath writing.⁴²

The second is that two separate sources in the Tanach make reference to the practice of operating one’s business on Shabbat as contemptible. In Isaiah 58:13 we learn:

אם-תנשֵׁיב מִשְׁבַּת רָגְלֶךָ עֲשֹׂות חֲפֵץ בַּיּוֹם קָדְשִׁי וְקָרָאת לִשְׁבַּת עֲגָלָה לְקָדוֹשׁ יְהוָה מְכַבֵּד וְכַבְּדָתוֹ מִעֲשָׂת
דָּרְכֵיכֶם מִמְצָא חֲפֵץ וְדִבֶּר דָּבָר:

⁴² Mishnah Berurah on SA:OH 246:3.

"If you refrain from trampling the sabbath, From pursuing your affairs on My holy day. If you call the sabbath 'delight,' God's holy day honored. And if you honor it and go not your ways nor look to your affairs, nor strike bargains."

In Nehemiah 13:16-17 we learn:

והצרים ישבו בה מביאים דאג וכל-מכר ומכרים בשבת לבני יהודה ובירושלים

Tyrians who lived there brought fish and all sorts of wares and sold them on the sabbath to the Judahites in Jerusalem.

ואריבה את חרי יהודה ואמרה להם מה-הדבר הרע זהה אשר אתם עושים ומחללים את-יום השבת

I censured the nobles of Judah, saying to them, "What evil thing is this that you are doing, profaning the sabbath day!

Thus the understanding of the rabbis of the Talmud was that, although commerce was not delineated explicitly in the 39 *Av melachot* of Shabbat, it should still be forbidden.⁴³ There are ways in which one might do critically important and compensated labor on the Sabbath without violating the Sabbath explicitly. The key principle here is that one must be engaged in the same manner of labor and business on days other than Shabbat, and that the payment must not be given on Shabbat itself.⁴⁴ This ultimately results in a long standing *halachic* idea in which shopping, buying, selling, and exchanging money are all violations of Shabbat.

Heschel's 'The Sabbath' extends this concept into the philosophical areas of the weekly labors being focused on 'dominating the world'. If, as Heschel says, "Six days a week

⁴³ Ramban on Leviticus 23:24 - on the definition of the word 'Shabbaton' understands that although certain activities may not fall directly under the 39 categories of forbidden labor, nonetheless they are toilsome and get us away from 'rest'. "For one could toil all day at weighing produce, filling barrels with wine, moving things from place to place, buying and selling... as long as there is a wall around the city and its gates are locked at night. ... (However) complete rest means avoiding anything toilsome. This is an excellent and quite sensible thing."

⁴⁴ Shulchan Aruch OH 306:4

we live under the tyranny of things of space,”⁴⁵ then the greatest tyranny of all is the rampant need to acquire yet more things.

Moreover, the Torah in Exodus 20:9-10 teaches us

שְׁשָׁתْ יְמִים תַּעֲבֹד וְעַשֵּׂת כָּל־מְلָאכָה: וַיּוּם הַשְׁבִּיעִי שֶׁבֶת לְיהוָה אֱלֹהֵיכֶם לֹא־תַעֲשֶׂה כָּל־מְלָאכָה אַתָּה
וּבָנֶיךָ וּבָתֶךָ עֲבֹד וְאַמְתַח בְּבָהָמָתֶךָ וְגַרְגַּר בְּשָׁעָרֶיךָ:

“Six days you shall labor and do all your work, but the seventh day is a sabbath of the LORD your God: you shall not do any work—you, your son or daughter, your male or female servants/slaves, or your cattle, or the stranger who is within your settlements.”

Although much of the process of online purchasing has been automated - the inputting of credit card data, the placing of the order, the creation of a receipt - to order something online still results in people doing work: a clerk searching for and bagging a grocery item; a warehouse employee sealing, labeling, and scanning a box; a delivery person driving the item from one location to another. The Sabbath is about us desisting from work, and us producing no additional work for others, including laborers who may be regarded as our modern equivalent of manservants or maidservants. Although the warehouse employee may have to label a hundred other boxes from non-Jews on Saturday, it is important that Jews produce no additional toil for this individual. My restful behavior, even the leisurely purchasing of an item I worked all week to afford, should not come at the expense of another person’s toil.

For all these reasons, despite the possibility that there may be ways for which one could find suitable legal permissibility to engage in online purchasing, it should remain forbidden on Shabbat and Yom Tov. Moreover, it is my sincere hope that issuing specific guidance on digital devices which helps to permit some things while clarifying why others, like buying and selling, should remain forbidden, will increase the observance of

⁴⁵ The Sabbath, pg 10.

the Sabbath and contribute to more Jews taking part in restful activities rather than persisting in un-restful commercial activities.

Audio devices - 'Hey Siri, text my wife'

The main purpose of this teshuvah is to address digital devices which primarily utilize text that one might read or write. As mentioned elsewhere, it would be impossible to address the myriad of devices in the modern world that now utilize microprocessors, since everything from clothing to toasters to doorbells in the 21st century now comes with a CPU, camera, and wifi connectability.

However, 'Smart speaker' audio assistant devices and applications like Siri for Apple, Google Home, and Amazon's Alexa are also digital devices that may or may not raise halachic issues on Shabbat and Yom Tov. Essentially, while they do not produce writing, they do digitally encode a voice into a series of zeros and ones and send that voice to a computer which responds in kind. These smart speakers can take dictation, order groceries, play music or audio books, or place phone calls. To some degree, they fall into an even more grey area halachically than digital devices with a typing or swiping interface - without actually producing visible letters, a person might be able to accomplish certain things, like buy a book, that would otherwise violate the Sabbath.

For that reason, audio devices should be regarded in this teshuvah in much the same way as other digital devices - if they are asked to engage in an *av melacha* or an act of buying or selling, the action they engage in is forbidden. However, if they are involved in an act of communication, inquiry, or other act which the user determines is beneficial to their oneg shabbat, it may be permitted.

Carrying your phone to shul on Shabbat, just in case

On October 27, 2018, my daughter and I arrived to our synagogue in Pittsburgh only to be met by the shul's Executive Director at the door, who hustled us inside. Apparently the Conservative synagogue just three blocks away was being attacked by a man wielding a semi-automatic rifle. When it was all over, the murderer killed 11 people during Shacharit Services.

Ever since I had become a father, I had carried my phone to synagogue in order to be able to keep in touch with my wife 'just in case'. On the morning of the attack, I texted her to say I was fine. After an hour of highly distracted prayer, I wondered if perhaps other family members were also concerned - since many only knew that I went to shul every week at a Conservative synagogue in Squirrel Hill, but likely did not remember the name - and so I checked my phone. In just one hour, I received hundreds of emails, text messages, and social media posts of people who sometimes literally pleaded in writing for me to respond, since they openly wondered if I had been killed.

It was a disturbing feeling to know that perhaps a thousand people sincerely worried after my welfare. It seemed obvious that informing them that I was fine - alleviated their grief and anxiety - was absolutely essential. And thus I posted a brief message telling everyone I was alright.

My survey revealed that 30.1% of Conservative Jews queried carry a cellphone on Shabbat and Yom Tov 'just in case'. Regardless of how one feels about digital devices and writing and phone calls on Shabbat, the notion that a cellphone can be thought of as a safety device is an important one. The members of Dor Hadash, New Light, and Tree of Life Synagogues called for help with cellphones. The members at local synagogues in Pittsburgh were alerted to an attack by a gunman with their cellphones. And, as I returned home from shul that day, I saw many members of the Orthodox shuls in our neighborhood out front of their buildings, conversing with people in their cars and on their phones, conveying the latest information about what was happening.

Cellphones serve a greater purpose today than they did thirty years ago. Not only can they aid in creating safety and awareness of dangerous situations, but they also have the ability to lend peace of mind to those that carry them. Certainly a phone can be a device of perpetual distraction, and on Shabbat, the ‘constant checking of one’s phone’ is not of benefit - it may damage our connection to the Sabbath rather than enhance it. However, in modern times when danger is pervasive and anti-semitic or violent acts are not uncommon, the carrying of a cellphone can provide great peace of mind and assuage anxiety.

The Talmud regards it as important to permit acts that, although not necessary on the Sabbath, come to bring peace to an individual that is anxious or discomforted. Seven times it brings up the establishment of a legal concept of the basis of *agamat nefesh* - מפני עגמת נפש - ‘due to creating anguish or anxiety’.⁴⁶ Two of the examples involve the cracking of nuts on Yom Kippur in preparation for the breaking of the fast, although it is not yet necessary, and permitting the *kriah* of a garment for a minor child even though they are not obligated to observe mourning rituals at all. The justification for both is *agamat nefesh*.

It would make sense, then, that in light of the Conservative movement’s previously established positions on electrical devices, the leniencies with which the entire category of *muktze* is generally regarding, the compelling safety benefits, and emotional and psychological piece of mind that carrying a cellphone can create, carrying a smartphone or cellphone on shabbat should be permitted.

The implications of this teshuvah for use of digital devices in a synagogue on Shabbat or Yom Tov

⁴⁶ See Mishnah Megillah 3:3; Talmud Megillah 28a and b and 29a, Moed Katan 14b and 26b, and Yerushalmi Megillah 23a and 25a.

Halacha treats many behaviors in public and private by different standards. While an Israeli living in the United States may not be obligated to observe the second day of Yom Tov Sukkot or Shavuot, they also may not openly violate the law to all their neighbors. In matters of Sabbath observance, there are a variety of practices that Conservative Jews engage in. While some folks drive to synagogue, others walk. In some homes people use electricity while in others they do not.

Permitting digital devices for individuals does not necessarily mean that Conservative synagogues, Jewish camps, and other institutions can or should utilize digital devices on Shabbat in ways which affect all of their members. While one person might feel that using a tablet device on Shabbat to read is within the boundaries of what is spiritually acceptable to them, another person may feel it is an imposition upon them. So while it might be permissible under this *teshuvah* to allow congregants to attend shul with their siddur or machzor downloaded as a file on their digital devices, the act of doing so would very literally create an uncomfortable digital divide in the community - those that publicly use devices, and those that do not. The intent of permitting digital devices is to allow people to engage with the Sabbath in their personal lives in a meaningful way. It is not to drive a wedge between members of a synagogue, or add additional headaches to the board of directors or ritual committee of a given community.

For one person to read on their computer on Shabbat is a personal choice; for one person to do it in the main sanctuary creates an imposition on those around them. And for an entire congregation to tackle the issue of digital device use on Sabbath and Yom Tov and apply it to their entire community might inadvertently tear down the ‘big tent’ of halachic practice that has come to serve as one of the strengths of the movement to date.

Conclusion

The limited use of digital devices on Shabbat for purposes of the observance of Shabbat and for reasons of oneg shabbat should be permitted. The following are possible **uses of a digital device which are within the bounds of Sabbath observance:**

- Streaming or Zooming into services or a class
- Reading audio books and listening to podcasts
- Calling and facetimeing relatives
- Carrying a cellphone for reasons of safety, security, and necessary communication
- Reading a book, magazine, or the newspaper
- Reading social media
- Listening to music

The following are possible **uses of a digital device which are not within the bounds of Sabbath observance**

- Writing work emails
- Writing/Posting on social media
- Printing to an ink-based printer
- Online buying or selling
- Using a digital device to engage in other activities that might be part of your regular employment responsibilities⁴⁷

Any other uses of a digital device not explicitly outlined in this teshuvah for which an individual Jew may have a desire to use on Shabbat or Yom Tov should be discussed with that individual's *mara* or *marata d'atra*.

⁴⁷ This is potentially a large category, and thus must be left to the individual and his or her own rabbi to explore and delineate. However, a clear example might be a web developer who logs onto their device to edit lines of code or add a new page to a website; although the labor might otherwise fall under the blanket permission given in this teshuvah as acceptable, because it is for one's employment, it is both *melacha* and not *shvut*, and therefore is not permitted.

By more carefully examining the question of the role of digital devices in today's world - their function as devices of communication, connection, and exploration as opposed to simply being seen as crude tools of writing, they can be examined more fully for their role in making the Sabbath a delight and a time for soul and body to rest and refresh. And by bringing the *halacha* more in line with the regular practices of most Conservative Jews, all of *halacha* becomes something that seems within the plausible reach of Jews as a means of creating meaningful connection with Torah, *Mitzvot*, and God.

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