

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

231 - DANCING AND CLAPPING ON SHABBAT AND YOM TOV OU ISRAEL CENTER - SUMMER 2021

- In the last shiur we looked at showering on Yom Tov and the tricky question of whether the halacha, as laid down by the Gemara and the Shulchan Aruch, is still unchanged today, give the different reality of bathing habits in the 21st Century.
- In this shiur we will engage with the issue of dancing and clapping on Shabbat and Yom Tov. All communities celebrate Simchat Torah with dancing and clapping. Furthermore, in many shuls and Yeshivot on Shabbat, and certainly at the Kotel, Shabbat and Yom Tov services are often accompanied by dancing and clapping¹. Is this halachically problematic?

A] TALMUDIC SOURCES

A1] THE MISHNA

- There is no hint in the Torah or Tanach to any halachic problem concerning dancing or clapping on Shabbat.
- In the list of 39 prohibited melachot transmitted by the Oral Law, there is also no mention of a prohibition of dancing or clapping.

1. כל שחייבין עליו משום 'שבות' משום 'רשות' משום 'מצוה' בשבת חייבין עליו ביום טוב. ואלו הן משום 'שבות' - לא עולין באילן, ולא רוכבין על גבי בהמה, ולא שטין על פני המים, ולא מטפחין ולא מספקין ולא מרקדין. ואלו הן משום 'רשות' - לא דנין, ולא מקדשין, ולא חולצין, ולא מיבמין. ואלו הן משום 'מצוה' לא מקדשין, ולא מעריכין, ולא מחרמימן, ולא מגביהין תרומה ומעשר. כל אלו ביום טוב אמרו - קל וחומר בשבת. אין בין יום טוב לשבת אלא אוכל נפש בלבד.

משנה מסכת ביצה פרק ה משנה ב

The Mishna lists different kinds of Rabbinic prohibitions which apply both on Shabbat and also on Yom Tov. Some of these are categorized as 'Shevut'² - rabbinic prohibitions designed as a fence around core Torah prohibition, both to prevent inadvertent breach of the Torah melacha and also to enhance the atmosphere of Shabbat.³

2. אין מטפחין - משום שיר, או משום אכל. מטפחין - ידיו זו לזו. מספקין - כף על ירך. מרקדין - צרגל. וכולם נאסרו משום שבות, גזרז שמה יתקן כלי שיר....

רש"י ביצה ל.

Rashi explains that 'metapchin' means clapping⁴, 'mesapkin'⁵ means slapping thighs⁶ and 'merakdin' means dancing⁷. These are rabbinic prohibitions in case someone comes to do the melacha of 'tikun kli' - fixing a musical instrument⁸.

1. Note the Maccabean's song 'It's Shabbat! - Sing and Dance'. It's unlikely that they would have called it 'It's Shabbat - Play the Piano', but the halachic issues may be the similar.
2. The Ramban explains that, although prohibitions of 'Shevut' are rabbinic in nature, they are part of a framework of laws which facilitate the positive Torah mitzva of 'Shabbaton' - to make Shabbat different to a weekday. As such, rabbinic prohibitions of shevut are often applied more strictly than other rabbinic prohibitions. For instance, the halacha usual prevents the Rabbis from make a *gezeira legezeira* - a secondary rabbinic fence to prevent breach of the first. In the case of shevut, this is not always the case and one does sometimes find a 'fence around a fence'. For instance one may normally not ask a non-Jew to perform a rabbinic prohibition (*shevut deshevut*) on Shabbat unless there is some mitzva need. See <https://www.etzion.org.il/he/halakha/studies-halakha/philosophy-halakha/> גדר-גזירה-לגזירה.
3. The other categories of 'Reshut' and 'Mitzva' are also rabbinic prohibitions of different types. A detailed analysis is beyond the scope of this shiur.
4. Rashi understands that this may be prohibited even due to aveilut, where people would smack their hands together in grief. Tosafot (ibid s.v. *ein*) question Rashi's explanation on the basis that such clapping would itself be prohibited, even on Chol HaMoed, as a public expression of grief. Some mefarshim (Simchat Yom Tov) answer that it would be permitted to mourn certain individuals (such as a talmid chacham) and thus the concern remains that someone may fix up a musical instrument to console the mourner.
5. Compare Bamidbar 24:10 where it says of Balak וַיִּסְפֹּק אֶת-כַּפָּי בְּעֵינָיו when he was angry at Bilaam for blessing the Jewish people. In that context Rashi explains it to mean clapping the hands on each other. Some mefarshim ask that, according to Rashi's explanation in the Gemara, Balak would have smacked his hands against his thighs in anger! In fact, the shoshon *s-p-k* is used in Tanach for smacking the thigh in distress (Yirmiyahu 31:19 - וְגַם נִכְלַמְתִּי - לָכֵן סִפֵּק אֶל-יָרֵךְ - or in grief (Yechezkel 21:17 - לָכֵן סִפֵּק אֶל-יָרֵךְ). Self-mutilation in grief was a common ancient custom, which the Torah prohibits (Vayikra 19:28, 21:5 and Devarim 14:1). Smacking hands and thighs was therefore a permitted outlet. See also Mishna Berura 339:7 who prohibits clapping on Shabbat in grief or anger.
6. Thigh slapping has always been one of the modes of dancing. One example is the Schuhplattler - a traditional German folk dance from Bavaria. This features groups of men slapping themselves (and sometimes each other) on the knees, the thighs and the soles of their shoes. The dance is probably over a thousand years old - it was first described in 1050CE.
7. Some mefarshim raise a question from Mishna Ta'anit 4:8 which writes that the young women of Yerushalayim would go the vineyards and dance on Tu B'Av and Yom Kippur. Some question whether *cholot* in the Mishna means to dance or just hold hands in a circle. It is also possible that the minhag was only on 15 Av and not on Yom Kippur, or that this was an exception to the general rule. The most likely resolution is that the Mishna in Ta'anit records a custom which predated the Rabbinic decree mentioned in Mishna Beitza.
8. The mefarshim debate whether this meant making a new instrument or fixing a broken one (see Shu't Bnei Banim 1:12 p 48). Most likely, it would also relate to TUNING an

- The Bavli does not define what is meant by dancing. But the Yerushalmi does!

3. ולא מרקדין: ר' ירמיה ר' זעירה בשם רב חונה קיפוץ עוקר שתי רגליו כאחת ריקוד עוקר אחת ומניח אחת.

תלמוד ירושלמי מסכת ביצה פרק ה הלכה ב

Chazal here define jumping as lifting two feet off the ground at the same time, and dancing as lifting one foot up and leaving the other down.⁹

4. ומכל מקום נראה שהליכה במחול סביב עם שירות ותשבחות, אין זה בכלל ריקוד שאסרו חז"ל, שהרי מבואר בירושלמי שהריקוד שאסרו חז"ל הוא באופן שעוקר רגלו אחת ומניח אחת.

שו"ת יחיה דעת חלק ב סימן נח

R. Ovadia Yosef rules that the slow shuffle around in a circle (which the older generation tend to prefer at weddings) does NOT have a halachic status of dancing and is permitted on Shabbat according to all opinions.¹⁰

A2] THE GEMARA

5. אמר ליה רבא בר רב חנין לאביי: תנו, אין מטפחין ואין מספקין ואין מרקדין. והאידיא דקא חזינן דעבדן הכי, ולא אמרינן להו ולא מידי? אמר ליה ... הנח להם לישראל, מוטב שיהיו שוגגין ואל יהיו מזידין. והני מילי - בדרבנן, אבל בדאורייתא - לא! ולא היא, לא שנה בדאורייתא ולא שנה בדרבנן לא אמרינן להו ולא מידי, דהא תוספת יום הכפורים דאורייתא הוא, ואכלי ושתו עד שחשכה ולא אמרינן להו ולא מידי.

ביצה ל

Only a few generations after the Mishna in the time of Abaya and Rava it was clear that even shomrei Shabbat¹¹ were not observing this halacha and were dancing on Shabbat, yet the Rabbis did not rebuke them! Abaya explains that it was considered preferable for them to break this rabbinic law in error (beshogeg) rather than be told that it was wrong and then continue to break it on purpose (bemeizid). The Gemara even applies this to Torah prohibitions, such as the mitzva to add on to Yom Kippur and begin the fast towards the end of 9th Tishrei.

6. נשים שאוכלות ושותות עד שחשכה, והן אינן יודעות שמצוה להוסיף מחול על הקדש, אין ממחין בידן כדי שלא יבואו לעשות בזדון. הגה: וכו"ה בכל דבר איסור אמרינן: מוטב שיכיו שוגגין ולא יכיו מזידין. ודוקא שאינו מפורש בתורה, אף על פי שהוא דאורייתא. אבל אם מפורש בתורה, מוחין בידן (ר"ן דביצה ור"ש שם בעיטור). ואם יודע שאין דבריו נשמעין, לא יאמר צרכים להוכיחן רק פעם אחת, אבל לא ירצה בתוכחות מאחר שידוע שלא ישמעו אליו. אבל ביחיד חייב להוכיחו עד שיכנו או יקללנו.

שולחן ערוך אורח חיים הלכות יום הכיפורים סימן תרח סעיף ב

This halacha is ruled in Shulchan Aruch¹². Where people breach halacha beshogeg and would not listen¹³ if they were rebuked, it is better not to tell them. This even applies to a Torah law, but only if the law is not explicit in the Torah¹⁴.

B] THE RISHONIM

B1] THE SEFARDI RISHONIM

7. תנו אין מספקין ואין מטפחין ואין מרקדין. והאידיא קא חזינן דקא עבדי ולא אמרינן להו ולא מידי, אמר ליה הנח להן לישראל מוטב שיהיו שוגגים ואל יהיו מזידין. והני מילי במילי דידיעין בודאי דלא מקבלי מינן אבל במידי דלא ידיעין מחוייב למחות בידם.

רי"ף ביצה טו

The Rif brings the halacha and rules that we must rebuke those who dance if we think the people may listen.

instrument to make it usable, which would be a Torah prohibition, and a common application.

9. Some Rishonim quote this but leave out the end of the phrase 'leaving the other down'. R. Henkin learns from this that one should not read this Gemara as limiting the form of dancing to a specific type where one foot is always on the floor, but is rather simply distinguishing it from jumping. As such, anything that would reasonably be called dancing will be halachic dancing. For instance, some wedding dances are now more vertical than horizontal but this should not halachically define them as 'not dancing' simply because both feet are off the floor. Similar 'The Twist' should not be defined as 'not dancing' just because both feet are kept on the floor.

10. This is also the opinion of the Devar Yehoshua 2:42:4 and Shulchan Shlomo 524:4, note 3.

11. From the context of the Gemara it seems that this was particularly an issue with women dancing.

12. This is the position of the Ran (Beitza 16b s.v. *vehach*). Other Rishonim argue that this principle applied only in Talmudic times, but today one is obligated to protest even rabbinic breaches to strengthen Torah (see Shita Mekubetzet Beitza 85 s.v. *velo* in the name of the Ritva who quotes the Maharam of Rottenberg and others).

13. Tosafot Bava Batra 60b s.v. *mutav* rules that this only applies when it is certain that people will not listen. If one is not sure, however, one is obligated to tell them (see Rif below and also Rosh Beitza 49a:2). This is ruled by the Mishna Berura 608:5. The Mishna Berura also rules that one must rebuke if the people are *intentionally* sinning.

14. For instance, the prohibition to light a fire on Shabbat or not to eat pig is explicit in the Torah. However the Torah prohibitions of *shemirat negia* or for a married woman to cover her hair, are not explicit in the Torah. For more see R. Yehuda Henkin's article *Mutav Sheyiyu Shogegin*, Techumin 2:272-280.

8. אין מספקין ולא מרקדין ואין מטפחין בשבת, גזירה שמא יתקן כלי שיר. ולספק כלאחר יד מותר.

רמב"ם הלכות שבת פרק כג הלכה ה

The Rambam rules the halacha without any accommodation towards those who do not listen!

B2] THE ASHKENAZI RISHONIM

- The Rosh¹⁵ and the Tur¹⁶ quote the halacha prohibiting clapping and dancing on Shabbat and Yom Tov in the same terms used by the Gemara. However Tosafot drop a bombshell!

9. תנו אין מטפחין ואין מרקדין - פרש"י שמא יתקן כלי שיר. ומיכו לדידן שרי. דדוקא צימיון שהיו צקיאין לעשות כלי שיר שייך למגזר, אבל לדידן אין חנו צקיאין לעשות כלי שיר ולא שייך למגזר.

תוספות ביצה ל.

Tosafot rule a radical psak! They observe that, already by their day, nobody would make¹⁷ an instruments in this situation so the gezeira should fall away.

C] DOES HALACHA CHANGE WHEN THE FACTUAL REALITIES CHANGE?

- For Torah mitzvot it is clear that a mitzva will not cease to have effect simply because the reasoning apparently no longer applies.¹⁸ For Rabbinic mitzvot created by the Sanhedrin, the position also appears to be clear.

10. ולמה מזכירין דברי היחיד בין המרובין הואיל ואין הלכה אלא כדברי המרובין? שאם יראה בית דין את דברי היחיד ויסמוך עליו. שאין בית דין יכול לבטל דברי בית דין חברו עד שיהיה גדול ממנו בחכמה ובמנין.

משנה עדויות א:ה

The Mishna rules that a later Sanhedrin may not override an earlier one unless it is greater in wisdom and number.¹⁹

11. אתמר, שני ימים טובים של ראש השנה נולדה בזה אסורה בזה אמר רבה: מתקנת רבן יוחנן בן זכאי ואילך ביצה מותרת. דתנו: משחרב בית המקדש התקין רבן יוחנן בן זכאי שיהו מקבלין עדות החדש כל היום ורב יוסף אמר: אף מתקנת רבן יוחנן בן זכאי ואילך ביצה אסורה. מאי טעמא? הוי דבר שבמנין, וכל דבר שבמנין צריך מנין אחר להתירו. אמר רב יוסף: מנא אמינא לה - דכתיב (דברים ה: כז) לך אָמַר לָהֶם שׁוּבוּ לָכֶם לְאֵהָלֵיכֶם. ואומר: (שמות יט: יג) בְּמִשְׁךְ הַיָּבֵל הַמָּה יַעֲלֶן בָּרֶךְ.

ביצה ד:

An egg laid on first day Rosh Hashana remains muktze through to the end of the second day, due to Rosh Hashana having a status of one 'long day'. After the destruction of the Temple, R. Yochanan b. Zakai adapted the fixing of Rosh Hashana to reflect the absence of the Temple. Nevertheless, even though the original reason for classifying Rosh Hashana as one 'long day' was no longer relevant (since the Temple had been destroyed) the egg remains prohibited through the second day. The Gemara rules the principle of 'davar shebeminyan'. Since the original rabbinic ruling was made 'beminyan' - in a quorum of the full Sanhedrin - R. Yochanan b. Zakai did NOT have the authority to change it.

12. הוי דבר שבמנין - צילכ זו נאסרת צקצון חכמים, שנמנו וגמרו לעשותן שני ימים קדושה אחת ... צריך מנין אחר - שימנו לך ויתירו. ... דכל דבר הנאסר צמנין לריך מנין אחר להתירו. ואפילו אירע דבר שאתה יכול להורות צו היתר ולומר: אין תקנת מנין הראשון עומדת כי הכא, אפילו הכי אסור עד שתירוכו צקצון חכמים.

רש"י ביצה ה.

Rashi explains that, even when the original Rabbinic enactment was made for a reason, and the reason apparently falls away, nevertheless, the enactment stands unless a later and greater Beit Din is able to repeal it.

15. Beitz 4:2

16. OC 339. Like the Rambam, the Tur does not even mention the case of those people who breach the halacha *beshogeg*.

17. Interestingly, Tosafot state that people would not MAKE instruments in his time. He does not mention *tikun* - fixing or perhaps tuning. Presumably, people would still be easily drawn to tune an instrument in 13C France, but Tosafot may understand that the reality had sufficiently changed to warrant a change in the psak. See also Piskei Tosafot Beitz 108 who write: אין מטפחין משום [שמא יתקן] כלי שיר והני מלי לדידהו דבקיאי בכלי שיר, ולדידן שרי

18. In the debate between R. Shimon and R. Yehuda in the Gemara concerning *dorshim ta'amei dekra* we rule like R. Yehuda - that we do NOT base the halacha on our understanding of the reasons for the mitzva. The classic case is the Torah prohibition against taking security against a loan to a widow. R. Shimon understands that this only applies to a poor widow, due to the halachic requirement of returning the day or night security each morning/evening and the impropriety of being seen frequently at the widow's home. But there would be no prohibition against taking security from a rich widow. R. Yehuda rules that the mitzva applies to ALL widows irrespective of their wealth since we do not ascribe reasons to Torah mitzvot.

19. Number does not here refer to the number of judges on the Beit Din, which is fixed, but rather to the number of people in the community who are supportive of the Beit Din's position.

C1] THE RAMBAM'S POSITION - RABBINIC MITZVOT DO NOT CHANGE

- Why were the considerations of Tosafot not relevant for the Rambam? Were people still making musical instruments at short notice in Sefardi lands? In fact, the Rambam has a fundamental halachic objection to Tosafot's approach.

13. **ב** בית דין שגזרו גזרה או תקנו תקנה והנהיגו מנהג ופשט הדבר בכל ישראל, ועמד אחריהם בית דין אחר ובקש לבטל דברים הראשונים ולעקור אותה התקנה ואותה הגזרה ואותו המנהג, אינו יכול עד שיהיה גדול מן הראשונים בחכמה ובמנין. היה גדול בחכמה אבל לא במנין, במנין אבל לא בחכמה, אינו יכול לבטל את דבריו, אפילו בטל הטעם שבגללו גזרו הראשונים או התקינו, אין האחרונים יכולין לבטל עד שיהיו גדולים מהם.....

ג במה דברים אמורים? בדברים שלא אסרו אותן כדי לעשות סייג לתורה אלא כשאר דיני תורה. אבל דברים שראו בית דין לגזור ולאסרן לעשות סייג, אם פשט איסורן בכל ישראל אין בית דין גדול אחר יכול לעקור ולהתירן אפילו היה גדול מן הראשונים.

רמב"ם הלכות ממרים פרק ב הלכה ב

The Rambam rules that a later Sanhedrin cannot overturn Rabbinic gezeirot or takanot of an earlier Sanhedrin even if the reason for the decree has apparently fallen away, unless the later Sanhedrin is greater in wisdom and 'number' (ie following). Furthermore, if the original gezeira was a rabbinic fence around the Torah to protect the Torah, EVEN a greater Sanhedrin would not be permitted to revoke it! This would apply even more so to a generation after the Gemara without a Sanhedrin!

14. **יהיה גדול בחכמה וכו'.** א"א עיטור שוקי ירושלים צפירות קשיא עליה! שהראשונים תקנוהו ור' יוחנן בן זכאי ציטלה אחר חרבן מפני שנתבטל הטעם לראשונים ולא היה גדול כראשונים.

השגת הראב"ד שם

The Ra'avad questions the Rambam's ruling based on the example of 'itur shevakei Yerushalayim'. The Sanhedrin ruled that the streets of Yerushalayim should be decorated to celebrate the bringing of the Bikkurim. Yet R. Yochanan ben Zakkai, who was not greater than the earlier Sanhedrin who had made the ruling, still overturned it after the Churban since its reasoning was obviously entirely inapplicable.

C2] TOSAFOT'S POSITION - SOMETIMES THEY DO!

- In many places throughout Shas, Tosafot take the view that some rabbinic decrees were only put in place due to a very specific concern. Once that concern is removed, then it is 'built in' to that mitzva that it will fall away

15. **והאינדא דאיכא חברי חיישינן - פרש"י** שכופין לישראל לעשות מלאכה וכשהוא י"ט מניחין אותם. ואם היו רואין שיקצרו מתיבם יכופו אותם לעשות מלאכה. והשתא בזמן הזה שאין חצרי מותר. ואין לומר שצריך מנין אחר להתירו. דכיון דזה הטעם משום חששא ועצרה החששא עבר הטעם. וה"ל אמרינן גבי מים מגולין דאסורין שמא נחש שחב מהן ועכשיו שאין נחשים מצויין ציינו לנו שותין מהן אפילו לכתחילה, אף על פי שהוא דבר שצמנין.

תוספות ביצה ו'

Tosafot explicate their position in the discussion concerning burial on Yom Tov Sheni. In principle this was allowed, even where the burial was performed by Jews, but Chazal prohibited it due to the specific situation of the Jews in Persia who were ruled by a group - the Chavrei²⁰. Since the Chavrei are no longer relevant to the Jews, Tosafot understands that the original rabbinic decree prohibiting burial on Yom Tov Sheni has lapsed. Although it was made in a 'minyan', since it was decreed due to a 'chashash' - a specific concern, once this has passed, the halacha reverts to its former state.

16. **ואנו שאין נחשים מצויין ציינו אין לחוש משום גלוי ואין לומר דדבר שצמנין הוא ולריך מנין אחר להתירו כי ודאי הוא כשאסרו תחלה לא אסרו אלא במקום שהנחשים מצויין**

תוספות מסכת עבודה זרה לה. ד'ה חדא

Another example is the prohibition on drinking from water which remained uncovered for a short time (day or night) in case snakes had been in the water and left behind venom. Tosafot say that this no longer applies in places where snakes are uncommon.

20. The Chavrei oppressed them but would normally allow them to rest on Yom Tov. If the Chavrei saw the Jews actively burying on Yom Tov (even second day) there was a concern that they would start to oppress them on Yom Tov too! The Chavrei were a sect of Zoroastrian priests (possibly originally based in Chaver, near Shiraz in southern Persia). When the relatively tolerant Parthian Empire was overthrown in 227 CE by the Sassanians, a period of harassment and oppression of the Jews commenced, including the imposition of religious and other decrees on the Jews by the Chavrei.

17. ... טעמא דמיס אחרונים הוי משום מלח סדומית כדאמר בסמוך. ואנו לפי שאין מלח סדומית מלוי זיינו לא נהגו צמים אחרונים.

תוספות שם

*Another example is Mayim Acharonim. Tosafot rule that, since the reason for the takana is the danger of Dead Sea salt, and we do not have this today, this halacha falls away and there is no longer any reason to do Mayim Acharonim!*²¹

18. **מקום שנהגו - ... מאי שנא ערבי פסחים משאר י"ט? משום דזמן הפסח מחלות ואילך ונראה דאף צמן הזה דליכא הקרבה ביון שנאסר אז אסור לעולם.**

תוספות פסחים נ.

Nevertheless, in the case of the prohibition of work on the afternoon of Erev Pesach, Tosafot rules that, even though there is no korban today, the prohibition still applies! As indicated above, this case could be different since the decree was not made because of a 'chashash', but to give a special status to Erev Pesach so that people would bring the korban.

• Another question on Tosafot is the issue of the chatimat haShas - that NO rabbinic authority after the Gemara is permitted to argue with its conclusions²². Again, Tosafot would argue that the change of the halacha was 'built in' as part of Chazal's conclusion.

C3] SIMCHAT TORAH - A SPECIAL EXCEPTION

19. ונשאל מרב האי גאון ז"ל וזה לשונו: נהגו במקומינו ביום אחרון של חג מקלסים לס"ת ומביאים מגומראות לב"ה. והשיב ... בתשוב' אחרת אומר אסור להביא מגומראות ביום תשיעי ספק שמיני כו' ודאי יום זה רגילים אצלנו לרקד בו אפילו כמה זקנים בשעה שאומר קלוסים לתורה. אלא שזו משום שבות הוא ונהגו בו היתר משום **כבוד התורה** עכ"ל רב האי גאון כאשר הביא רבינו יצחק אבן גיא. הרי לך שמנהג העשוי לכבוד התורה דוחה אפילו איסור שבות דהיינו ריקוד בי"ט כדאיתא בהדיא בי"ט פרק משילין (דף לז). וכ"ש מנהג זה שאין בו שום צד איסור כי אם חביב התורה וכבוד שיש לאשרו ולקיימו במקום אשר פשט שם. וכל המשנה ידו על התחתונה! דאנו אין לנו בכל היוצא בזה אלא מנהג המקום, ואפילו היה מנהג אחר הגון ממנו אין לשנות ממנהג המדינה כמו שכתב רבינו יצחק אבן גיא ב"שם רב האי גאון וז"ל.

שו"ת מהרי"ק סימן ט

The Maharik (15C France) deals with the question of selling off aliyot on Simchat Torah. He permits this and quotes Rav Hai Gaon (9C Bavel) that the minhag²³ was to permit dancing on Simchat Torah because of 'kavod haTorah'²⁴.

D] DANCING ON SHABBAT - THE SHULCHAN ARUCH

20. אין מטפחין להכות כף אל כף, ולא מספקין להכות כף על ירך, ולא מרקדין, גזירה שמא יתקן כלי שיר. הגב: והא דמספקין ומרקדין האידנא ולא מחינן זכו משום דמוטב שיביו שוגגין וכו'. וי"א דזמן הזה הכל שרי, דאין אנו צוקיחין צעשיית כלי שיר וליכא למגזר שמא יתקן כלי שיר דמלתא דלא שכיח הוא ואפשר שעל זה נהגו להקל בכל.

שולחן ערוך אורח חיים הלכות שבת סימן שלט סעיף ג

The Mechaber quotes the Rambam and other Sefardi Rishonim that dancing and clapping etc remains prohibited on Shabbat. The Rema accepts that people are lenient on this issue on Shabbat but he brings two views as to why. First, he brings the view that dancing is prohibited but that people will not listen when rebuked, so it is better that they should break the halacha in ignorance than intentionally. The Rema then quotes - as a 'yesh omrim' - the view of Tosafot the gezeira falls away since the likelihood of making an instrument is very rare and Rabbinic enactments do not normally apply to rare occurrences.

21. **דמלתא דלא שכיח הוא. - בזכ מתורן מה ש"ל מפ"ק דב"ה דאמרי' שאע"פ שנתבטל טעם הגזירה לא נתבטלה הגזירה - דכא שחגי כיון דלא שכיח כ"כ (צ"ו).**

ט"ז אורח חיים סימן שלט ס"ק ג

The Taz quotes the Beit Yosef²⁵ who suggests that where a Rabbinic gezeira was made concerning something which was rare, this weakens the original power of the gezeira and enables it to be removed once the reason has lapsed.

21. The psak of the Shulchan Aruch in each of these cases is different. In the case of mayim megulim, the Shulchan Aruch (YD 116:1) rules like Tosafot that, these days, such drinks are totally permitted (although some Acharonim, such as the Vilna Gaon, were stringent). However, in the case of mayim acharonim, the Shulchan Aruch (OC 181:10) rules like the Rambam that mayim acharonim is compulsory even today, but quotes the opinion of Tosafot as a 'yesh omrim'. Many Acharonim are insistent that mayim acharonim is still obligatory today. (See for instance Aruch Hashulchan OC 181:5 who insists that even Tosafot could not have intended that mayim acharonim be entirely optional!)

22. See Rashbam Bava Batra 130b s.v. *ad sheyomru*; Ri Migash ibid s.v. *sha'ah*; Intro of Maimonides to the Mishna (towards the end, at paragraph beginning *veka'asher metu*).

23. The custom of finishing the Torah and celebrating on Simchat Torah evolved in the time of the Geonim as an expression of simcha and ahavat Hashem on second day Shemini Atzeret. Even though second day Yom Tov was observed in Bavel in the time of the Gemara, Chazal clearly had a different practice and different Torah readings on that day.

24. R. Henkin (Shu't Bnei Banim 1:12) understands that this meant 'kavod SEFER Torah' and only applied on second day Yom Tov.

25. The Beit Yosef (OC 339:3) understands that Tosafot's position on dancing is consistent with their lenient position on mayim megulim etc. See also Taz YD 116:1 where he brings a parallel reasoning for mayim megulim.

- The position of the Mechaber is clear - dancing on Shabbat and Yom Tov is prohibited.
- The position of the Rema is less clear²⁶ and there appears to be some room for leniency.

E] DANCING ON SHABBAT - THE ACHARONIM AND POSKIM

- The ruling of R. Hai Gaon permitting dancing on Simchat Torah is universally accepted²⁷, even in Israel where Simchat Torah is on first day Yom Tov and can even fall on Shabbat²⁸!

E1] THE SEFARDI PSAK

- Most Sefardi poskim rule strictly on the issue and prohibit dancing on Shabbat and Yom Tov²⁹, even for a mitzva and even at a Shabbat Chatan. As noted above, shuffling in a circle is NOT considered dancing and will be permitted.
- As such, Yalkut Yosef rules that a Sefardi individual who dances on Shabbat should be politely rebuked and told to stop³⁰.
- Clapping with a shinui - eg on the back of the hand - is permitted.

E2] THE BASIC ASHKENAZI PSAK

- Many Ashkenazi poskim understand the Rema strictly and prohibit dancing and clapping on Shabbat and Yom Tov.
- For instance, the Shulchan Aruch HaRav³¹ rules that dancing is prohibited and that, even though people DO dance on Shabbat, this is incorrect and we do not rebuke them only because they will not listen. He quotes the lenient position of Tosafot as a 'limud zechut'.
- Many Ashkenazi poskim (such as R. Moshe Feinstein³²) take the view that, although the leniency of Tosafot is questionable today - since we see that most musicians tune and fix their instruments - since the Rema quotes this opinion, it can be relied upon in some situations³³. Although he rules that it is preferable³⁴ to be strict, R. Feinstein writes that he has met many God-fearing Jews who dance and clap on Shabbat³⁵.
- All Ashkenazi poskim permit clapping with a shinui.
- Most also prohibit drumming or banging on the table during Shabbat Zemirot.³⁶
- Many poskim permit banging or clapping without rhythm to wake someone. Many also permit applauding³⁷ on the basis that it the clapping is not rhythmic.

E3] ASHKENAZI LENIENCIES - 1: FOR A MITZVA

22. וכתב התוס' ואף על פי שכל שאר המחברים לא חילקו בין האידנא לימים ראשונים, מ"מ בצירוף טעמי מצוה יש לתלק. ומה שמרקדין הבתולות, אפילו בלא חינגא דמצוה, הנח להם לסמוך על דברי התוס', כי כדאי הם לסמוך, בפרט בדבר שלא ישמעו.

ים של שלמה מסכת ביצה פרק ה סימן ו

The Maharshal (16C Poland) rules that, even though most poskim do not accept the lenient position of Tosafot, when combined with a 'tzorech mitzva', one can rely on this. As for young girls who dance all the time on Shabbat, even absent a mitzva need, they should not be rebuked since they will not listen, and Tosafot is also a position on which they can (bedieved) rely.

26. R. Ovadia Yosef (Yechave Da'at 2:58) understands, based on the Shach (YD Issur VeHeter 242) that the general rule in understanding the psak of the Rema is that where he quotes two opinions and the second is a 'yesh omrim', he rules like the first and brings the second only to justify a prevailing custom.

27. See Magen Avraham 339:1, Taz OC 339:2, Rema OC 669, Yalkut Yosef 668:5.

28. This is an interesting extension of the original heter of R. Hai Gaon which explicitly refers only to Simchat Torah on Yom Tov Sheni, which in chu' can never fall on Shabbat.

29. See R. Ovadia Yosef (Yechave Da'at 2:58). R. Ovadia rejects the leniencies suggested by many of the Ashkenazi poskim - see below. See also Kaf HaChaim 339:13.

30. See Yalkut Yosef 339:4-8.

31. OC 339:2. The Shulchan Aruch HaRav was written by R. Shneur Zalman of Liady - the founder of Chabad Chassidut. Evidently, dancing on Shabbat was NOT encouraged (at least in theory) in early Chabad chassidut. This is not the case today. For instance https://www.chabad.org/library/article_cdo/aid/965540/jewish/Why-no-music-on-Shabbat.htm states "So, while playing music on Shabbat and holidays is forbidden, song and dance are permitted and encouraged."

32. Igrot Moshe 2:100.

33. Note that some people mistakenly tried to apply the leniency of Tosafot to actually playing musical instruments on Shabbat and some poskim had to specifically refute that practice - see Shu't R. Ezeriel Hildersheimer 1 OC 50. Many Rabbanim also had to fight against mixed dancing between men and women - see Biur Halacha 339:3 s.v. *lehakel*.

34. Particular for someone who is a *ba'al nefesh*.

35. Rabbi Ribiat in his 39 Melachot, vol 4, p 1160 writes that, based on the Rema, many people permit themselves to clap and drum their fingers while singing and he quotes Igrot Moshe in the footnote.

36. R. Eliezer Melamed (Shabbat 22:18) prohibits this EVEN according to the views which are more lenient since this is very similar to the action of an actual drum, which all agree is prohibited, even for the sake of a mitzva. He permits drumming on the bima during davening and perhaps also for the person leading the Zemirot at the table. R. Melamed also permits jumping up and down with enthusiasm if there is no music playing!

37. See <https://torah.org/torah-portion/weekly-halacha-5773-vayakhel/>.

- This position is also followed by the Mishna Berura³⁸. On that basis, dancing and clapping for simchat Yom Tov (and maybe for Oneg Shabbat) may be permitted. Nevertheless, the Mishna Berura clearly limits the application of this heter and explicitly rules³⁹ that dancing at a wedding/Shabbat Chatan would be prohibited on Shabbat or Yom Tov.
- Nevertheless, many poskim extend the heter of dancing to a Shabbat Chatan/aufruf.⁴⁰
- This position is also followed by the Shemirat Shabbat Kehilchata⁴¹.

E4] ASHKENAZI LENIENCIES - 2: SIMCHAT YOM TOV AND SHABBAT

- The Minchat Elazar⁴² - Rabbi Chaim Elazar Shapira (the Munkaczer Rebbe)⁴³ was asked to explain the Chassidic practice to dance on Shabbat and Yom Tov.

23. וכן ב"י בסי' של"ט דרבינו האי מתיר גם בלא דעת התוס' דבלא"ה מותר בזמנה". ולדידיה גם בימיהם מותר זה (אף אם בקיאיין לתקן כלי שיר) כיון שהוא לכבוד התורה. וא"כ שוב י"ל גם בכל שמחת יום טוב ריקודין וסיפוקין (בלא כלי) מותר. ומה דלא חשיב לה במתני' ביצה הנו' אף לסרך מצוה י"ל כיון שאינו מצוה לכל אדם רק למי שבווער בקרבו רשפי אש שלהבת ה' שמחת יום טוב אשר הנחילנו. אבל לא לכל אדם הוא טירחא ואינו שמחה של מצוה אם אין חושק לה.

שו"ת מנחת אלעזר חלק א סימן כט

The Munkaczer rules that dancing in simcha on a regular Yom Tov and Shabbat⁴⁴ is an extension of the heter of dancing on Simchat Torah. Even though the Mishna did NOT define dancing as a mitzva (but rather as a shevut), the Munkaczer understands that this depends on the person. For Chassidim who are imbued with simchat hachaim, dancing and clapping⁴⁵ on Shabbat and Yom Tov is a mitzva. For others, it is simply a bother!⁴⁶

- This was also the position of the R. Menachem Mendel Schneerson⁴⁷

E5] ASHKENAZI LENIENCIES - 3: WE JUST DON'T DANCE PROPERLY ANY MORE!

24. ח והדברים מתמיהים! חדא דקשירת נימי הכנור שכיחא טובא. וכן לגלגלה על היתידות והיינו שמגלגלין היתד עד שתשוב הנימא להיות כנכון. ובשני הדברים יש חיוב חטאת משום קשירה ומשום מתקן מנא ועוד דחלילה לבטל שבות דרבנן מפני טעמים כאלו!

ט ולענ"ד נראה טעם פשוט דסיפוק וריקוד שלנו לא נאסרה מעולם. דבזמן חז"ל היה זה בעת שמזמרים בכלי שיר והיו מטפחים ומספקים ומרקדין ע"פ סדר השיר, וכן משמע בירושלמי. אבל עכשיו אין זה כלל בעת שמזמרים בכלי שיר אלא בעת ששוררים בפה שירי שמחה מטפחים כף אל כף טיפוח בעלמא, ולא ע"פ סדרי השיר. והך דסיפוק כף על ירך לא נודע לנו כלל וגם הריקוד בעת השמחה אינו כריקוד שלהם בסדר כרקודי נשים, אלא מרקדים בלא סדרים. ואין כאן גדר שמא יתקן כלי שיר, דאין להם שייכות זה לזה כלל, ולא על זה גזרו חכמים. ולכן גם בשמחת תורה שמרקדים ומטפחים לפני הס"ת. וי"א הטעם דלכבוד התורה מותר לרקד, וקשה בעיני לבטל שבות דרבנן מפני זה. אבל לפי מה שכתבנו אתי שפיר דאין זה הריקוד והטיפוח שאסרו חכמים. וכמה פעמים ראינו שגדולים מטפחים בידם בעת שמחה.....

ערוך השולחן אורח חיים סימן שלט סעיף ח - ט

The Aruch Hashulchan finds it very hard to justify overriding a clear Rabbinic prohibition of dancing (even on Simchat Torah) just because of a mitzva⁴⁸ or kavod haTorah. He therefore proposes that our amateurish dancing today is not even close to the professional dancing Chazal were speaking about. We do not smack our thighs, or even clap in time to the music. So our dancing and clapping was NEVER prohibited.⁴⁹

38. 339:10 and also Sha'ar HaTziyun 339:7 who quotes the Maharshal's leniency. See also Sha'ar Hatzion 426:12 who explicitly rules that dancing for a mitzva would be permitted on Shabbat and Yom Tov, as an extension of the specific heter of Simchat Torah.

39. 339:8.

40. Chavot Yair (Mekor Chaim 511:1), R. Chaim Palag'i (Lev Chaim 2:9); Eishel Avraham Butchetch 339:3; R. Shlomo Zalman Auerbach (Shalmei Simcha page 115). The Chazon Ish is also cited as saying that the custom is rule leniently (Maaseh Haish vol. 5 page 17).

41. 3rd Ed. 16:43.

42. 1:29

43. R. Chaim Elazar son of R. Tzvi Shapira was born in Hungary, in 1871. He studied from his father, the author of Darchei Teshuvah on Shulchan Aruch. In 1922 he became the rabbi of the city of Munkatch, where was also a Chassidic Admor and Rosh Yeshiva.

44. There is a significant debate as to whether there is a din of simcha on Shabbat. A number of sources suggest that there is - see <https://queensvaad.org/halacha-weekly-parshas-behaaloscha-obligation-of-simcha-on-shabbos/>. See also Yechave Da'at 2:58.

45. The Minchat Elazar rejects any halachic suggestion to separate the two - where dancing is permitted, so is clapping and vice versa.

46. This explanation of the Mishna is dismissed by R. Ovadia Yosef as untenable. Nevertheless, many Chassidim strongly defend the psak of the Minchat Elazar. Shu't Dvar Yehoshua 2:42:4 takes a similar view to the Aruch HaShulchan (see below) and argues that Chassidic dancing is so lacking in order that it could not have been the dancing prohibited by Chazal which was far more rhythmic and which one might fix an instrument to accompany. (R. Yehoshua Menachem Ehrenberg was born in Kemesce, Hungary. In 1921, he moved to Tarnow to learn in the yeshiva of Rav Meir Arik. Living in Cracow, Rav Ehrenberg published his first sefer, Rashei Besamim on the Rokeach, in 1937. During WWII, he was interned in the Cracow ghetto. He was included in the "Kastner train," escaping to Switzerland. In 1945, he moved to Yerushalayim. In November of 1947, he heeded to request of Rav Herzog to be the Chief Rabbi of the interment camp on Cyprus; he stayed until the camp was entirely dismantled and came back to Eretz Yisrael on the last ship. He was appointed Av Beit Din in Yaffo. When Yaffo was joined to Tel Aviv, he served as a specialist on Gittin, and was widely regarded as the foremost posek in this area. He died in 1976.)

47. Shaarei Halacha U'Minhag Vol 2 pp 26-27.

48. The general position in hilchot Shabbat is that only a DOUBLE level Rabbinic mitzva - *shevut deshevut* - is set aside for a mitzva.

49. R. Ovadia Yosef dismisses this explanation as 'words of prophecy!'

- R. Shlomo Aviner is lenient and permits dancing on Shabbat for a number of reasons, including the reasoning of the Aruch HaShulchan⁵⁰.

E6] ASHKENAZI LENIENCIES - 4: OUR DANCING DOESN'T MAKE ANY NOISE

- R. Yehuda Henkin⁵¹ quotes the Sefer HaAguda⁵² who, in turn, cites the R'i who permits dancing which does not generate any noise - *hashma'at kol*.⁵³

E7] ASHKENAZI LENIENCIES - 5: DANCING FOR KABBALAT SHABBAT

- The Ashel Avraham⁵⁴ rules that dancing during bein hashemashot from Friday into Shabbat would be permissible since the prohibition is rabbinic and is not applicable in the same way during bein hashemashot^{55 56}.

50. R. Aviner quotes a story about R. Moshe Feinstein: a student in his yeshiva finally got married after many, many years. At the Aufruf, they were so excited that they began to dance around the Bima. Ha-Rav Feinstein participated. A student asked him: Isn't it forbidden to dance on Shabbat? Ha-Rav Feinstein responded: You call this dancing?! He also notes that R. Chaim Kanievski related that he once asked the Chazon Ish about dancing on Shabbat for an Aufruf or Bar Mitzvah, and the Chazon Ish answered that the custom is to be lenient. He said, however, that his father, the Steipler, would walk around and not dance (Ma'aseh Ish vol. 5 p. 17).

51. Shu't Bnei Banim 1:12.

52. Beitza 44.

53. R. Henkin brings a proof from Eruvin 104a where the Gemara rules that one may not clap or stamp loudly (*yirkod*) on Shabbat to scare off birds. On that basis, it may be that the prohibition of dancing, like clapping, is related to making noise.

54. Tanina 299:10 and 339:1.

55. See Shulchan Aruch OC 261:1. Note also that, according to Rabbeinu Tam, whose view was followed widely in Europe until the 19th Century, bein hashemashot extends over an hour after sunset. See <https://rabbimanning.com/wp-content/uploads/2018/08/The-Late-Shabbat.pdf>

56. For a detailed source sheet on this topic by R. Ari Kahn see <http://mishkanetrog.blogspot.com/2014/05/sources-for-clapping-on-shabbat.html>