

# IS INSTRUMENTAL MUSIC PERMISSIBLE ON SHABBAT AND FESTIVALS AT THE JACKSONVILLE JEWISH CENTER?

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## INTRODUCTION

A survey conducted by the United Synagogue of Conservative Judaism in 2013 in which 365 congregations participated found that half permitted instrumental music on or immediately prior to Shabbat/Yom Tov (49.1% responded yes; 50.9% responded no). The real picture, however, is much more complicated. There were variations by region (in the Pacific Southwest, a significant majority permitted instrumental music; in the Metropolitan New York region an equally significant majority did not). Furthermore, while 84% of those congregations who responded "yes" included instrumental music at least at some Friday evening services, only 30.3% of those congregations with instrumental music permitted such on Shabbat morning. In addition, some congregations allowed electric or electronic instruments, while others did not; still others confined their instrumental services to particular weekends or imposed other limitations on the types of instruments that could be played.<sup>1</sup> Of course, fully half the congregations surveyed did not permit music instrumentation at any time on or immediately before Shabbat or Yom Tov.

The *mara d'atra* of each synagogue determines halakhic policy. Thus, it is hardly helpful to make invidious comparisons between one's own synagogue and other congregations -- it is always possible to find another more to the left or the right on the spectrum with which to make a favorable or unfavorable comparison. On the other hand, the above data points to the fact that an increasing number of Conservative synagogues are using musical instruments as an

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1. See Rabbi Paul Drazen, "United Synagogue of Conservative Judaism Survey: Use of Musical Instruments on Shabbat/Yom Tov" (January 2013):  
[cantors.org/sites/default/files/uploaded\\_files/site/Education/uscj\\_instrumentusesurveyresults\\_20130219.pdf](http://cantors.org/sites/default/files/uploaded_files/site/Education/uscj_instrumentusesurveyresults_20130219.pdf)

accompaniment to worship on Shabbat and/or Yom Tov. Whether one approves of such use or not, it is clear that those who embrace instrumental music on Shabbat believe it adds beauty and meaning to congregational worship.<sup>2</sup>

Given this trend, it is not unreasonable to ask whether or not the Jacksonville Jewish Center should consider the use of musical instruments on Shabbat -- not simply because others do, but because we cannot be afraid to engage the world in which we live and to ask questions about what tools and opportunities are out there to strengthen the religious life of our synagogue. Whatever the answer to the question -- be it yes, no, or only in limited circumstances -- it is incumbent upon us to educate our synagogue leaders and laity about the nature of the religious issues involved. Should we continue to prohibit musical instruments on Shabbat on Yom Tov, we must be prepared to offer cogent reasons why we do not; conversely, if we allow some musical instrumentation, we must also be able to explain what yes and what no, and above all, why. To approach this question is not to presuppose an answer. It does, however, underscore the need for a more credible response than "We don't because we never have." As *mara d'atra*, my goal in writing a responsum is to educate members of the Religious Life Committee and the congregation at large, rather than simply offer "yes or no" guidance on this issue..

The use of instrumental music on Shabbat and Yom Tov raises concerns in two specific, if distinct, areas: *halakhah* and aesthetics. In this *teshuvah* (rabbinic responsum) we will briefly review the history of instrumental music in Jewish worship; the rabbinic prohibitions imposed upon its use and the specific *halakhic* issues it occasions; the aesthetic pros-and-cons involved; and the religious culture of the Jacksonville Jewish Center. We will conclude with a review of the positions taken by the Committee on Jewish Law and Standards of the Conservative Movement and my specific conclusions for the future.

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2. See Rebecca Spence, "Synagogues Become Rock Venues: Congregations Using Music to Revitalize Membership Rolls," *Forward*, January 4, 2008, p.A3; Cantor Mark Goodman, "Back from the Brink: How One Synagogue Turned Itself Around," *United Synagogue Review*, Fall/Winter 2005, (vol 58, no. 1), pp. 10-11. Interestingly, at the United Synagogue's 2008 Biennial Convention in Orlando an alternative Shabbat service featured musical instrumentation.

## A VERY BRIEF HISTORY OF MUSIC IN JUDAISM FROM THE SOURCES

We know that musical instruments were played in Jewish antiquity. From Miriam using a timbrel to lead the Israelite women in song at the Sea of Reeds to King David dancing before the Ark on its way into Jerusalem to the accompaniment of lyres, drums and cymbals, there are many biblical sources that speak of the use of musical instruments on occasions of religious significance.<sup>3</sup> In fact, there are 19 different musical instruments referred to in the Hebrew Bible.<sup>4</sup> We also know from the scriptural evidence that a chorus of Levites sang with the accompaniment of an orchestra in the Temple, and that instruments were used to accompany the daily sacrificial offering.<sup>5</sup>

It should be noted, however, that the playing of instruments on Shabbat even when the Temple stood had limitations. The Mishnah teaches that the playing of the flute on Shabbat was prohibited during the *Simhat Beit Ha-Sho-eivim*, the joyous water drawing ceremony which took place during Sukkot. We also know that when Rosh Hashanah coincided with Shabbat, while the shofar was blown within the Temple precincts, it was prohibited to sound it anywhere else.<sup>6</sup>

One interesting development that came about directly as a destruction of the Second Temple was an attempt to ban all music -- including non-instrumental music -- as a sign of mourning for the Temple's loss. Thus, we find strong condemnations of all forms of non-liturgical music in the Babylonian Talmud.<sup>7</sup> Even so, in spite of such efforts, there is evidence that this ban was never fully observed.<sup>8</sup> One of the great historians of Jewish law, Dr.

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3. *Exodus* 15:20; *II Samuel* 6:5-15; *I Chronicles* 13:8; *I Samuel* 10:5, 10; *Psalms* 81:3.

4. "Music" *Encyclopedia Judaica* (Jerusalem: Keter, 1972). Volume 12, p. 560.

5. *I Chronicles* 15:16-24.

6. Mishnah *Sukkot* 5:1; Mishnah *Rosh Hashanah* 4:1. We will address the question of sounding the shofar on Shabbat later in this *teshuvah*.

7. "Rav said: 'The ear that listens to song should be torn off.' Rav Huna abolished singing." Babylonian Talmud, *Sotah* 48a. The custom of breaking a glass at a wedding was another sign of mourning the Temple's loss instituted in antiquity -- a practice we still adhere to today. *Shulhan Arukh, Oraḥ Hayim* 560:3.

8. For instances in which music was permitted by the rabbis see the Jerusalem Talmud, *Megillah* 3:2, 74a; See also

Boaz Cohen writes, “In spite of the rigor of the law, music could not be suppressed; not only did Jews borrow melodies from the people among whom they lived for secular purposes, but they also imported various tunes for their divine services. The law prohibiting music was never fully observed, because it ran counter to human nature.”<sup>9</sup>

Little by little, the prohibition of music within the Jewish community was whittled down. By the time of Rabbi Moshe Isserles, the great codifier of Jewish law for Ashkenazi Jewry who lived in 16th century Poland, we find the following ruling: “For the need of a *mitzvah* as in the case of a wedding celebration everything [both vocal and instrumental music] is permitted.”<sup>10</sup> Obviously, in all segments of the Jewish community, singing is a regular feature of Shabbat and holiday celebration. Even among the most ultra-Orthodox, music of a religious nature with instrumental accompaniment is freely played not only at life cycle events, but on many occasions, Shabbat and holidays notwithstanding.

## **THE HALKHC ISSUES: MEETING THE CHALLENGE OF JEWISH LAW**

Yet the renewed embrace of music within the Jewish community over a period of centuries was attenuated from the question of the use of musical instruments on Shabbat. Regarding the latter the query revolves around specific aspects of Jewish law regarding Shabbat observance.

The rabbis understood the Torah to contain 39 major rubrics of work prohibited on Shabbat. These categories include, but are not limited to, kindling a fire, extinguishing a fire,

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the qualification that Rashi and Tosafot offer to Babylonian Talmud, *Gittin* 7a.

9. Dr. Boaz Cohen on Maimonides’ Responsum Concerning Music, *Law and Tradition* (New York: The Jewish Theological Seminary of America, 1959), p. 181.

10. The gloss of Rabbi Moshe Isserles to the *Shulhan Arukh*, *Orah Hayim* 560:3; Other commentaries on the *Shulhan Arukh* also agreed that it is a *mitzvah* to sing songs of praise on occasions of religious importance. See *Magen Avraham* to *ibid.* 560:10 and *Mishnah Berurah* to *ibid.* 560:14

cooking, writing, erasing, building, demolishing, and carrying in a public domain.<sup>11</sup> Subsumed within each area are more specific activities that are part of the broader categories. To protect these rubrics as well as the sanctity of Shabbat's unique atmosphere, the rabbis of the Talmud established the concept of *shevut*, a ban on engaging in tasks or handling items that were not in the spirit of Shabbat or whose use could easily lead one to violate Shabbat, even unintentionally.<sup>12</sup> One example of *shevut* is the prohibition of handling money on Shabbat -- aside from the fact that doing so is at odds with the spirit of the Sabbath, one might be tempted to carry one's wallet or use the cash in it to engage in other activities incompatible with Shabbat. Naturally, if one refrains from handling money in the first place, the possibility of its misuse disappears. The above will serve as important background for discussion of the use of musical instruments on Shabbat.

*There is no source in Jewish law that prohibits the act of playing music itself on Shabbat as a form of work.* Rather, the issues involve the assembly and dismantling of instruments, repairing them on Shabbat (e.g. replacing broken reeds or guitar strings), and their transport from place to place. We will review each of these areas in turn.

**Assembling (*Boneh*) and Disassembling (*Soter*)** -- Those who play drums, especially when they are moved from place to place, must assemble and disassemble them; woodwind instruments require reeds to be set in place and the mouthpiece attached to the the body of the instrument before playing; trombone players have to attach a slide whose extension and contraction enables the instruments to make sounds. What is the relationship of these actions to the prohibition of assembling or disassembling items on Shabbat?

The Talmud states that *boneh* (assembling) applies to even the most minimal amount of work that assumes a quality of some permanence<sup>13</sup>. Among the other variables that enter into the

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11. Mishnah *Shabbat* 7:2 offers the complete list of the 39 categories of *melakhah*, work prohibited on Shabbat.

12. The most comprehensive and useful exploration of the concept of *shevut* and its various types is found in the work of Rabbi Israel Lifshitz, whose *Tiferet Yisrael* was first published in the early 19th century. See *Kalkalat Shabbat* 1a in *Tiferet Yisrael's* introduction to *Mishnah Shabbat*. Also Rabbi Joel Roth, "Melakhah U'Shevut: A Theoretical Framework," *Conservative Judaism* volume 35, no. 3 (Spring 1982).

13. Babylonian Talmud, *Shabbat* 102b. Some rabbis extended this even to *temporary* structures. See Jerusalem

*halakhic* picture are intentionality and utility, i.e., whether or not one's action changes an item from unusable to usable (we will explore this more in the next section). Thus, "building" with Lego blocks on Shabbat is permissible because the structure one makes is typically not intended to be permanent, while the intention in playing with Legos is simply to have fun, rather than to construct anything with actual utility (making a pencil holder out of Legos as a birthday gift on Shabbat, however, might potentially pose an halakhic problem). Finally, because it constitutes a form of game playing, finishing one's Lego house/car/ship does not alter the object's status from non-functional to functional (of course, if you're using Legos to make a life-sized dwelling for actual use, the construction on Shabbat would be forbidden).<sup>14</sup>

While some instruments spend most of their time in a case and are assembled only for brief periods of use, others are typically left standing for longer periods. The difference between a clarinet, put together for an hour and then put away, versus a drum kit that generally remains assembled for long periods of time is not an academic one as far as the observance of Shabbat goes.

**Makeh B'Patish** ("The Final Blow") -- What makes the assembling of instruments most problematic is another of the major prohibitions of Shabbat alluded to above: engaging in any activity that transforms an item from being unusable to functional. Thus, even if one were to allow the assembly of a clarinet because one's "building" of the instrument is only temporary (as soon as one is finished playing, it is taken apart and put away), the act of fitting the reed and mouthpiece to the body of the instrument transforms a hitherto unusable item to a working, playable instrument.<sup>15</sup>

This is also the problem with the changing of a string on an instrument should it break or replacing a broken reed on a woodwind instrument. The need to change a broken string or reed

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Talmud, *Shabbat* 87:2.

14. Rabbi Yehoshua Yeshaya Neuwirth, *Shemirat Shabbat Kehilkhitah* (Jerusalem: Bet Midrash Moriyah, 1978) 16:18, p. 186.

15. This applies not only to building, but objects. Babylonian Talmud, *Shabbat* 75b.

may not happen routinely, but they are occurrences which are far from rare or unheard of<sup>16</sup>. Indeed, the rabbis enacted a prophylactic injunction against the playing of *any* musical instrument on Shabbat or Festival *šhema yitaken*,<sup>ö</sup> lest it break in mid-use and be fixed.<sup>17</sup>

Why not, then, simply require that all instruments be assembled before Shabbat and left that way until after nightfall on Saturday night? As for broken guitar strings, why not just require musicians to put their instruments down in mid-service if need be?

Responsible decisors of Jewish law, however, do not simply permit particular practices on the basis of theoretical, best-case scenarios. Rather, halakhic decision-making takes into account that life as lived is filled with the unanticipated. If the clarinet player who<sup>ø</sup> excited about playing on Shabbat but gets caught in a traffic jam and consequently arrives at the synagogue after sundown, too late to assemble his clarinet, is the rabbi going to argue with him or take the instrument away? If a string breaks while the guitarist is outside the sanctuary, will he quietly change the string while no one<sup>ø</sup> looking, or solemnly announce to those assembled that there<sup>d</sup> be no music for the service because he can<sup>t</sup> change the string on Shabbat? Relying only on the optimal when one knows full well that it will be violated at some point compromises halakhic integrity because it is a dishonest way of legislating Jewish law.

By the same token, the fence that rabbinic law built around the prohibition of all musical instruments is unnecessarily broad and somewhat illogical. The strength and beauty of Conservative Judaism is the authentic way in which it respects the core values and processes by which Jewish law is decided, while understanding that the rabbis of each generation have the responsibility to decide when the preventative enactments employed to protect Jewish law have become too lenient, too restrictive, or are no longer applicable. Not every instrument is like a

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16. This is similar to the prohibition of riding a bicycle on Shabbat (except when doing so enables one directly to perform a *mitzvah*), lest one experience a flat tire or a derailed chain. These repairs are easy to accomplish by any cyclist, and do not require special skills. Faced with having to walk instead of riding home, and having to leave one<sup>ø</sup> bicycle at the spot of the breakdown (once it breaks it cannot be handled on Shabbat), the inclination to perform a simple repair is obvious. That repair, however, would directly violate the laws of the Torah. See my responsum for the *Committee on Jewish Law and Standards*, *öRecreational Sports and Exercise on Shabbat,ö* OH 301:2.2015, [www.rabbinicalassembly.org](http://www.rabbinicalassembly.org).

17. Maimonides, *Mishneh Torah*, *Hilkhot Shabbat* 23:4; Babylonian Talmud, *Eruvin* 102b-103a

guitar. Some, like a piano, are far too complicated to fix on the spot during Shabbat. Should a piano malfunction it will require contacting a skilled repair person with the appropriate tools after Shabbat; other instruments like hand drums are not likely to break, and if for some reason they do, they, too, will not be instantly fixable on Shabbat. In the case of pianos and hand drums, moreover, neither of them require *any* assembly. Accordingly, not only is the principle of *shema yitaken* inapplicable to them, but by definition they cannot transgress the other forbidden acts described above. Accordingly, there is no reason to prohibit the use of musical instruments impervious to transgressions within the *halakhah* of Shabbat.

**Carrying on the Sabbath** -- Carrying in a public domain, or from a public to a private domain or *vice versa* is also one of the 39 major categories of activity prohibited on Shabbat. Indeed, the Talmud explains that this is the reason we do not blow the shofar when the first day of Rosh Hashanah falls on Shabbat -- despite the fact that its sounding is clearly a commandment in the Torah, it does not trump the injunction "To keep the Sabbath day holy."<sup>18</sup> The postponement of the shofar's sounding to the second day of the holiday was codified as the prevailing law in the *Shulhan Arukh*, the most significant compendia of Jewish law, and it remains standard practice today. While a desire to use musical instruments on Shabbat may be for the noble purpose of enhancing worship, Jewish law teaches that the performance of a *mitzvah* by way of transgression is itself a transgression.<sup>19</sup> The violation of Shabbat for the sake of creating a particular aesthetic of prayer has no traction<sup>20</sup>. Yes, there are Conservative rabbis and congregations that allow musical instruments to be carried in and out of their buildings on Shabbat without restriction, but their decision, at least in terms of what Judaism teaches, is not premised on some alternative analysis of *halakhah*, but the determination that Jewish law on this question may be ignored . . . something this author is not prepared to do.

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18. Babylonian Talmud, *Rosh Hashanah* 29b; *Shulhan Arukh*, *Orah Hayim* 588:5, also the language of the *Mishnah Berurah* *ibid* to 588:13.

19. The principle is cited numerous times in rabbinic literature. See for instance Babylonian Talmud, *Sukkah* 30a-b.

20. *Hiddur mitzvah*, the beautification of a commandment, is a wonderful element of our tradition. The decoration of *sukkot*, the purchase of an especially beautiful *etrog*, embroidering a *tallit*, or setting a beautiful Shabbat table are all examples of this principle. It should be noted, however, that *hiddur mitzvah* never trumps Jewish law. The beautification of a particular observance that is undertaken through a violation of *halakhah* is a transgression.

It is only fair to note that the Jacksonville Jewish Center is located within an *eruv*. As defined by Jewish law, the creation of an *eruv* involves surrounding a neighborhood with a physical boundary that, for the purpose of carrying on Shabbat, converts a public domain into a private one. Inasmuch as one may carry in a private domain on Shabbat, it is permissible to carry within an *eruv*.

Even so, there are weeks when the *eruv* is down and therefore non-functional; of yet greater significance is that most of our congregants do not live within the boundaries of the *eruv* at all. To sanction members of the synagogue to carry their instruments to Shabbat services for the sake of congregational prayer is to sanction the violation of Shabbat for a more aesthetic worship experience -- a reason that has no traction within *halakhah*. It is true that the vast majority of congregants do not observe the prohibition of carrying on Shabbat, but it is one thing to accept the right of congregants to carry personal belongings for their own individual benefit, and quite another to encourage them to transgress Shabbat for the sake of communal worship. That the congregational *kiddush* for a *bat mitzvah* is kosher, even when a family decides not to observe *kashrut* at their private party later that day is another illustration of the same principle.

We could require those who would play at services to leave their instruments in the building over Shabbat. It is important to recognize, however, that instruments are often valuable and their owners may be reluctant to leave them in the synagogue. In addition, there are those who may not wish to part company with their instruments for 25+ hours because they plan to play them elsewhere on Saturday. Our limited use of instrument accompaniment on Friday afternoons during Daylight Savings confirms this -- members of *Koltrain* or those who play at Shabbat-in-the-Round have devised a *õpack outö* song, an extended instrumental that transitions into a capella singing to give them the time to dismantle their instruments and remove them to their cars before Shabbat begins because they do not want to leave them at the Center until Saturday night or Sunday morning.

There is only one approach that will automatically ensure the integrity of this dimension of Shabbat observance and obviate the need to monitor congregants' decisions in awkward and unpleasant ways. If the synagogue owns the instruments used and they are permanently housed

within the congregation, there can be no issue regarding their transport on Shabbat. This requirement is reflected in the list of conclusions at the end of the responsum.

**Sounding the Shofar when Rosh Hashanah Falls on Shabbat** -- One ancillary issue worthy of consideration is whether or not it would now be permissible to blow *shofar* when Shabbat falls on Rosh Hashanah. Let us explore the matter more closely.

As mentioned earlier, we know from the Mishnah that once upon the time the *shofar* was sounded on Rosh Hashanah when it fell on Shabbat, but solely within the Temple's precincts -- nowhere else was it blown on Shabbat. After the Second Temple's destruction, the Mishnah tells us that the sages continued to permit its sounding on Shabbat, but only in Yavneh, the home of the *Sanhedrin*. Once the Sanhedrin ceased to exist, the *shofar* was no longer sounded on Shabbat.<sup>21</sup>

According to the Talmud, the sage Rava explains the prohibition of the *shofar's* sounding on Shabbat as a precautionary measure instituted by the rabbis, "lest one take it in hand [on Shabbat] and go to an expert to learn [how to blow it] and carry it in the public domain [which would not have been at issue within the Temple proper]. And that is the reason [we also do not use] a *lulav* [on Shabbat during Sukkot] and why we do not read the *Megillah* [when Purim falls on Shabbat]."<sup>22</sup> Many centuries later, Rabbi Yosef Karo echoed this source in the relevant ruling found in the *Shulhan Arukh*, namely that we do not sound the *shofar* on Shabbat lest someone carry it on the Sabbath to learn how to blow it.<sup>23</sup>

This suggests there is no difference between the *shofar* and any other musical instrument. Another source rabbinic source, however, offers a different reason to prohibit the sounding of the *shofar* on Shabbat:

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21. *Mishnah Rosh Hashanah* 4:1.

22. Babylonian Talmud, *Rosh Hashanah* 29b

23. *Shulhan Arukh, Oreḥ Hayyim* 588:5; see also the *Mishneh Berurah, ad. locum*, 588:13

Rabbi Yoḥanan and Resh Lakish were once sitting and puzzling over the following difficulty. They said: We have learned that when Rosh Hashanah fell on Shabbat, the *shofar* was sounded in the Temple, but nowhere else. Now if the sounding of the *shofar* is commanded by the Torah, let it override Shabbat not only in the Temple, but everywhere else, too! By the same token, if it is not a biblical injunction to sound the *shofar* on Shabbat, it should not override the Sabbath even in the Temple! They inquired of Rav Kahana who answered: the Torah [refers to Rosh Hashanah] as a *Yom Teruah* (ōthe day of the [shofar] blastö) in one source (*Numbers* 29:1); and refers to it as *Zikhron Teruah* (ōa remembrance of the blastö) in another place (*Leviticus* 23:24). How can this be? [A remembrance blast implies memory rather than an actual blowing]. When the festival comes on a Shabbat [it is a remembrance of the blast]; we recall the act of blowing in our minds, but we do not blow the *shofar* itself.<sup>24</sup>

This text indicates that the Torah itself, rather than a rabbinic decree, is the source for not sounding the *shofar* on Shabbat. Far from simply being as a musical instrument, the blowing of the *shofar* serves as the most visible and primary *mitzvah* we associate with the Jewish New Year. Even so, the sanctity of Shabbat takes precedence over that of Rosh Hashanah, which is why we assert the primacy of the Sabbath by *not* blowing *shofar*, just as we do not use a *lulav* when the festival of Sukkot coincides with Shabbat, or forego the wearing of *tefillin* on the Seventh Day. Accordingly, we refrain from using a *shofar* on Shabbat not because it is a musical instrument, and not because we are fearful that it might be carried to an expert for instruction, but because the rabbis interpreted the Torah's own language to distinguish between a weekday Rosh Hashanah (ōthe day of the *shofar* blastö) and one that falls on Shabbat (ōa day when we *remember* the blastö -- but do not actually sound it). In agreement with the 1978 ruling of the Committee on Jewish Law and Standards, and consonant with 18 centuries of practice, we affirm that the *shofar* should not be blown on Shabbat, but its sounding is postponed to the second day of the holiday.

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24. *Leviticus Rabbah* 29:12

## THE AESTHETICS OF WORSHIP MUSIC: PASSIVE OR PARTICIPATORY?

In the world of the mega-church, the church band plays a critical piece in shaping a particular atmosphere. Indeed, even within small churches, historically and today, hymn-singing invites congregational participation through the work of a music director, choir, and/or organist. This is most evident in the gospel music of African-American churches -- regardless of the size of the choir or the number of musicians, participation is pervasive throughout the congregation. No doubt, the ability to sing familiar compositions in one's own native language helps immensely.

Within the Jewish community, however, things are more nuanced. Attend a Shabbat service of an Orthodox community, particularly those animated by the musical traditions of Hasidism, Shlomo Carlebach or the Sephardic world and, without a single musical instrument in sight, you will encounter one of the most powerful prayer experiences imaginable, one occasioned by the power of all-encompassing participation. Some years ago on a trip to Israel, I took a member of our congregation to a rather unusual Orthodox synagogue in Jerusalem. He was blown away by what could be accomplished when a room full of people sang, improvising harmonies as they went along. To be sure, they did not all have good voices, but in the totality of their shared music, they sang "A new song to the Lord."<sup>25</sup>

By contrast, congregations can put together groups of talented musicians, professional or lay, whose collective ability to generate beautiful music is breathtaking. Yet in synagogues lacking cultures of participation, this approach masks the dearth of engagement rather than its enhancement. Communal worship becomes a congregational concert; prayers are the functional equivalent of musical numbers; those who serve as prayer leaders are converted into performers. In synagogues where those present do not *daven* or are unfamiliar with the Hebrew, the ten-piece synagogue band may be great listen to, but it quickly becomes old hat. There are always

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25. *Psalm* 96:1, which also happens to be a part of the *Kabbalat Shabbat* service.

aficionados who can watch the same movie over and over, or listen to the same album again and again, but for the vast majority, once the novelty of attending a Shabbat rock service passes, hearing the same band perform week-in, week-out does not translate into commitment to a worship community by itself.

At the Jacksonville Jewish Center, during the months in which Daylight Savings are in effect, we feature two modes of music at Kabbalat Shabbat, the first part of the Friday night service. They have had dramatically different trajectories that reflect the above observations. Our Koltrain Friday nights started with a big splash more than five years ago. With multiple instruments of all kinds, it debuted to a packed house. At the end of each prayer, people applauded vigorously; a few got up to dance, but most stayed in their seats. Those present were undeniably attentive, but few opened *siddurim* and most did not sing along; they tapped their toes and enjoyed the performance. In time attendance began to diminish. The big band did not translate into a greater sense of connection because the music was perceived as an end in itself rather than a means to the creation of greater engagement.

At the opposite end of the spectrum, our Shabbat-in-the-Round services are far more musically modest, typically including a guitar or two, a single djembe drum, sometimes a recorder. Those present are invited to use a shaker egg to keep time and feel a part of the music. While the intimacy of the chapel space and the flexibility of its seating allow us to create a circle and contribute significantly to the vibe, the music invites congregants to sing and clap (not applaud); the music is an embrace of community, not a substitute for it. Unlike the Koltrain service, attendance at Shabbat-in-the-Round has grown and remains consistently strong. There are important lessons to learn here.

*The use of musical instrumentation on Shabbat can only be for the sake of making our worship more participatory and our davening more connective.* This is a religious goal, not an aesthetic one. It may be that the sounds we produce are pleasing, but our motivation isn't to offer a more pleasurable listening experience, but a more compelling way to sing to God as a community. The *raison d'être* of this responsum as well as the goal it seeks for the Jacksonville Jewish Center is simply that. Having witnessed worship in which the level of participation

precluded a need for instruments, as well as services whose use of such discouraged participation, I can say that musical instruments are neither *THE* key to our future nor a magic bullet. I do believe, however, in nurturing a *davening* experience that pulls people in. If musical instrumentation -- subject to the parameters of Jewish law as explained in this responsum -- can help us achieve that goal, it is worth considering.

## **TAKING INTO ACCOUNT THE RELIGIOUS CULTURE OF THE JACKSONVILLE JEWISH CENTER**

Halakhic permissibility is always the first issue to consider, but by no means the only one. That which is permissible may or may not be desirable depending upon the circumstances. In certain ways, one the greatest strengths of the Jacksonville Jewish Center is its veneration and respect for tradition, a respect that is largely the result of past practices and shared history rather than halakhic reasoning (what some may call the *kishke* factor). In deciding whether or not to implement this responsum, which constitutes a major departure from the practice of the last 115 years, there are serious and nuanced questions that must be asked by the Religious Life Committee, the Board as well as the Shabbat regulars who are important stakeholders in their own right.

While the congregation cannot exceed the parameters set forth in this responsum, it might decide to allow for instrumental music as described herein only at certain Friday evening or alternative Shabbat morning services. Similarly, the synagogue might opt to permit some of the acceptable instruments, but not others. Having had the pleasure of Hazzan Holzer's musical leadership for eight years, we know that drumming is a *de facto* part of our *davening* experience already; it is not a big stretch to expand the circle of permissible percussion instruments from using the lectern as an instrument to a hand drum. By the same token, key elements of the congregation may view the jump to the use of an acoustic piano on Shabbat as too jarring. The specifics of implementing this responsum has to embrace all stakeholders, including Shabbat regulars, and a process of teaching it and soliciting feedback about it must precede its ultimate presentation to the Board for approval as a major policy change pursuant to the Center's by-laws.

## **GUIDANCE FROM THE COMMITTEE ON JEWISH LAW AND STANDARDS (CJLS)**

With the exception of several binding standards of practice, the role of the Committee on Jewish Law and Standards (CJLS) of the Rabbinical Assembly is advisory only. The senior rabbi of each and every congregation serves as *mara d'atra* and is the authority for determining the local practice of his/her congregation. Nevertheless, the CJLS offers important guidance regarding what could and should be considered official positions of the Conservative rabbinate, embodying authentic options because of the care with which each is researched, written, reviewed, critiqued and voted upon by a body of rabbis selected because of their expertise in matters of Jewish law.

In November 2011, Rabbi Elliot Dorff, the chair of the CJLS, and Rabbi Elie Kaplan Spitz submitted a responsum entitled *Musical Instruments and Recorded Music as Part of Shabbat and Festival Worship*. After going through six drafts and discussions spanning several years, the responsum failed to garner the minimum six votes needed to become an official position of the CJLS. Many of the members of the CJLS did not take umbrage at Dorff's and Spitz's conclusion allowing for the use of musical instruments, but some of their specific understandings of the source material and the wide scope of its application. Indeed, while I voted against the 2011 paper as a whole, I have borrowed from the Dorff and Spitz responsum without hesitation because many of its assertions are factual and simply represent what Jewish law teaches.

In the meantime, a new paper on this topic is in the works from another member of the CJLS, Rabbi Aaron Alexander. It is likely that a responsum permitting musical instruments on Shabbat and Festivals in some form, shape or manner will receive the requisite number of votes to become an official position of the Conservative movement seems a foregone conclusion. This is so not only because there is a real need to offer synagogues guidance (consider the numbers that presently allow instrumental music in some fashion); and not only because the halakhic sources are far less controversial than some of the discussions around the topic; but also because there are already a number of past responsa from the CJLS permitting instrumental music.

Indeed, more than 50 years ago Rabbi Ben Zion Bokser, writing on behalf of the Law Committee, noted that, “The use of organ must be regarded as legitimate within Conservative Judaism. A congregation resolving to use the organ is not inconsistent with the standards of Jewish worship as we understand them.”<sup>26</sup> In addition, while not an official position of the CJLS, the minutes from a 1970 meeting revealed that some members felt that, “Other instruments are also permitted in light of the organ *teshuvah*.”<sup>27</sup> In still another CJLS decision dating to the early 1960s, a minority opinion even went so far as to permit music at social functions on Shabbat and *Yom Tov*, lest congregants take their life-cycle celebrations elsewhere.<sup>28</sup> Oddly enough, while the foregoing treated the aesthetics of instrumental music at length and whether or not it too closely resembled church worship, none of these sources covered the *halakhic* aspects of instrumental music on Shabbat! It is for this reason that the CJLS has sanctioned the present effort to outline the circumstances governing the use of musical instrumentation on Shabbat.

This responsum remains uncompromising in its insistence that we take *halakhah* seriously in weighing any departure from current religious policy. At the same time, it accepts that we live in a changing world with new assumptions regarding worship and spirituality. In seeking a path to move the Jacksonville Jewish Center into the future while preserving the integrity of its core values, it is my humble hope to remain true to the Torah I love and the congregation I am privileged to serve.

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26. Rabbi Ben Zion Bokser, “The Organ and Jewish Worship,” Statement of the CJLS from the *Proceedings of the Rabbinical Assembly*, November 1962. Note that organs by virtue of their size and construction are neither likely to be repaired on Shabbat or transported from one domain to another. Rabbi Bokser does go on to caution against the use of any musical instrument that encourages passivity among worshippers. There is a fascinating series of exchanges regarding the use of an organ on Shabbat that can be read in their entirety in *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement, 1927-1970*, 3 vols. David Golinkin editor (Jerusalem: Rabbinical Assembly, 1997), 3:1314-1335.

27. Minutes of the CJLS, 062370B.

28. Rabbi Arthur Neulander, “Music at Sabbath Bar Mitzvah Seudah,” *Proceedings of the Rabbinical Assembly*, 1962. The majority ruling, however, written by Rabbi Eli Bohnen, prohibited music at social function on Shabbat or *Yom Tov*. Rabbi Eli Bohnen, “Should Dinner Music be Permitted at Bar Mitzvah Dinners Held on the Sabbath?” *Proceedings of the Rabbinical Assembly*, 1963.

## ***PISKEI HALAKHAH:***

### **PRACTICAL OUTCOMES OF THIS RESPONSUM**

- i.** The current unrestricted use of musical instruments on Fridays during Daylight Saving Times and up to *Psalm 92* where the Shabbat liturgy begins may continue, and include acoustic, electric and electronic instruments of any kind. Musical instruments not in conformity with the policy outlined below must be removed from the building before Shabbat starts and may not be used during Shabbat or Festival services.
- ii.** The purpose of allowing certain musical instrumentation on Shabbat is solely for the sake of enhancing worship and, as such, constitutes *hiddur mitzvah*, the rabbinic concept that the beautification of a *mitzvah* is praiseworthy. Instrumental music for other purposes on Shabbat might be quite pleasurable, but remains impermissible because it does not connect directly with *hiddur mitzvah*. Accordingly, pursuant to the majority ruling of the CJLS, instrumental music may not be used at social events, *kiddushes*, or receptions on Shabbat and Yom Tov.
- iii.** Instruments requiring assembly or disassembly on Shabbat or Festivals may not be used because of the concepts of *boneh*, *soter*, and *makeh b'patish*, three of the major categories of work on Shabbat.
- iv.** String or reed instruments may not be used on Shabbat or festivals because of the principles of *makeh b'patish*, putting the instrument together to make it playable and/or *shema yitaken*, the ease and likelihood of repair in the case of a broken reed or string.
- v.** No instrument may be tuned on Shabbat or festivals.
- vi.** Any instrument used on Shabbat must belong to the congregation and be housed within the building to obviate the issue of transport to/from the synagogue.
- vii.** The *shofar* will not be sounded on the first day of Rosh Hashanah when it coincides with Shabbat. When the first day falls on Shabbat, the *shofar* will be sounded on the second day only.
- viii.** Electronic or electric instruments do not accord with the spiritual serenity we wish to promote on Shabbat or festivals. Electric amplification of acoustic instruments, however, is permissible in the same manner as microphones are currently used to amplify speaking and singing on Shabbat or festivals. Non-Jewish maintenance personnel are the only ones who may connect or disconnect these instruments on Shabbat.
- ix.** While not a complete list, instruments whose use would be consonant with the above parameters include: hand drums, cajon, hand percussion, piano, marimba and related instruments, harmonica, wooden recorders (i.e., *halil*) that lack reeds and are generally kept assembled at all times.