

Text Immersion: *Mishnah Berurah Hilchot Shabbat*

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Introduction

In America in the twenty-first century there are a number of available academic and curricular paths to becoming a rabbi. There exist at least one or two seminaries for each of the major movements in American Judaism in which students complete a prescribed course of training after which they are conferred the title rabbi. There are also plentiful opportunities for individual *smicha* (though often restricted to men) that vary widely in their study requirements. In each of the liberal Jewish seminaries today (Reform, Reconstructionist, Renewal, Conservative) study of *halakhic* literature constitutes only a small portion of the overall curriculum, though students may opt to take additional coursework in that field. This remains in contrast to Orthodox requirements for which rabbinic *smicha*, both at the *yoreh yoreh* and *yadin yadin* levels, require additional study of Jewish law codes, principal among them mastery of aspects of the *Shulchan Aruch* in conversation with commentaries such as the *Mishnah Berurah*. Each curriculum and path to *smicha* is designed to reflect how the denominations conceive of themselves as being in conversation with Jewish tradition and their goals for translating that tradition for the (perceived) needs of the Jewish community they serve today.

It is not surprising then that the Reform movement's seminary, the Hebrew Union College-Jewish Institute of Religion, only requires one course in rabbinic codes to graduate. We continue to perceive and pride ourselves on being a non-*halakhic* movement and therefore often wonder what relevance the study of *halakhah* will have for our work in contemporary Reform congregations. The question is a valid one, and one

with which each student must grapple for him/herself.¹ To be sure, there are equally valid arguments for pursuing a route of study at HUC-JIR that emphasizes other aspects of the curriculum. For myself, however, being in conversation with Jewish tradition means studying *halakhic* literature and developing an understanding of how law codes and commentaries are in conversation with each other. I find that even when the laws themselves are not directly applicable to my personal practice or that of my congregation, the development of a critical thinking process that comes out of studying the thought processes, arguments, and rhetorical strategies of the rabbis informs my own thinking on complex subject matters in addition to giving me a more grounded understanding of our history(ies) and tradition(s).

For my text immersion I chose to focus on the *Shulchan Aruch* and one of its many commentaries, the *Mishnah Berurah*, precisely because the *Shulchan Aruch* has arguably been the most referenced and widely-used code for both Sephardic and Ashkenazic (accompanied by the Rema) Jewry since its composition by Joseph Karo in sixteenth-century Palestine. The *Orach Chayyim* section of the *Shulchan Aruch* is frequently studied alongside the late-nineteenth/early-twentieth century commentary the *Mishnah Berurah*. As a commentary the *Mishnah Berurah* helped to further elucidate the *Shulchan Aruch*'s legal rulings in conversation with rabbinic texts written since the sixteenth century and in light of turn-of-the-twentieth-century Jewish life in Eastern Europe. I see this independent study as the opening to a lifetime of study in Jewish texts. My main purpose was to feel comfortable navigating the text of the *Shulchan Aruch* and

¹ For a compelling discussion on medieval *halakhic* literature and the Reform rabbi see Mark Washofsky, "Medieval *Halakhic* Literature and the Reform Rabbi," *CCAR: A Reform Jewish Quarterly Journal* 162, no. 4 (Fall 1993).

some of the rabbis in conversation with it, namely the Chafetz Chayyim, author of the *Mishnah Berurah*.

The Chafetz Chayyim as he was popularly known, or Rabbi Israel Meir (HaCohen) Kagan, was born in Zhetl, Hrodno Guberniya, today's Belarus, on February 6, 1838. He later moved to Radin, Poland where he established a *yeshivah* in 1869. The Chafetz Chayyim soon became one of the most influential rabbis of late nineteenth-century/early twentieth-century Eastern European Jewry and was the author of many works of *mussar* and *halakhah* including the *Chafetz Chayyim*, *Sh'mirat HaLashon*, *Ahavat Chesed*, and *Likutei Halachot* among many others. The *Mishnah Berurah* (1884-1907) is one of his most well-known works and his primary work of *halakhic* commentary. It consists of six volumes of commentary to the *Orach Chayyim* section of the *Shulchan Aruch*. Each individual page of the *Mishnah Berurah* itself includes a few different commentaries. *HaMapa* (the sixteenth-century commentary written by the Rema for Ashkenazic Jewry which is included in every *Shulchan Aruch*), the *Ba'eir Heiteiv* (written by Rabbi Yehudah Ashkenazi of Tiktin), the *Bei'ur Halachah* (written by the Chafetz Chayyim), and the *Sha'ar HaTziyun* (reference section by the Chafetz Chayyim).

For this text immersion I chose to study thirty chapters from the *Mishnah Berurah* in *hilchot Shabbat* because many of the discussions in this section remain applicable to Reform Jewish practice and thought today. The following three papers emphasize a close reading of the *Shulchan Aruch* and *Mishnah Berurah* in addition to relevant secondary sources. The first paper, “*Halakhic Decision-Making in the Mishnah Berurah*” provides a close analysis of two secondary sources in an attempt to discern the *Mishnah Berurah*'s organizing principles to Jewish lawmaking and commentary. The second, “*Ha'Sha'ah*

Dechukah Lo: Economic Duress and the Case for Leniency in the Mishnah Berurah”

argues that while the *Mishnah Berurah* generally shows a pattern for soft stringency in its decision-making it breaks this pattern in favor of leniency on topics of economic hardship.² The third paper, “Understanding Our Havdalah Ceremony through Jewish Law” provides a model for how I might demonstrate to a Reform congregation how certain aspects of *halakhic* literature continue to inform our contemporary Reform practice.

² “Soft stringency” is a type of legal ruling that urges stringency while operating as an optional norm, opening the way for the reader to choose if s/he will adopt the stringent option or discard it for leniency. The definition of soft stringency as well as representative examples will be a central focus of paper one and two.

Halakhic Decision-Making in the Mishnah Berurah

The *Mishnah Berurah*, written by Rabbi Yisrael Meir HaCohen of Radin (also known as the *Chafetz Chayyim*, 1838-1933) is the principal commentary studied in Orthodox Jewish communities today as a companion to the *Orach Hayyim* section of the *Shulchan Aruch*.³ Published intermittently between 1884 and 1907, the commentary quickly became essential reading for understanding the laws of daily Jewish living. However, despite the centrality of the *Mishnah Berurah* to the Jewish legal canon and its persistent popularity, a comprehensive academic examination of the work and its author remains to be written.⁴ In 1991, Simcha Fishbane published *The Method and Meaning of the Mishnah Berurah*. The study serves as an initial introduction to the Chafetz Chayyim as well as an in-depth examination of six chapters of the *Mishnah Berurah*. However, it is far from exhaustive and leaves many questions unanswered in regards to the historical context out of which the Chafetz Chayyim's thought emerges as well as his approach to *halakhic* exegesis and decision-making.

³ The *Shulchan Aruch* is a 16th century code of Jewish law written by Joseph Karo. The code is divided into four distinct parts: *Orach Chayyim* (laws of daily living such as prayers and holidays), *Yoreh Deah* (includes laws on *Tzedakah*, *Kashrut*, and Torah study), *Even haEzer* (laws concerning marriage and divorce), and *Choshen Mishpat* (civil law). Karo's Sephardic code was enhanced by *HaMapa*, an Ashkenazic gloss on the *Shulchan Aruch* written by Rabbi Moses Isserles of Poland. Many commentaries on the *Shulchan Aruch* have been written in the centuries since. Of these commentaries Simcha Fishbane notes that "the *Mishnah Berurah* has become the contemporary *halakhic* work of *halakhic* standards. Study groups and classes on this work abound in Orthodox synagogues and yeshivot. Contemporary decisors refer to it as a matter of course" ("*Mishnah Berurah*: The Writings of the 'Hafetz Hayyim' Rabbi Israel Meir Kagan", last modified 2010, accessed Feb. 2, 2014, http://mobile.myjewishlearning.com/texts/Rabbinics/Halakhah/Modern/Orthodox/Mishnah_Berurah.shtml?TSRB).

⁴ Although Michael J. Broyde and Ira Bedzow's article "The Codification of Jewish Law and An Introduction to the Jurisprudence of the *Mishna Berura*" published in the *Hamline Law Review* is due to be published in book-length form (according to Amazon) as a definitive study of the *Mishnah Berurah* in April 2014.

More helpful for understanding the Chafetz Chayyim's literary style and approach to legal rulings are Benjamin Brown's article in *Contemporary Jewry* entitled "'Soft Stringency' in the *Mishnah Berurah*: Jurisprudential, Social, and Ideological Aspects of a *Halakhic* Formulation" (2007) and Michael J. Broyde and Ira Bedzow's article "The Codification of Jewish Law and An Introduction to the Jurisprudence of the *Mishna Berura*" (2011).⁵ The two articles aim to analyze the way in which the Chafetz Chayyim elucidates the *Shulchan Aruch* and makes Jewish legal ("halakhic") decisions for the Jewish community of late-nineteenth/early-twentieth century Lithuania. While Brown and Broyde identify some common themes in the Chafetz Chayyim's legal literature, they ultimately diverge on their approach to Jewish law in general and in their analysis of the *Mishnah Berurah* in particular. This is especially evident in a pointed and lengthy footnote in Broyde's article that demarcates his disagreements with Brown's central thesis (to be discussed in more detail later in this essay).

This essay aims to explain Brown's and Broyde's arguments and how they function in aiding the reader in an exploration of the *Mishnah Berurah* and its methods. Both articles are helpful in providing a structure for the student to think critically about the *Mishnah Berurah* as a text of Jewish legal commentary. However, after an analysis of both articles there are a few clear reasons why Brown offers a superior argument. First, Broyde essentializes "Jewish law" and ascribes a strict, yet vague, rubric of *halakhic* principles to the *Mishnah Berurah*. Brown succeeds in situating the *Mishnah Berurah* in

⁵ Benjamin Brown, "'Soft Stringency' in the *Mishnah Berurah*: Jurisprudential, Social, and ideological Aspects of a *Halakhic* Formulation," *Contemporary Jewry* 27 (2007).

Michael J. Broyde and Ira Bedzow, "The Codification of Jewish Law and An Introduction to the Jurisprudence of the *Mishna Berura*," *Hamline Law Review* 35, no. 623 (2011).

From this point on I will refer to this essay using only Broyde's last name as the author for the sake of brevity.

its historical context and describing a trend in the Chafetz Chayyim's work that provides an easily identifiable framework for study. Broyde's analysis is not wrong per se. Indeed, each of the *halakhic* principles he recognizes in the *Mishnah Berurah* (which I will outline in more detail later) is present in the work. However, recognizing these disparate *halakhic* principles within the *Mishnah Berurah* does not aid the reader in formulating an organized understanding of the text and its approach as he claims. For this reason, while I will provide an analysis of Broyde's article, I will not attempt to give examples of each of the *halakhic* principles he lists. They are all present in the text but do not create a consistent theme if pointed out. Rather, it is in applying Brown's central thesis about soft stringency that the reader is able to glean a more coherent understanding of the *Mishnah Berurah*. To this end, in the following section I will briefly analyze the two articles in question after which I will provide examples from the *Mishnah Berurah* that support Brown's central thesis.

In " 'Soft Stringency' in the *Mishnah Berurah*" Benjamin Brown coins the term "soft stringency". According to Brown, the soft stringency refers to a manner of legal ruling particularly prevalent in the later stages of the Jewish legal tradition that expresses "a recommendation or encouragement to follow the stringent option...as a preferable norm rather than a required one".⁶ Soft stringency "operates as an optional norm, which opens the way for the reader to choose if he adopts it or discards it for leniency".⁷

According to Brown, soft stringency enables lay readers to quickly identify both the optimal observance of a law as well as its necessary minimum. After establishing his definition of soft stringency, Brown puts forward his central thesis that the Chafetz

⁶ Brown, 1.

⁷ Ibid.

Chayyim made “considerably broad use of the soft stringency technique”.⁸ Brown’s article proceeds to establish historical background for the jurisprudential, social, and ideological motivations that may have contributed to the Chafetz Chayyim’s approach to legal decision-making. Principle among these is the Chafetz Chayyim’s background in *mussar* literature which emphasizes *mussar* principles rather than rules.⁹ In his article “From Principles to Rules and from *Musar* to *Halakhah*: The Hafetz Hayim on Libel and Gossip” Brown clarifies the way in which the Chafetz Chayyim merges legal literature with aspirational literature. Brown defines *halakhah* as a morality of duty that is rule-centered and *mussar* as a morality of aspiration that is principle-centered.¹⁰ In his commentary, the Chafetz Chayyim recognizes these as two types of norms. They are both evident in his employment of the soft stringency.

Brown grounds his argument in quantitative data by composing a chart comparison through the Bar Ilan Responsa Project of the frequency with which certain phrases that suggest soft stringency occur in the *Mishnah Berurah* as opposed to other works of *halakhic* literature. The textual comparison reveals that the Chafetz Chayyim utilizes phrases that indicate soft stringency twenty-one times more than comparable commentary literature such as the *Beit Yosef*, the *Magein Avraham*, and the *Sha’arei T’shuvah*.¹¹ Some examples of these phrases include:

⁸ Ibid.

⁹ Ibid.

¹⁰ Benjamin Brown, “From Principles to Rules and From *Musar* to *Halakha*: The Hafetz Hayyim on Libel and Gossip”.

http://www.academia.edu/1096590/From_Principles_to_Rules_and_From_Musar_to_Halakhah_The_Hafetz_Hayim_on_Libel_and_Gossip. Accessed 16 Dec. 2013: 176, 181.

¹¹ Brown, “Soft Stringency”, 5.

- *Yeish/tov/nachon/ra'ui l'hachmir*/ one should/it is good/it is right/it is appropriate to be stringent.
- *Tov/nachon/ra'ui lizaheir*/it is good/it is correct/it is appropriate to beware
- *Baal nefesh yachmir*/a truly observant person should be stringent.

Brown's argument, when read in conjunction with a close textual reading of the *Mishnah Berurah*, is convincing for a number of reasons. First is his manner of scholarship. In the language with which he writes Brown implicitly acknowledges that there is no essential "Jewish law" but rather a Jewish legal tradition that is in conversation with itself and that evolves throughout history. Emerging from this school of thought on Jewish law, Brown's research is clearly grounded in an understanding that the *Mishnah Berurah* is a product of a particular geographic region and an historical context. As such, it is in conversation not only with its rabbinic predecessors but also with the social world that surrounds it and a living and flexible tradition of Jewish legal development.

The same cannot be said of Michael Broyde's article. Broyde begins his article with a "General Methodology of Codification of Jewish Law", presumably for a secular audience that is well-versed in American legal history but with scant knowledge of Jewish legal history. Broyde's introduction to the Jewish legal tradition makes clear that he wants to present an essentialized view of Jewish law by recapitulating the standard mythology about Jewish law that there is a) one singular and unified body of Jewish law and b) it was revealed to Moses at Mount Sinai.¹² This introduction is unhistorical and

¹² Broyde, 623.

reveals a religious bias in Broyde's thinking and scholarship. While Broyde's article does contribute elements of valuable discussion to the topic of the *Mishnah Berurah*, this unhistorical approach diminishes his ability to evaluate the *Mishnah Berurah*'s method and impact in context. However, Broyde's essentialized approach to history is not enough to ensure that Brown's article be more convincing in its argument on the *Mishnah Berurah*'s style of legal ruling. Broyde's assertions are not only difficult to comprehend because of his approach to Jewish law. He also describes the Chafetz Chayyim's decision-making in such broad terms and with such catch-all descriptors that he seems to render the *Mishnah Berurah* free from any sense of logic or direction despite his claims to the contrary.

For instance, Broyde writes that the *Mishnah Berurah*'s responses are

nimble, subtle, and variegated, yet remain at once clear and defined. His perspective is not about observations of strictness versus lenience, as much as about evaluating a spectrum of options; the same question could get a different answer depending on the situation.¹³

While I agree that the *Mishnah Berurah* often evaluates a "spectrum of options," the above quote is an example of Broyde's tendency to define the *Mishnah Berurah* as employing so many techniques that he fails to prove his central claim that the *Mishnah Berurah* has a coherent and clearly defined system. The following is evident in Broyde's central claim that the *Mishnah Berurah* has a distinct methodology that utilizes ten main *halakhic* principles:

- Relevance—to interpret rules in ways that are relevant to contemporary society.
- More or Less—to provide a framework which allows one to follow minimal requirements in times of stress so that at least the basic framework of *halakhic* life

¹³ Broyde, 636.

is maintained, yet to demand more stringent requirements when possible, in order to have a more holistic approach to the *Halakha*.

- Both Right—to demand adherence that is consistent with more than one position if both are reasonable.
- Avoidance—to avoid situations that result in trying to negotiate between conflicting parties.
- Be Strict (*machmir*)—to be strict when Jewish law authorities are stringent, even if lenient customs have developed.
- Be Lenient (*meikel*)—to not protest against well-established lenient customs, even if the individual may personally lean toward stringency as a matter of belief or interpretation.
- Unsupported Customs—to protest against following customs that are not based on Jewish tradition, are not recorded, or are erroneous.
- Explanation—to explain why unsupported customs might be permissible.
- Mysticism and *Halakhah*—to minimize the inherent tensions between Kabbala and Talmud, even if such interpretations may seem somewhat forced. However, when faced with no alternative, the Talmud does take precedence.
- Tension—to incorporate the positions of the Gra, despite the fact that the Gra's 'true and false' approach is diametrically opposed to the *Mishnah Berurah*'s inclusive and holistic priorities in which alternative views are rarely fully wrong.¹⁴

While it is true that these elements of legal decision-making are present in the *Mishnah Berurah*, the combination of such divergent *halakhic* principles does not describe a clear methodology nor make it easier for the student of the *Mishnah Berurah* to discern its methodology if, indeed, there is one.

In his concern for putting forth a unique contribution to the scholarship on the *Mishnah Berurah*, Broyde dismisses Brown's thesis even as he affirms it in other words. In the lengthy footnote in which Broyde disagree with Brown's thesis on soft stringency,

¹⁴ Broyde, 640-641.

Broyde remarks that the *Mishnah Berurah*'s "multifaceted recommendations are not the result of avoiding decision, but rather are deliberately constructed decisions in themselves".¹⁵ Broyde goes on to remark that Brown claims that the "*Mishnah Berurah* deliberately gives ambiguous rulings in order to accommodate various degrees of legitimate religious observance".¹⁶

Both of these statements not only misinterpret Brown's article, but they also seem to stretch his words to imply something else entirely. Brown never argues that the *Mishnah Berurah* avoids making decisions nor does he refer to the *Mishnah Berurah*'s rulings as ambiguous. Broyde's central disagreement with Brown is that the *Chafetz Chayyim* does not "deliberately create vagueness...but rather he adjudicates".¹⁷ However, Brown never suggests that the *Chafetz Chayyim* deliberately creates vagueness or avoids adjudicating. Rather, Brown believes that the soft stringency is a manner of legal ruling, not an avoidance of a ruling.

Further, there are phrases in Broyde's article that suggest he himself is reading soft stringency in the *Mishnah Berurah*, while choosing to call it by a different name. For example, in his section evaluating the *Mishnah Berurah*'s jurisprudence, Broyde outlines four central questions that the *Mishnah Berurah* utilizes in order to "balance opposing forces of tradition and modernity".¹⁸ The last two of these questions are:

1. What are the minimum *halakhic* requirements one should try to fulfill?
2. How can one maximize observance in order to enhance his relationship to God?¹⁹

¹⁵ Broyde, 651.

¹⁶ Ibid.

¹⁷ Broyde, 652.

¹⁸ Broyde, 640.

¹⁹ Ibid.

Further, they are followed by the claim that “it is precisely *because* the *Mishnah Berurah* recognizes the complexity of life and gives a spectrum of reasonable answers to difficult *halakhic* questions that it has stood the test of time”.²⁰ I agree that this comment reflects the *Mishnah Berurah*’s approach to Jewish legal decision-making. However, this is Brown’s soft stringency couched, perhaps unwittingly, in different language. A close reading of thirty chapters of *Mishnah Berurah Hilchot Shabbat* reveals multiple instances of soft stringency. One can also identify various instances of the ten main *halakhic* principles that Broyde outlines. However, these instances seem to follow no obvious pattern nor do they delineate a clear methodology. As a result, reading the *Mishnah Berurah* through the lens of Brown’s article provides a helpful framework for organizing the various threads of the *Chafetz Chayyim*’s commentary whereas reading it through the lens of Broyde’s article lends little additional clarity.

Soft Stringency Example 1: *Mishnah Berurah Hilchot Shabbat* 249:1:3

This chapter presents *halakhot* pertaining to Friday prior to Shabbat’s arrival. In 249:1 the *Shulchan Aruch* rules that a person may not travel more than three *parsa’ot* on Friday in order that he will arrive home before nightfall and be able to prepare enough food for Shabbat. The *Shulchan Aruch* continues that this applies both to a person traveling to someone else’s home as well as to a person returning to his own home. The *Mishnah Berurah* commentary to “*bein sh’holech l’veito*” begins by explaining that part of Karo’s concern is that a person’s family may not be aware of his arrival and therefore may not have prepared enough food for him. The *Mishnah Berurah* then introduces a leniency with the words *u’v’medinot eilu* (in these countries)—making the distinction

²⁰ Ibid.

that in 19th/20th century Lithuania this would not be a concern because most people have developed the custom of preparing more than enough food for Shabbat. The commentary then states:

ולכן אין נזהרין בזה כלל--And therefore we are not meticulous about this--

After offering this leniency, the *Mishnah Berurah* invokes the opinion of many *acharonim* who warn that people should not walk nor ride close to nightfall lest they find themselves in the position of desecrating Shabbat. It then offers a long list of possibilities for inadvertent desecration of Shabbat in this situation. Thus, while the Chafetz Chayyim acknowledges that people in his day may be lenient about travel on Friday he warns:

ולכן כל זה ישים האדם ללבו וימהר לשבות אפילו בכפר ולא יסיתנו היצר לומר עוד היום גדול והדרך טוב.

Translation:

And therefore one should take all this into his heart and hurry to stop and rest, even in a small village, and not to incite the *yetzer (ha'ra)* to say the day is still long and the way is good.

Therefore, while the *Mishnah Berurah* acknowledges that one may travel more than three *parsa'ot* on Friday, his recommendation is that one should be careful to avoid a situation of traveling that could easily lead to a desecration of Shabbat. The language in this soft stringency example is highly aspirational, representing what Brown might view as an introduction of *mussar* into the *halakhah*—particularly the warning concerning one's *yetzer hara*.

Soft Stringency Example 2: Mishnah Berurah Hilchot Shabbat 261: 2: 23

The discussion here concerns the exact time that Shabbat begins, how much weekday time one should add to Shabbat, and how long *bein hashmashot* is. The *Shulchan Aruch* rules that one must add onto Shabbat some amount of weekday time that is definitely daytime. It defines *bein hashmashot* as the amount of time it takes to walk three-quarters of a *mil* and argues that the automatic start of Shabbat is sometime after the initial sunset. The *Mishnah Berurah* attaches a lengthy comment to “three quarters of a mil”. As he often does with his soft stringencies, the Chafetz Chayyim begins by explaining Karo’s ruling. Here he notes that the *Shulchan Aruch* is ruling in accordance with Rabbeinu Tam (Jacob ben Meir, a twelfth-century Tosafist and Rashi’s grandson) and his colleagues. Following this clarification the *Mishnah Berurah* brings in the *rishonim* and the Gra (Vilna Gaon, an eighteenth-century *halakhist* and leader of non-Chassidic Jewry) as examples of rabbis who ruled more stringently on this matter—they regard the beginning of *bein hashmashot* to be as soon as the sun is not visible. In this example, the *Mishnah Berurah* sides definitively with the *rishonim* on the definition of *bein hashmashot* and the commencement of Shabbat. In the three sentences following his citation of the *rishonim* and the Gra the Chafetz Chayyim uses three different soft stringency indicators (according to Brown’s list of soft stringency phrases):

yeish lizaheir m’od...that one not engage in any *melachah* after the sun is no longer visible.

gam kein lizaheir m’od...to finish lighting candles before the sun begins to set and

*u'mi sh'machmir al atzmo...*and who begins to refrain from any *melachah chetzi sh'ah*, or at least *sh'lish sha'ah* before the sun begins to set...*ashrei lo, d'hu yotzei bazeh y'dei shitat kol harishonim*.

In this case the *Mishnah Berurah's* commentary deviates slightly from his typical pattern of soft stringency. In many cases of soft stringency the *Mishnah Berurah* begins by explaining the *Shulchan Aruch*, citing other opinions, and then speaking in his own voice about the lenient option even though he will follow up that lenient voice with a recommendation to follow the stringent choice.²¹ However, in the above example, the *Mishnah Berurah* offers the lenient option only through the voice of the *Shulchan Aruch* and those with whom it is in agreement. Here, the *Mishnah Berurah* is giving the *Shulchan Aruch's* ruling as an option for the reader to follow, but following this up with his definitive preference. It is clear that the *Mishnah Berurah* sides fully with the *rishonim*, but, by utilizing the phrases of soft stringency, he leaves the window open for the student to follow the *Shulchan Aruch's* definition of *bein hashmashot* and commencement of Shabbat if he so chooses. The language of soft stringency that the *Mishnah Berurah* uses here is clearly in the category of strong recommendation, as Brown notes. These recommendations show that the *Mishnah Berurah* has a clear and decisive opinion for preferred behavior, but falls short of completely barring the lenient option from use.

²¹ It should be noted that the *Shulchan Aruch* does not represent a consistently lenient nor stringent choice as compared to the *Mishnah Berurah*. The MB's approach is always respectful of the SA but may clarify his position by offering a soft stringency or, at times, an explanation for leniency.

Soft Stringency Example 3: Mishnah Berurah Hilchot Shabbat 271: 5:21

This section presents a case in which two people have been eating and drinking on Friday afternoon prior to Shabbat and Shabbat comes upon them before they have completed their meal. The question here is whether or not they should say a *borei p'ri hagafen* if they choose to continue drinking. In this case, Karo rules that if they want to drink again before making Kiddush they must recite *borei p'ri hagafen* again. The Chafetz Chayyim opens his commentary on this point by explaining why the *Shulchan Aruch* rules in this way. He compares it to a case in which someone would say “*hav lan u'nevareich*” [give us (a cup of wine) and let us bless (say *Birkat HaMazon*)] prior to *Birkat HaMazon*. Here, if he drinks wine after saying *Birkat HaMazon* he would need to make a new blessing afterwards, thus Karo's ruling. The Chafetz Chayyim then deviates from Karo's ruling in saying “*u'mikol makom...*” (nevertheless) and then citing the Magein Avraham's more lenient opinion that they do not need to recite the *bracha* again and have already fulfilled their obligation with the initial *bracha*. The Chafetz Chayyim upholds this more lenient ruling and explains the reason:

דהא לא ואסח דעתיהו מכוס של קדוש במה שאמרו באו ונקדש.

Translation: This is because they did not abandon all thought (of drinking) from the cup of Kiddush in their saying, “come, let us make Kiddush”.

However, after siding with the Magein Avraham and upholding the more lenient legal ruling, the Chafetz Chayyim ends his comment by saying:

ולפי שיש דעות הרבה בדינים אלו, ראוי לכל בעל-נפש לזהר שלא יבא לידי כך.

Translation: And because there are many opinions on these rulings it is proper for any *ba'al nefesh* to be careful that he doesn't come to this (situation).

Thus, while the *Mishnah Berurah* offers a lenient opinion in the case that one does find oneself in the situation, it urges the reader to avoid the situation altogether. This language falls into Brown's phrases denoting soft stringency. In his chart, Brown lists use of *ba'al nefesh* as one of the markers of soft stringency in the *Mishnah Berurah*, appearing twenty-nine times within the *Mishnah Berurah* as an indication of soft stringency. The word *l'zaheir* is also an indicator on his list. The above recommendation offered by the *Mishnah Berurah* closes the paragraph, as is the case with most of the *Mishnah Berurah*'s soft stringencies. The stringent recommendation is the final word on the matter. Further, the Chafetz Chayyim repeats the soft stringency in *Sha'ar HaTziyon* 25. He first offers citations for those who agree with the Magein Avraham—the Chayei Adam (Rabbi Avraham Danzig's eighteenth-century work of Jewish law commenting on SA's *Orach Chayyim*) and the Gra. Then he mentions others who disagree and favor the stringency of blessing again. After offering a variety of citations from different sides of the spectrum he concludes with his soft stringency:

ולכן צריך לזהר לכתחלה שלא לבוא לידי כך, וכמו שכתבתי בפנים.

Translation: And therefore one must be careful from the beginning that one does not come to this, as I wrote inside (in the MB commentary).

In the above cases, it is evident that the *Mishnah Berurah* has an approach that follows Brown's understanding of soft stringency. He is not avoiding decision, rather he is stating clearly the minimal requirement for observance but also making a clear recommendation that stringency is the preferred option. In the end though, the reader is given permission to decide for himself. Brown's article does not suggest, as Broyde

claims, that the *Mishnah Berurah* avoids decisive rulings, merely that one of his prevalent patterns is soft stringency.

This paper has offered three examples in support of Brown's central thesis that the *Mishnah Berurah* regularly utilizes the approach of soft stringency in order to allow the reader a range of options for behavior from minimum requirement to aspirational. Brown himself argued that the motivation behind the *Mishnah Berurah*'s utilization of soft stringency was based on his penchant for *mussar*, an inherent trust in the lay readership to make their own informed decisions by using the *Mishnah Berurah* as a primer and guide, and in his understanding of the Jewish community's changing needs. Broyde also acknowledges some of these factors in his article. Proving motivation and context are beyond the bounds of this essay which focused on a close reading of the texts rather than outside research on historical sources. These features are not present in Broyde's current article although his forthcoming full-length study on the *Mishnah Berurah* may contain more historical information to contextualize the Chafetz Chayyim's approach. This remains to be seen. If the book does not address historical context, this will remain a much-needed open topic for further study.

There is one distinct category of rulings within the thirty chapters of *Mishnah Berurah* that I studied that reveals a consistent pattern of leniency. When it comes to economic need the Chafetz Chayyim tends towards leniency with little to no discussion of the stringent option. The following paper aims to discuss this distinct deviation from the approach of soft stringency within the *Mishnah Berurah*.

Ha'Sha'ah Dechukah Lo: Economic Duress and the Case for Leniency in the Mishnah Berurah

In his essay “‘Soft Stringency’ in the *Mishnah Berurah*: Jurisprudential, Social, and Ideological Aspects of the *Halakhic* Formulation,” Benjamin Brown argues that the Chafetz Chayyim’s principal approach to ruling is that of soft stringency. In my first essay I expressed my agreement with Brown’s analysis of the patterns in the Chafetz Chayyim’s rulings. However, while I agree with Brown’s thesis that “soft stringency” is a broad theme in the Chafetz Chayyim’s commentary, there are a few topics that show a distinct trend toward leniency. Throughout *Mishnah Berurah Hilchot Shabbat* the Chafetz Chayyim demonstrates a tendency to rule leniently when there is a clear economic need. While the nature of one’s economic need is not specifically or narrowly defined in the *Mishnah Berurah*, there are clues that indicate the nature of an individual’s need. The *Mishnah Berurah* uses phrases such as “*mi sh’tzarich l’acheirim*” (one who is dependent on others), “*yeish lo m’at*” (he has little), “*l’mi sh’ha’sha’ah d’chukah lo*” (Literal meaning: the hour is pressing. Figurative meaning: to one whose financial means are limited) to describe someone in economic need. Similarly, when the *Mishnah Berurah* acknowledges that one may not have enough money for all the items needed for Shabbat it is referring to those members of the community who are struggling financially.

In some of these cases, the Chafetz Chayyim will drop his usual stance of accompanying a lenient option with a push towards stringency and instead, leave the lenient ruling as his final word on the matter. Further, the cases of economic need are dealt with in a distinctly different manner than the cases where there is an extenuating circumstance for a reason *unrelated* to one’s financial situation. In these non-economic

cases of duress, the *Mishnah Berurah* employs soft stringency or stringency. However, when the economic duress is severe, the *Mishnah Berurah* is lenient. The following essay will highlight the relationship between levels of economic duress and soft stringency as well as a comparison with how non-economic duress is treated in the *Mishnah Berurah*.

Case #1: *Oneg Shabbat* and *Shalosh Seudot*

Shulchan Aruch Orach Chayyim chapter 242 deals with the *mitzvah* of *oneg Shabbat* (joy of Shabbat), or the commandment that one honor the Sabbath day by setting special pleasures aside for Shabbat such as the enjoyment of three meals and dressing up in special clothing. All are meant to participate in *oneg Shabbat* regardless of financial circumstances. However, the *Mishnah Berurah* acknowledges leniencies for those who are unable to fulfill the *mitzvah* to the extent that financially stable individuals are able.

The *Shulchan Aruch* begins:

Even one who needs from others, if he has a little he needs to extend himself to honor Shabbat. And they don't say: make your Shabbat as a weekday and don't be dependent on humanity except for one who is in dire financial straits (*sha'ah dechukah lo*). Therefore one should cut back the rest of the week in order to honor Shabbat.²²

Part of the *mitzvah* of *oneg Shabbat* is buying delicacies that one would not ordinarily eat throughout the week, preparing a special table, and making *shalosh seudot* (the three meals that are stipulated for *oneg Shabbat*). The question at the beginning of this chapter then is: how will someone without financial means be able to fulfill the *mitzvah* of *oneg Shabbat*?

²² SA 242:1.

The *Mishnah Berurah* comments extensively on this question. It begins with a discussion of what *chazal* (the sages of the early rabbinic period) had in mind by *oneg Shabbat*, emphasizing that extending oneself in regards to purchasing food for Shabbat is the primary way to observe the *mitzvah*. The *Mishnah Berurah* cites Rabbi Akiva's statement:

עשה שבתך חל ועל תצטרך לבריות...

Translation: Make your Shabbat like a weekday and don't rely on others.

The *Mishnah Berurah* goes on to elucidate R. Akiva's thoughts on the matter. He continues that if one has no financial means it is better to have only two meals than to depend upon others. The *Mishnah Berurah* upholds this leniency. In this case it rules:

ואינו מחויב לא בשלוש סעודות ולא בכסא דהרסנא.

Translation: And he is not obligated in (fulfilling the *mitzvah* of) *shalosh se'udot* (three meals) or *kasa d'hars'nah* (a special fish dish stipulated for *oneg Shabbat* that is small, mixed with flour and fried in its own oil to form a fish cake).

This is significant because the rabbis specifically stipulate *shalosh se'udot* and the enjoyment of *kasa d'hars'nah* as one aspect to the fulfillment of *oneg Shabbat*.

However, in a case where one is already dependent upon the public *tzedakah* fund the Chafetz Chayyim rules that it is preferable for that person to receive three meals on Shabbat in order to participate fully in the *mitzvah* of *oneg Shabbat*. The *Mishnah Berurah* urges that the *tzedakah* fund must provide anyone who relies on it with three meals plus *kasa d'hars'na* rather than simply two meals for Shabbat. This stringent ruling

demonstrates the *Mishnah Berurah*'s deep commitment to the poor, to standards for public giving, and to the *mitzvah* of *oneg Shabbat*. The stringency is employed to ensure that the public charity does not skimp on its own responsibility. Throughout this commentary, the *Mishnah Berurah* rules strictly in regards to the behavior of the public *tzedakah* fund, but leniently in regards to the person for whom “*sha’ah d’chukah lo*”.

The *Mishnah Berurah* also shows its concern for one's economic needs over following the tradition of honoring Shabbat with fish in a discussion about price inflation in 242:1:2. Here the *Mishnah Berurah* begins by writing that:

גם טוב שיאכל בכל סעודה משלש סעודות דגים.

Translation: It is also good that one should eat fish at every meal of the *shalosh seudot*.

This recommendation is in accordance with *Chazal*'s discussions, cited by the *Mishnah Berurah*, on eating fish on Shabbat. However, in the event that the fish sellers inflate the price, the *Mishnah Berurah* urges that people decline buying fish until the price goes down despite its centrality to the Shabbat meal:

נכון לתקן שלא יקנו דגים איזה שבתות עד שיעמד השער על מקומו.

Translation: It is correct to fix that nobody should purchase fish for a number of *Shabbatot* until the price stands at its (original) place.

This expresses a clear preference for individuals to forego fish if the price is too high.

This will have both the individual impact of saving one's money, as well as the broader societal impact of forcing the sellers to readjust their pricing.²³ Further, the *Mishnah Berurah* rules alongside the *Eliyah Rabbah* and *Pri Megadim* that even if the price is

²³ There is *Mishnaic* precedent for this ruling in *Mishnah Keritut* 1:7.

raised less than 1/3 this is grounds for a ban on fish--**מִשּׁוּם עֲנִיִּים** (out of consideration for the poor).²⁴ And, in the final sentences of his commentary on this issue, the *Mishnah Berurah* takes one more step to look out for a person's economic circumstances. Out of consideration for one's economic needs the *Mishnah Berurah* concludes that one who purchased fish prior to the ban may eat the fish. This is significant given that here, too, the *Mishnah Berurah* is concerned with one's economic wellbeing. Rather than worrying about the *marit ayin* that may result from a person eating fish during a rabbinic ban on the product, the *Mishnah Berurah* prefers to be lenient in order to protect one's economic circumstances.

In his commentary on this chapter it is clear that the Chafetz Chayyim places concern for the poor as a high priority and exempts those who are truly struggling from the practice of extending oneself financially to honor Shabbat with three meals. However, the soft stringency is present in this commentary as well. Worried that those with limited, but sufficient, financial means might take his ruling in this section as an opportunity to be lax in their own observance of Shabbat the Chafetz Chayyim warns that:

ומירי כשאין לו משכונות ללות עליהם ובלא משכון אין יכול להשיג,

דאי לאו הכי צריך ללות כדי שלא לבטל מצות ענג שבת.

Translation: Even then, that he has no collateral with which to borrow or any collateral to obtain a loan. Otherwise, one must borrow in order that he not cancel the *mitzvah* of *oneg Shabbat*.

²⁴ The Pri Megadim is the great 18th century rabbi Joseph ben Meir Teomim who wrote the Pri Megadim, a commentary on the *Shulchan Aruch*.

Here, the *Mishnah Berurah* adds a caveat to the leniency he has given. The leniency only applies if one has no way of borrowing money (which also implies being able to pay it back).

Case #2: Essential Items for Sanctifying Shabbat

There are a number of comments in the *Mishnah Berurah*'s commentary that demonstrate a central concern that one who is without money and means must still be able, in some way, to observe Shabbat. For example, in 242:1 the *Shulchan Aruch* rules that one may not eat bread made by a non-Jew on Shabbat. However, the *Mishnah Berurah* introduces a leniency to this ruling. In MB 242:1:6 the Chafetz Chayyim remarks that if one has nothing available for *Kiddush* other than bread baked by a non-Jew he may use this bread to make *Kiddush*. This is a leniency specifically mentioned with a consciousness of the poor or needy as is evidenced from the sentence immediately following. Here, the *Mishnah Berurah* notes that it is a common experience for soldiers to only have at their disposal bread baked by a non-Jew. This acknowledgment in the text is specific to the *Mishnah Berurah*'s time period. Beginning in 1827 Jewish children who became known as cantonists were conscripted into the Tsar's army for up to twenty-five years with the intent that they would assimilate and renounce their Jewish upbringing. While this specific practice of conscripting cantonists was abolished by the 1860s, Jewish children continued to serve in the Russian army through the twentieth century.²⁵

Therefore, the ruling is a much-needed leniency for the *Mishnah Berurah*'s time.

²⁵ "Cantonists", *Jewish Virtual Library*, Last revised 2008. Accessed March 3, 2014, http://www.jewishvirtuallibrary.org/jsourc/judaica/ejud_0002_0004_0_03914.html.

In MB 251:2:5 the situation is similar. A leniency is expressed so that those who do not have enough money to purchase their needs for Shabbat are given the opportunity to make these purchases. Here, the Rema has ruled that one may not receive payment for a repair that one makes on Friday late in the day. However, the *Mishnah Berurah* issues a correction to this and comments:

ואם הוא עני שאין לו מה יאכל, שרי, ...
ואפילו יש לו לחם, רק הוא צריך לצרכי-שבת לענגו בבשר ודגים ומשקים טובים
גם-כן יש לומר דשרי.

Translation: And if he is so poor that he has nothing to eat, it is permitted (that he receive payment)...and even if a person has bread, but he wishes to enjoy *oneg* Shabbat with meat, fish, and good drink, it is also probably permitted (to receive payment).

Thus, if a person is so poor that he cannot afford anything to eat he may receive payment on Friday late in the afternoon (even though it may be close to Shabbat) so that he can afford what he needs for Shabbat. The *Mishnah Berurah* even stretches this leniency to enable those who would like to enjoy Shabbat with meat, fish, and drink rather than just bread. If their money will be going towards *oneg Shabbat* and without it they would have no means to supplement their meal, then the leniency applies. Of course, the *Mishnah Berurah* follows this with the requisite warning that:

אבל בלאו הכי יש לזהר בזה מאד כי משמע מכמה פוסקים דמלבד דאין הרוא סימן

ברכה, יש חשש אסור בזה.

Translation: But otherwise one must be very meticulous with this, because many *poskim* state that besides for the absence of blessing, there is a concern of there being a transgression here.

The stringency here is only to remind those who are not under economic duress that the original Rema ruling--that one should not receive payment late in the day on Friday out of a real fear that one will transgress a Shabbat prohibition—still applies to them. Only those in the category of impoverished or in real economic need are permitted to disregard the Rema's ruling.

A similarly lenient ruling is given in 261:1:5. Here the prohibition given in the *Shulchan Aruch* (quoted from the Mishnah to BT Shabbat 34a) is against immersing vessels in the *mikvah* during *bein hashmashot*. In his commentary, the *Mishnah Berurah* upholds the ruling of the *Shulchan Aruch* that according to those who prohibit immersing vessels on Shabbat it would also be prohibited to immerse these vessels during *bein hashmashot*. He then introduces the following leniency:

אך אם הוא צריך לשבת ואין לא אחר

יכול לטבול בין השמשות ולברך כדין.

Translation: However, if one needs (a vessel) for Shabbat and does not have another, s/he may immerse (the vessel) during *bein hashmashot* and bless it according to the usual ruling.

In this case, I am inferring that a person without other dishes for use on Shabbat may fall into the category of someone in economic need i.e.; someone without many possessions. Here, the need for an item for use on Shabbat takes precedence over the prohibition against immersing during *bein hashmashot*.

The *Mishnah Berurah*'s concern for the poor comes across as well in the language and discussion of minimum requirement necessary for proper observance. While the poor still have obligations, their obligations are scaled back. For example, MB 263:2:9 provides an outline for how one under economic duress may fulfill the minimum requirements for honoring Shabbat. The *Shulchan Aruch* 263:2 rules that if one has nothing, one must beg from door to door in order to purchase oil and kindle a light for Shabbat as part of his/her Shabbat obligation. However, in the Chafetz Chayyim's commentary to this section he is careful to distinguish that this obligation does not refer to a person who literally has nothing at all to eat. Here his concern is that one would beg for a candle while foregoing food—a situation the Chafetz Chayyim wants to avoid. Therefore the *Mishnah Berurah* ensures that the obligation to light candles on Shabbat not take precedence over acquiring bread for food. Thus, the recommendation is that for one who has nothing:

דבזה מוטב שיחזור על הפתחים כדי לקנות לחם לשבת,

דיקים בזה מצות קדוש וגם עקר סעודת שבת.

Translation: In this case it is better that he return to the doors in order to acquire bread for Shabbat, for he will then be able to fulfill the *mitzvah* of *Kiddush*, as well as the essence of a Shabbat meal.

Here the *Mishnah Berurah* explains that with bread the individual will be able to fulfill the *mitzvah* of *Kiddush* as well as his needs for the Shabbat meal. Following acquiring bread for the meal, the *Mishnah Berurah* recommends that one acquire a candle for lighting. However, it makes sure to mention that only one candle is necessary in this case. It is far more important to use any remaining money for additional food.

These examples demonstrate that when there is a noticeable absence in the *Shulchan Aruch* in regards to helping the poor honor Shabbat without sufficient funds, the *Mishnah Berurah* takes it upon itself to sensitively address the question. The *Mishnah Berurah* offers the poor options for observing the *mitzvah* of *oneg Shabbat* with a sensitivity to their economic circumstances and needs. In this case it is evident that the *Mishnah Berurah* attempts to fill a noticeable lacuna in the *Shulchan Aruch* as well as respond to the needs of the economically disenfranchised of his community.

Case # 3: Guarding Against Economic Loss:

In addition to showing concern for those who are experiencing economic difficulty, the *Mishnah Berurah* also demonstrates an interest in preventing economic loss. Within the *hilchot Shabbat* materials that I studied for this text immersion there were a few distinct cases where the *Mishnah Berurah* offers a leniency to prevent against economic loss. *Shulchan Aruch* 266 addresses the laws concerning how a person should act if he is caught traveling when Shabbat descends. One of the principal concerns in this case for both the *Shulchan Aruch* and the *Mishnah Berurah* is that the individual in question will violate the laws of carrying on Shabbat.²⁶

However, both works aim to find leniencies to enable an individual to transport his wallet so that he will not incur financial loss. One example of the many issues in question concerns a case in which one is transporting articles of glass (SA 266:9). Here the circumstance refers to a man who is leading a donkey carrying glass vessels. These

²⁶ Jewish law identifies thirty-nine prohibited activities on Shabbat known as the thirty-nine *melachot*. These *melachot* are derived from the work in the Torah that the Israelites performed in the desert to construct the Tabernacle. The Israelites rested from this labor on Shabbat. Among these thirty-nine *melachot* is the prohibition against carrying, or, more specifically, transferring an item from one domain to another—a clear violation of Shabbat. This section of the SA and MB are concerned with the violation of this prohibition, but also concerned with a person's economic needs.

vessels would break if the man allows them to drop to the ground (so as not to physically transfer them). In this case, the *Shulchan Aruch* rules that when one arrives at one's town one may place pillows or cushions around the animal in order to protect the glass vessels as they fall. Technically, the use of these pillows would be a violation of the laws of *muktzeh* because when one places a *muktzeh* item (the glass vessels) on top of a non-*muktzeh* item (the pillows) the original use of the utensil is negated.²⁷ The prohibition would not apply if one could immediately shake the *muktzeh* item off of the utensil, but in this case that is not possible as the glass would break. In MB 266:9:27 the *Mishnah Berurah* comments on this controversial ruling that one may use pillows even though it violates the laws of *muktzeh*. The *Mishnah Berurah* explains that while the use of the pillows is negated when they are removed from protecting the vessels:

אפילו הכי התירו חכמים לעשות כן כדי שלא יהיה הפסד על ידי השבירה.

וכתבו הרבה פוסקים דדוקא כלים שיש הפסד מרבה.

Translation: Even the sages permitted doing this (using the pillows) in order to prevent financial loss on account of their breaking and many *poskim* wrote that especially (in the case of) vessels that incur a big loss.

The ruling could not be more clear in this case. Given the amount of loss that would be incurred by the damage, it is preferable to negate the utensil's use by placing a *muktzeh* item on top of a non-*muktzeh* item. Here, the *Mishnah Berurah* also brings in the

²⁷ *Muktzeh* are items that may not be moved, or in some cases even touched on Shabbat because they were not prepared beforehand for the use of Shabbat. For instance, money is a *muktzeh* item: it may not be touched or moved on Shabbat. Other items, such as certain utensils, have a status that is less clear.

Magen Avraham's similar conclusion that the leniency is allowed in cases where significant loss would ensue.

The *Mishnah Berurah* also sides with lenient opinions in 266:12 concerning the case of one's wallet—a clear *muktzeh* item. In 266:11 the *Shulchan Aruch* rules that a person caught with a package in a public domain when Shabbat comes in may transfer it to his home if he runs home without pause. But in 266:12 the *Shulchan Aruch* introduces the ambiguity that:

יש אומרים דדוקא בחבילה התירו לעשות כן אבל לא בכיסו.

ויש אומרים דהוא הדין לכיסו.

Translation: There are those who say that one is permitted even to do so with a package but not with his wallet. And there are those who say that this is the ruling for his wallet.

The *Mishnah Berurah*'s comment on this point (266:12:34) first explains that the *Shulchan Aruch* is referring to the debate over whether or not one may run home with his wallet. It clarifies that this refers only to a case where the previously stated preferable options are unavailable.²⁸ After explaining this point though the *Mishnah Berurah* includes the Taz's ruling that:

והמקל כהיש אומרים לא הפסיד.

Translation: The one who follows the lenient opinion does not lose.

And the Magen Avraham states in the name of Shiltei Giborim:

²⁸ The preferable options for care of a wallet if one is caught on the road and Shabbat arrives is to give the wallet to a non-Jew whom he trusts, place it on an animal, give it to a deaf-mute or a minor, or carry it in repeated intervals of less than four *amot*.

דלדידן דלית לן רשות הרבים אפשר דלכולי עלמא שרי בכל ענין.

Translation: that since we do not have public domains it's possible that it is permitted according to all opinions in any case.²⁹

The *Mishnah Berurah* is in implicit agreement with these opinions.

The Rema's comment to 266:12 also gives cause for the *Mishnah Berurah* to clarify its leniency. Here, the Rema rules that if one is in the marketplace and forgets that one is carrying a wallet and Shabbat comes in, he is not allowed to bring his wallet home. He must drop his wallet immediately. If there is a non-Jew present he can ask the non-Jew to guard his wallet (and this may include the non-Jew bringing it home for him but the Jewish man may not ask for this).

This ruling does not sit well with the *Mishnah Berurah*. The *Mishnah Berurah*, concerned about financial loss to the individual, provides a leniency:

בשוק: ... ודוקא כשאין מתירא מן האינם יהודים שמא יקחוהו

אבל אם ירא שמא יקחו אותו האינם יהודים רשאי לרוץ עמו לביתו שלא לעמוד כלל...

Translation: In the shuk...and only if there is no fear that the non-Jews will take it. But if he fears that the non-Jews will take it he is permitted to run with it (the wallet) to his house without standing at all...

In this case, the individual must still follow the prescriptions of the *Shulchan Aruch* to run without stopping and to throw the wallet into the house so as not to interrupt

²⁹ The reference here to not having public domains is in conversation with a plethora of rabbinic discussions and wide-ranging opinions regarding the definition of *reishut ha'rabim* which is a highly contested subject. According to Karo, if a street is wider than sixteen *amot*, the street is considered public domain. This was the case for instance in India where the Jews, if they followed Karo's ruling, could not transfer anything from their houses to the streets on Shabbat. However, one necessary condition for a street to be considered *reishut ha'rabim* is that 600,000 people would pass through it each day. Thus, disqualifying most streets from being considered *reishut ha'rabim*. For a lengthy and informative discussion on whether a street would be considered *reishut ha'rabim* see chapter two ("On 'Reshut ha-Rabim' in India: The Halakhic conversation between Rabbi Eliyahu Mani and Rabbi 'Abdallah Somekh" in Zvi Zohar's book *Rabbinic Creativity in the Modern Middle East*).

the motion, but, it is clear that the *Mishnah Berurah* allows for a leniency despite the individual's forgetfulness in regards to Shabbat.

In all of the above cases the *Mishnah Berurah* instituted a particular leniency out of concern for one's situational economic duress or, in some cases, extreme poverty, and for avoiding placing someone in a situation that would lead to further economic duress. The economic duress is viewed as one type of extenuating circumstance. There are other types of extenuating circumstances in the *Mishnah Berurah* for which leniencies are offered. However, while the *Mishnah Berurah* offers some leniency in all cases of duress, when the duress is not related to economic circumstance the recommendations become soft stringencies. Not so with poverty. The *Mishnah Berurah* looks compassionately on individuals in difficult economic circumstances and does not assume that the strained conditions within which they find themselves are within their power to change. In the following section I will offer three examples of non-economic duress that demonstrate the *Mishnah Berurah*'s use of soft-stringency rather than leniency. These cases serve to further highlight the *Mishnah Berurah*'s unique sensitivity to economic duress over other cases of need.

Example 1: Finding Oneself Without An Item for the Needs of Shabbat

Shulchan Aruch 296:2 in Laws of *Havdalah* Over the Wine, rules that *havdalah* may not be said over bread but may be said over beer if it is *chamar medinah* (any regularly-used beverage of the region), or may be said over any other beverage if it is *chamar medinah* except for water. The Rema then comments that it is better to recite *havdalah* over a cup of wine that is *pagum* (blemished) than over beer. The *Mishnah Berurah*'s commentary to this passage deals with a number of extenuating circumstances

regarding what one should do if the correct beverage is not available. First, the *Mishnah Berurah* explains that the use of beer is already the far lesser option. It states:

על שכרה מבדילין: אם אין לא יין, ואם יש לא יין, הוא קודם לכל המשקין.

Translation: Upon beer we make Havdalah: (only) if there is not wine, and if there is wine it comes before all other beverages.

In the following comment the *Mishnah Berurah* expresses that one should avoid making Havdalah with whiskey. He provides the leniency in the case that there is no other beverage (MB 296:2:9):

אך שאין לו משקה אחר יכול להבדיל עליו.

Translation: Nevertheless, when there is no other beverage one may make Havdalah over it (whiskey).

But, his clear preference is for wine in the making of *havdalah* and he urges the reader to choose wine. For the *Mishnah Berurah*, the same is not true of kvass or borscht. The *Mishnah Berurah* explains that even in places where these are *chamar medinah* they have the status of water. And even though the Magen Avraham and the Chaye Adam rule that one may be lenient in a case of *bish'at had'chak*, the *Mishnah Berurah* cannot fathom this leniency. It sides with the Taz and Eliyah Rabbah that:

אף בשעת הדחק אין מברכים.

Translation: Even under duress we do not make Havdalah (over kvass or borscht).

Here, the *Mishnah Berurah* maintains a stringent position even though it involves an extenuating circumstance of a time of pressing need. The pressing need here though is

not expressed as an economic one in which case, as we have seen, the *Mishnah Berurah* tends to either side with the lenient opinion or institute one.

Example 2: When A Congregation Mistakenly Accepts Shabbat

In 263:14 the *Shulchan Aruch* discusses a case in which a congregation mistakenly assumes that Shabbat has come in because the day is very cloudy and it appears to be nightfall. The *Shulchan Aruch* rules in this case that regarding *melachah* a congregation or individual may perform *melachah* because they were completely mistaken about the arrival of Shabbat. The *Mishnah Berurah* disagrees. It cites that a number of Acharonim, in the name of prominent *Poskim*, rule that even though the congregation erred by mistake, and even if it is only through *davening Maariv*, still is regarded as an acceptance of Shabbat—meaning that no *melachah* should be done. The *Mishnah Berurah* then rules against the *Shulchan Aruch* as well, saying:

ואין להקל נגד אלו הפוסקים.

Translation: And there is no leniency against these *poskim*.

Unlike the previous example however, where under pressing circumstances the *Mishnah Berurah* stuck with a hard stringency, this particular case is one of soft stringency. After ruling that one should not be lenient in this case the *Mishnah Berurah* introduces the following addition in the case of duress:

ובמקום הדחק יש לסמוך על דעה קמיתא שבשלחן ערוך.

Translation: And in a place of pressing need one may rely on the first opinion in the *Shulchan Aruch*.

This is a soft stringency because the *Mishnah Berurah* shows a clear preference for one's behavior in this case—that one refrain from doing *melachah* even if one mistakenly accepted Shabbat. However, unlike the previous example where it does not provide a leniency under duress, in this case the leniency applies. Nevertheless, the language of the comment reads very differently than in cases of difficult economic circumstance where the *Mishnah Berurah* does not have stringent expectations for a person without means.

This essay has provided merely an introductory overview to the *Mishnah Berurah*'s approach to issues of economic need and its tendency towards leniency in these cases. The essay is far from exhaustive as it takes into account only a close reading of thirty chapters from *hilchot Shabbat*. A larger study of the full *Mishneh Berurah* is needed for these patterns to be established conclusively.

Havdalah: A Look at the Halakhic Conversation Behind A Beloved Jewish Ritual³⁰

In the previous two papers I provided a close reading of the *Mishnah Berurah* and relevant secondary sources and applied that to a discussion of the Chafetz Chayyim's approach to *halakhic* decision-making. However, the study of the *Mishnah Berurah* in particular and *halakhic* literature in general is not merely an academic exercise. As Mark Washofsky writes: "one who studies this material soon learns to appreciate its central importance to Jewish intellectual history, its continuing relevance to Reform rabbis as teachers and interpreters of Judaism, [as well as] its attraction as a subject of academic research."³¹ I believe that many lifelong learners in a Reform Jewish context are interested in understanding the *halakhic* underpinnings to Jewish practice for a variety of reasons. In my conversations with congregants they regularly express questions about Jewish law motivated by a range of desires from wanting to clarify misinformation, to wanting to learn more about the history of Judaism through *halakhic* literature, to nostalgia for their understanding (real or perceived) of their parents' approach to Jewish observance. In addition to those who express inquiries, there are also members of the congregation that are unclear as to how *halakha* pertains to Reform Jewish practice. The following paper is an attempt to translate the value of *halakhic* conversations, including those from the *Mishnah Berurah*, on a relevant Reform ritual, in this case *havdalah*, to a Reform audience.

³⁰ The following paper is roughly structured as a lecture/teaching session on Havdalah and *halakhic* considerations for a Reform Jewish audience. It presumes a prior teaching session/s on an introduction to *halakhic* literature. For this teaching session/s I would have a text sheet for congregants with all the textual examples given in this paper.

³¹ Washofsky, "Medieval *Halakhic* Literature and the Reform Rabbi," 61-62.

On any given Saturday evening at a NFTY summer camp the hills and fields are alive with the sound of music. Although not all Reform Jews observe the *mitzvah* of making *havdalah*, at Reform Jewish summer camp it is one of the campers' favorite moments of the week. The camp gathers outside in the dark after three stars have emerged in the night sky, link arms with one another, and begin humming a *niggun*. They then recite the blessings over the wine, the spices, the braided candle, and the separation between *kodesh* and *chol*. In many Reform congregations as well, members gather on Saturday evening for the *havdalah b'nei mitzvah*. Here the *b'nei mitzvah* student will lead the *kahal* in *Minchah/Maariv* plus a Torah service and then the congregation will gather to recite the blessings for *havdalah*. For many of us here, *havdalah* is one of our favorite rituals that we share together.

As Reform Jews we often refer to ourselves as non-*halakhic*, or, even further, believe that the history of Jewish law has nothing to do with our own practice. However, we forget that our most basic and beloved Reform Jewish rituals emerged out of discussions and decision-making in the *halakhic* literature. Rabbi Mark Washofsky, a professor at HUC-JIR Cincinnati and has emphasized this point in much of his teaching and writing. In his book *Jewish Living: A Guide to Contemporary Reform Practice* Washofsky writes: "The point is that, along with our penchant for creativity, innovation, and freedom of religious choice, there is a deep and profound connection that binds the forms of our religious life to those who have defined Jewish religious life throughout the ages."³² Today, I'd like to show you how *halakhic* discussions about *havdalah* have

³² Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice*. New York: UAHC Press, 2010.

influenced what we know intuitively to be our practice of *havdalah* today. But first, let's talk about what we already know about *havdalah* from our Reform practice.³³

Brief Introduction to Havdalah

No discussion of *havdalah* can take place without discussing the broader context of Shabbat as a religious institution. The commandments to remember Shabbat and keep it holy are laid out in both Exodus and Deuteronomy. In Exodus 20:8 the people Israel are commanded to *Zachor* (remember) Shabbat and in Deuteronomy 5:12 to *Shamor* (observe) Shabbat as a holy day of rest separate in both time and space from the other six days of the week. Zvi A. Yehuda notes in his essay “The Ritual and the Concept of Havdalah” that while the Torah does not mention the word *havdalah* in connection with Shabbat, during the Rabbinic period the terms *Kiddush* and *havdalah* had certain interchangeable elements, in many ways because *havdalah* and *Kiddush* served the same purpose—as a separation and blessing between the sacred and the profane. In fact, *Kiddush* and *havdalah* complement one another, bookending Shabbat in blessing and sanctification.³⁴ Throughout the *halakhic* discussions of Shabbat the rabbis struggle to determine what differentiates the rituals of *Kiddush* and *havdalah*, and what points they share in common.

The fact that *havdalah* is not mentioned explicitly in the Torah became a question for the rabbis. Were the *mitzvot* associated with *havdalah d'oraita* (laws mandated in the

³³ In the context of a participatory class I would first field answers from the class about *havdalah* to assess their knowledge of the *havdalah* ritual. I would then briefly fill in any gaps they may have left out about how we celebrate *havdalah* in our own congregation (assuming I am teaching this for my congregation) before continuing.

³⁴ Zvi A. Yehuda, “The Ritual and the Concept of Havdalah,” *Judaism* Vol. 43, 1994, 70.

Torah) or *d'rabbanan* (laws mandated by rabbis of the rabbinic period). And, if they are *d'rabbanan* wouldn't that give *havdalah* a different status than *Kiddush* which is *d'oraita*? This was just one of the many discussions that the rabbis have had concerning the laws of *havdalah*. For our purposes we will focus on three questions of interest that pertain directly to the when and how of our current *havdalah* ritual:

- Why is *havdalah* a separate ritual? Does one need to say *havdalah* during *tefillah* in addition to a separate *havdalah* ritual?
- What is the order of the *havdalah* blessings?
- Over what food/beverages may one make *havdalah*? Can one make *havdalah* over bread?

It is my hope that as we study the texts that led to the development of the ritual we know today as *havdalah*, we will deepen both our knowledge of the ritual as well as our understanding of *halakhic* discussion and decision-making.

Does one need to say havdalah during tefillah in addition to a separate havdalah ritual?

Today in the Reform movement, as you all noted in our initial discussion, we recite *havdalah* as a separate ritual on Saturday evening. However, beginning with the time of the Mishnah around the third century CE we know that *havdalah* was also recited during the Amidah prayer at the close of Shabbat, a practice that continues for many Jewish communities to this day. Mishnah Berachot 5:2 gives two options for saying *havdalah* during *tefillah*. It reads:

והבדלה בחונן הדעת. רבי עקיבה אומר: האומר ברכה רביעית בפני עצמה
רבי אליעזר אומר בהודאה.

Translation: And *havdalah* in *chonein hada'at*. R. Akiva says: One should recite the blessing by itself in the fourth (paragraph). R. Eliezer says in the *Hoda'ah* section.

Eventually, *havdalah* was included as an insert within the fourth paragraph of the Amidah during the Maariv service on Shabbat. This paragraph reads as follows:

אתה חוננתנו למדע תורתך

You have graced us with intelligence to study Your Torah

ותלמידנו לעשות חקי רצונך.

and You have taught us to perform the decrees You have willed.

ותבדל יהוה אלוהנו בין קודש לחול, בין אור לחושך,

Adonai, you have distinguished between the sacred and the everyday,

between light and darkness,

בין ישראל לעמים, בין יום השביעי לששת ימי המעשה.

between Israel and the peoples,

between the Seventh Day and the six days of labor.

אבינו מלכינו החל עלינו הימים הבאים לקראתנו לשלום,

Our Father, our King, begin for us the days approaching us for peace,

חשוכים מכל חטא ומנקים מכל עון ומדבקים ביראתך.

free from all sin, cleansed from iniquity, and attached to fear of You.

וחננו מאתך דעה בינה והשכל.

And endow us graciously from Yourself with wisdom, insight, and discernment.

ברוך אתה יהוה, חונן הדעת.

Blessed are You, Adonai, gracious Giver of wisdom.³⁵

The question as to where to recite *havdalah* during the *Amidah*, as well as whether or not one had to make *havdalah* both during *tefillah* and over a cup of wine, became an open question during the *Tannaitic* period which continued through the *Amoraic* period. The recitation of two versions of *havdalah*, one as a liturgical insert within the fourth benediction of the *Amidah*, the other a separate ritual, dates back at least to the fourth-fifth century C.E. which we know from its discussion in the Babylonian Talmud. The details of the dispute are recorded in BT Berachot 33a. According to the Talmudic explanation for the two ritual options, if it was a time of economic hardship and people could not afford wine, there would only be one recitation in the synagogue, whereas if it was a time of economic prosperity both the home and the synagogue ritual would be performed. The general discussion proceeds as follows:

Rav. Shemen bar Abba says to R. Yochanan:

The men of the Great Assembly fixed for Israel the blessings, prayers, and saying of *Kiddush* and *havdalah*.

Rav. Shemen then suggests that they look to see where they fixed the *havdalah* in prayer.

Rav Yochanan responds:

בתחילה קבעוה בתפילה. העשירו קבעוה על הכוס.

הענו חזרו וקבעוה בתפילה. והם אמרו המבדיל בתפילה צריך שיבדיל על הכוס.

Translation: At the beginning, (*havdalah*) was fixed in prayer. They became rich and fixed it (*havdalah*) over a cup (of wine). They became poor again and fixed it during prayer. But they said, one who recites *havdalah* during prayer needs to make *havdalah* over a cup.

Thus, in the final ruling, as long as a person could afford to recite *havdalah* over a cup of wine, one must say *havdalah* during *tefillah* as well as over a cup of wine. The

³⁵ Artscroll translation.

Gemara then introduces a *baraita* which renders this ruling ambiguous by saying that one who recites *havdalah* during prayer has fulfilled the *mitzvah*, but one who recites *havdalah* both during prayer and over a cup of wine will have blessings on his head. The Gemara then seeks to resolve the seemingly contradictory rulings and opinions.

Ravina solves the dispute by comparing *havdalah* to *Kiddush*:

כי קידוש מה קידוש? אף על גב דמקדש בצלותא מקדש אכסא

אף הבדלה נמי אף על גב דמבדיל בצלותא מבדיל אכסא.

Translation: It is just as in regard to *Kiddush*: Just as with regard to *Kiddush*, although one recites *Kiddush* during prayer one recites *Kiddush* over a cup, so too *havdalah*. Even though one makes *havdalah* in prayer one recites *havdalah* over a cup.

Here the symmetry between *Kiddush* and *havdalah* is evident. With *Kiddush*, the ruling is that one recites it during *Tefillah* in addition to over a cup, so too with *havdalah*.

The Rambam codifies this in *Shabbat* 29:6 which reads:

It is a *mitzvah* (instituted by) our Sages to recite *Kiddush* over a cup of wine and to recite *havdalah* over a cup of wine. Although one recites *havdalah* in one's evening prayers one is required to recite this blessing over a cup of wine. Nevertheless, once a person has said 'Baruch atah adonai' who distinguishes between the holy and the mundane, he is permitted to perform labor even though he has not recited *havdalah* over a cup of wine.

Further, in *Hilkhot Tefillah* 2:12 the Rambam mentions the inclusion of *havdalah* in *Maariv* through the addition of the passage *Atah Chonantanu*, the fourth blessing of the *Amidah*. By the time of the Rambam's ruling in the twelfth century it is clear that the

Tanna Kamma who says that *havdalah* is in *choneyn ha'da'at* and should be recited in both instances has won the day.

Shulchan Aruch Orach Chayyim 294 outlines these laws of *havdalah* in the *Amidah* prayer. It records that *havdalah* is said during the *Maariv Amidah* in the blessing *choneyn ha'da'at*. The *Shulchan Aruch* and the *Mishnah Berurah* both uphold the necessity of reciting *havdalah* during the *Amidah* as well as over a cup of wine in order to have fulfilled the obligation of *havdalah*. This section goes beyond the Gemara and *Mishneh Torah* however in outlining what one should do in the case that one errs. The *Shulchan Aruch* rules that if one mistakenly does not say *havdalah* during *choneyn ha'da'at* one should not return to it because he will be making *havdalah* later over a cup of wine. The *Mishnah Berurah* provides an addendum to this. One does not need to repeat the *Amidah* or go back to the beginning during *Maariv*, but during *Shacharit* the following morning one should recite two *Amidah* prayers without *Atah Chonantanu*. This is only in the case that one was sure to say the *havdalah* over the cup of wine on the previous night. But, in the case that one both omits *havdalah* from the *Amidah* and eats before making *havdalah* over the cup of wine, one must go back to recite *havdalah* in the prayer. Similarly, if one has no cup of wine over which to say *havdalah* and one forgets to recite *havdalah* during the *Amidah* one must go back and repeat the *Amidah*. The variety of rulings is reflective of some confusion that one need make *havdalah* both within prayer as well as over a cup of wine. There is a general tendency towards preferring that one fulfill the obligation by only making *havdalah* over the cup of wine given other concerns about repeating prayer. However, there remains a clear uneasiness

in the language of leniency given that one only truly fulfills one's obligation through having recited *havdalah* both within prayer and over a cup of wine.

What is the proper order of the Havdalah blessings?

Today we take for granted the recitation of the four blessings of *havdalah* to include the *brachot* over the wine, spices, light, and *havdalah* (separation) and that we recite them in that order. However, in the Gemara the rabbis discussed very different options for the order of the blessings. In BT Pesachim 102-103a a number of options are weighed. The initial proposal is:

הנכנס לביתו במוצאי שבת מברך על היין ועל המאור ועל הבשמים אחר כך אומר הבדלה

על הכוס.

Translation: One who enters his home on *Motzaei Shabbat* blesses over the wine, over the fire/flame, over the spices, and afterwards he says *havdalah*.

Here, the order of the blessings is wine, fire, spices, *havdalah*. The Gemara goes on to say that if one only has one cup of wine one should use it for *Birkat Hamazon* and then continue in the order listed above with the blessings for *havdalah*. A number of prominent rabbis, including Rav Ashi, Abaye, Shmuel, and Rava, omit the blessing over the spices. The Gemara first discusses the case of making *havdalah* the evening following a *Yom Tov*. Here, the blessing over the spices is absent in each suggestion, the Gemara wonders whether the *shehechyanu* should be included, and also if the *kiddush* and the *havdalah* should be considered one sanctification. In the case of making *havdalah*

following a *Yom Tov*, the *halakhah* follows Rava and the order is: YK^NH”Z: wine (*yayin*), *kiddush*, fire (*ner*), *havdalah*, *shehecheyanu* (ז’*man*).

The Gemara then approaches the question of *havdalah* on *Motza’ei Shabbat*. Here, the spices are reintroduced in a story:

רב הונא בר יהודה איקלע לבי רבא אייתו לקמיהו מאור ובשמים

ברוך רבא אבשמים ברישא והדר אמאור

אמר ליה: והא בין בית שמאי ובין בית הלל מאור ברישא והדר אבשמים.

Translation: Rav Huna Bar Yehudah visited the house of Rava. They brought before them a flame and spices. Rava blessed the spices first and then (made a blessing) over the flame. R. Huna bar Yehudah said to him: But both Beit Shammai and Beit Hillel (bless according to) flame first, and then spices.

Immediately following this story that takes place at the house of Rava, the Gemara introduces the opinions of Beit Shammai and Beit Hillel. R. Meir believes that Shammai and Hillel disagree about the order of the blessings, but that they both agree that the blessing over the fire/flame precedes the blessing over the spices. However, R. Yehudah disagrees. His understanding of the Shammai and Hillel discussion is different. R. Yehudah claims that it is precisely in regard to the order of the spices and the fire that Shammai and Hillel are in disagreement. He notes:

בית שמאי אומרים מאור ואחר כך בשמים ובית הלל אומרים

בשמים ואחר כך מאור.

נהגו העם כבית הלל ואליבא דרבי יהודה.

Translation: Beit Shammai says flame and afterwards spices, and Beit Hillel says spices and afterwards flame. The people behave according to Beit Hillel according to R. Yehudah.

Thus, the people followed R. Yehudah's ruling to follow *Beit Hillel's* ruling that the blessing over the spices precedes the blessing over fire. In this case, the order is considered *Birkat Hamazon*, spices, fire, *Havdalah*—very close to the order of our present day ceremony with the absence of the blessing over the wine. The *makhloket* that follows in 103a-b explains why today we begin the sequence of blessings with a blessing over wine. The Gemara gives two separate instances to support saying two blessings over a cup—one during *Birkat Hamazon* and one during the first blessing of Havdalah. In the both instances, Rav states that once you say the *Birkat Hamazon* it is prohibited to drink anything else. Thus, a new blessing over the wine needs to be recited. This is discussed in post-Talmudic *halakhic* texts.

Rambam *Hilchot Shabbat* 29:24 upholds that:

סדר הבדלה במוצאי שבת: מברך על היין ואחר כך על הבשמים ואחר כך על הנר

כיצד מברך על הנר? --בורא מאורי האש. ואחר כך מבדיל.

Translation: The order of *havdalah* on *motza'ei Shabbat*: bless the wine and afterwards over the spices and afterwards over the flame. How does one bless over the flame? *Borei M'orei HaEish*. And afterwards make *havdalah*.

He comments however that we don't recite the blessing over the fire until we have derived benefit from its light to the extent that one could differentiate between the coin of

one country and that of another. This is a commentary on *Mishnah Berachot* 8:6 where it also claims that one must derive benefit.³⁶

In the *Beit Yoseif* Joseph Karo sets forth the order of the blessings: wine, spices, candle, *havdalah*.³⁷ He codifies this further in the *Shulchan Aruch*. By the time of the *Shulchan Aruch* there is no discussion about the order of the four blessings themselves as it has been solidified in the order of *Yabneh*: *yayin, b'samin, ner, havdalah*.³⁸ However, the Rema inserts here a custom that was absent from previous discussions:

ונהגו לומר קודם הבדלה שעושים בבית: הנה אל ישועתי וגו'...

Translation: And the custom is to say before *havdalah* that we make at home: (the paragraph) *hinei el y'shu'ati* etc....

The Rema outlines in his comment the full introductory paragraph of *Hinei El*. Therefore, it is clear by this time in Ashkenaz a number of added liturgical elements and folk customs have been added on to the four blessings. The Rema continues that it is customary to spill a bit of wine out of the cup before one finishes the blessing *borei p'ri hagafen* and that any home that doesn't spill a bit out of their cup will not receive *siman bracha*. The Rema continues that it is customary after finishing *havdalah* to extinguish the flame by spilling wine over it and to then bathe one's eyes with the wine. Finally, by this time, the introduction of *Eliyahu Hanavi* has become important to the ritual.

Often I receive questions from congregants about the order of the *havdalah* blessings. How many of us have felt some degree of anxiety while joining together in our

³⁶ It is for this reason that the *Kitzur Shulchan Aruch* 96:10 (a 19th century commentary on the *Shulchan Aruch* by Shlomo Ganzfried) forbids a blind man from making *Havdalah*.

³⁷ *Beit Yoseif Orach Chayyim* 296.

³⁸ *Shulchan Aruch Orach Chayyim* 296:1.

Saturday evening *havdalah* ritual over whether or not we will be reciting the blessings in the correct order? I know that I have felt this on more than one occasion. Certainly when I was first participating in the *havdalah* ceremony and even now if my mind wanders for a moment I may get nervous that I have confused the order. An examination of the *halakhic* literature on the order of the *havdalah* blessings reveals that we need not cling so tightly to the order we have today nor worry so much if we recite the blessings in the wrong order. Of course, intention and prayer and ritual is important and we should be mindful of meaning in the order we choose or following the order we set out for ourselves. But clearly, there were centuries during which the rabbis were in conversation themselves as to what constituted the proper order of the *havdalah* blessings. While they are codified now in the *Shulchan Aruch*, we can give ourselves license to experiment with the order of the blessings as the rabbis of old did. Perhaps some reflection on what narrative the order of the blessings constructs for us is useful to our Shabbat practice. For instance, would it change our narrative of saying goodbye to Shabbat if we recited the blessing over the flame first and then the blessing over the spices? Following in the footsteps of our rabbis, we can reconstruct discussions of meaning and reflection around our rituals that are not heretical or outlandish, but entirely in keeping with our tradition. These conversations can open the door to added meaning and creativity with our rituals that are not a break from the past but are actually more fully in conversation with our past. The possibilities for such conversations are numerous.

Over what food/beverages may one make Havdalah? Can one make Havdalah over bread?

Today we accept unquestioningly that we make *havdalah* over wine, spices, and an *havdalah* candle. However, the rabbis debated whether or not *havdalah* could be made

over bread or other types of beverages. The Rambam makes a distinction between Kiddush and *havdalah* in his *Mishneh Torah Hilchot Shabbat* 29:9. He writes:

A person who desires to partake of bread more than of wine, and similarly, a person who has no wine, should wash his hands, recite the blessing *hamotzi*, and then recite *Kiddush*. Afterwards, he should break bread and eat. *Havdalah*, by contrast, may not be recited over bread, but only over wine.

Rabbenu Yitzchak Alfasi explains the difference between the two blessings: *Kiddush* was instituted at the beginning of the Sabbath meal. Therefore, to Rambam's mind, it is also appropriate that it be recited over bread. *Havdalah*, by contrast, has no connection with a meal—therefore, bread may not be used.³⁹ Other authorities however disagree with the Rambam. Although the *Shulchan Aruch* largely upholds the Rambam's stance in *SA Orach Hayyim* 296:2, it does acknowledge that there are those who believe that one may make *havdalah* over bread given that there is a parallel custom with *Kiddush*.⁴⁰

Until recently I had no idea that one could make *Kiddush* or *havdalah* over bread. Even in the Reform movement some of our practices, such as making *Kiddush* over a cup of wine, have become so ingrained as to remain unquestioned. Most of us would never even think to make *Kiddush* over bread or *havdalah* over beer were we to find ourselves without wine at an inopportune moment. Often, studying *halakhic* literature informs us of a wider range of options about which we were previously unaware. This knowledge and understanding can give us more flexibility in our choices and our practice and in some

³⁹ Included in notes to the *Mishneh Torah* Moznaim edition.

⁴⁰ The *Shulchan Aruch* and the *Mishnah Berurah* discuss at length the beverages over which one may make *havdalah* in this same chapter. See my comments on wine, beer, and *chamar medinah* for making *havdalah* at the end of paper two.

moments, as mentioned previously, enable as opposed to stifle increased creativity with our ritual practice.

Conclusion:

In our learning together we have looked at three core questions in relation to our *havdalah* ritual. As we have seen, studying *halakhic* texts demonstrates to us where so many of our practices originated and why they look the way they do today. Even more importantly though, when we look closely at these questions and others we see that each discussion contains a range of rabbinic opinion. Over time, the codes such as the *Mishneh Torah* and the *Shulchan Aruch* can erase this multiplicity of viewpoints, giving the suggestion that there is only one correct way to observe a ritual or answer a question. However, the history of *halakhic* literature demonstrates time and again an impulse toward commentary and discussion even after law codes are written. Studying our multivocal history reinforces for us the fact that Jewish practice has always shown fluidity and a willingness to field alternative possibilities within a broader framework of obligation, commandment, and covenant. As Reform Jews we can be proud that we are a part of this multivocal history and are continuing to redefine what it means to be in covenant with God and the Jewish people in the twenty-first century.

There are some conversations in the *halakhic* literature that have little relevance to our practice today. One of these substantial categories is gender. For instance, in the literature on *havdalah* that we didn't study, the rabbis ask the question as to whether or not women are equally obligated in *havdalah*. For an historical understanding of the development of Jewish law this is a fruitful area for study. But, for our egalitarian

practices today, it holds little say. Yet the areas of *halakhah* that feel antiquated to us should not scare us away from engaging in those aspects that may shine light and learning on our current practices. It can add meaning to the Jewish choices we make. For instance, now that you know that the Rema and the *Mishneh Berurah* support making *havdalah* over beer at the end of Passover because you've missed drinking it so much how great will you feel making that choice! As Reform Jews we have the freedom to make our own informed and creative choices about what we want our Jewish lives to look like. But when we assert that we are non-*halakhic* and decide that the tradition of *halakhah* holds nothing for us we often miss out on the gems of meaning within *halakhic* literature that could open our eyes to our Jewish practice in a whole new way. This is the beauty of studying *halakhic* literature in a Reform context. I look forward to our continued studies together.

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