

When the sun set on that first Saturday night the darkness began to fall. Adam then grew scared. What did God do? He provided him two flints which he struck together, creating light. And he praised God on its account, as it says: In the night, light surrounds me (Ps. 139:11). This resembles that which is taught in the name of the school of R' Ishmael: Why do we say the blessing of light, who created the lights of fire (bore m'orei ha-esh), on Saturday night? Because it was first created then. [Bereishit Rabbah 12:6]¹

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A Dissent Justified
to Rabbi Daniel S. Nevins' The Use of Electrical and Electronic Devices
on Shabbat
Rabbi Avram Israel Reisner

This paper was submitted, in June 2012, as a dissent to "The Use of Electrical and Electronic Devices on Shabbat" by Daniel Nevins. Dissenting and concurring papers are not official positions of the CJLS.

Rabbi Nevins' responsum on the nature of labor (*m'lekheth machashevet*) was an exciting, encyclopedic tour de force. He is to be commended for the depth and breadth of his scholarship. Thus it pains me to have had to vote against his *teshuvah* because of a fundamental disagreement that goes to the heart of his rulings. Were it anything less I would want to be associated with this responsum, but cannot.

Rabbi Nevins fairly summarizes my position in his responsum on pages 28-29 and explains his position. But I must demur. *Halakhah* often extends and extrapolates the boundaries of a forbidden action well beyond its origins, but it cannot abandon an original prohibition in favor of an interpretation which prohibits new things and permits that which had been forbidden.

Why did the Torah prohibit fire "in all your settlements" (Ex. 35:3)? Why would people seek to light fire in their settlements? It is clear (to me) that fire was kindled to achieve three purposes, to give light, to give heat, and to cook. Indeed, as the epigram from Bereshit Rabbah would have it, the purpose of giving light preceded those of giving heat and preparing food, and light was the specific event that was absent on the first Shabbat and that we mark the ability to create with *havdalah*.

A primary source to this effect is in the Tosefta in the name of Rabbi Natan, brought by Ramban in his commentary to that verse, and cited by Rabbi Nevins in describing my position on page 28, and cited in full at endnote 130. I also note that the well known discussion in Masekhet

¹ When Adam struck together the flints, this text says, ויצאת האור. In their vocalized editions both Aryeh Mirkin and more recently Avraham Steinberger vocalize this as "or", or light. It might be argued that it should rather be vocalized as "ur", or flame. But both the essential theme of the midrash and the proof text from Psalms contrast this "or" to darkness, and in the verse the masoretic reading is "or," not "ur." Similarly, there can be no question that the term in the blessing of *Havdalah*, "m'orei ha-esh," is about light.

Shabbat about the danger of incidentally redirecting the light so as to be able to read (Shabbat 12a-b) is about the light-giving function, and not, as Rabbi Nevins understands it, about the possibility that one will affect the combustion thereby. Indeed, the well known three-some of last minute Shabbat preparations, giving the tithe, completing the Eruv and lighting the candle is about having light, not about combustion. We are not Karaites, who would sit in the dark on Shabbat. An essential of preparing for Shabbat was assuring light.

By Rabbi Nevins' own meticulous explanation, "derivative labors, *toladot*, which accomplish a forbidden purpose (*tachlit*) via a mechanism (*peulah*) distinct from that of the primary labor, are considered to be biblically forbidden" (p. 29). That, it seems to me, makes the case why the use of electricity must be prohibited as a derivative form of fire (a *toladah* of *mav'ir*). Nonetheless, Rabbi Nevins argues that the Talmud associates the labor (*melakhah*) of fire (*mav'ir*) with heating and cooking and smelting at the Temple, and is dependent on physical combustion. As is to be expected, he is correct. But, as I argued, I am not satisfied that the Temple uses replace the aboriginal meaning of the prohibition. The only technology available then that permitted creating light was flame.

Rabbi Nevins further bases himself on the writing of Rabbi Dror Fixler of the engineering faculty of Bar Ilan University and the technical explanation that "'light' does not exist independently of the eye... Light is emitted and manipulated via an extraordinary range of physical and chemical interactions, including bioluminescence, none of which were considered in the halakhic literature" (p. 29). But halakhah often judges by what meets the eye, not by an underlying process that the tannaim and amoraim cannot have known about. To me it remains clear that the creating of light on Shabbat is one of the prohibited functions of *mav'ir*, howsoever it is achieved. If one could collect a jar of lightning bugs and so program them that they could be turned on at one's command, that command should be a prohibited act of *mav'ir* on Shabbat.

Having made clear why I felt it necessary to vote against this responsum, let me reiterate again that it was a careful and important study of *m'lekheth machashevet* and the ways in which modern technologies function. Beginning with a base prohibition of the use of electricity, it is still the case that the various instances of non-intentional transgressions that Rabbi Nevins lays out and the cases in which they might be overlooked, as for instance concerning motion detector technologies and magnetic key cards, and his discussion of *shvut* and rabbinic prohibitions are valuable at arriving at a living Shabbat observance. Those portions of this *teshuvah* are relevant and applicable even to those who would agree with me.