

## Playing Ball on *Shabbat* and *Yom Tov*

Saul J. Berman

**Abstract:** A review of the halakhic opinions from talmudic to contemporary authorities regarding the permissibility of playing ball on *shabbat* and *yom tov*. The author concludes that while contemporary custom is to refrain from playing ball on those days, normative legal opinion holds that such activity is permitted. He advances the idea that creative ways need to be found to utilize time more spiritually on *shabbat* and *yom tov*, perhaps through the permitted activity of ball playing.

**Biography:** Rabbi Saul J. Berman is the Director of Edah, Associate Professor Stern College, and Adjunct Professor Columbia University School of Law.

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From earliest times the Jewish people apparently had great difficulty in utilizing the holy time of *shabbat* in a manner consistent with God's purposes for that day. The fact that Ezra introduced a special reading of the Torah for *shabbat* afternoon<sup>1</sup>, and that various traditions of homiletical teachings being focused on *shabbat* afternoon emerged<sup>2</sup>, are themselves indications of the struggle. The unfortunately common practice of taking long naps on *shabbat* is just one further indication that many people are totally baffled by the question of how to use time in a spiritually uplifting fashion.

The issue of the propriety of playing ball on *shabbat* and *yom tov*, is both important in and of itself as a halakhic question, and is vital as a barometer of the general relationship of our community to the use of spiritual time.

## I. The Halakhic Issues

### A. *The Talmudic Period*

It is not surprising that *tannaim* and *amoraim* were quite aware of various forms of ball playing. The *mishna* already debates the question of whether the leather outer shell of a ball is a vessel that is capable of becoming *tameh*.<sup>3</sup> The *gemara* discusses the question of liability for homicide in a situation in which death occurred when the victim was struck by a rebounding ball during a sport similar to handball.<sup>4</sup>

The reason that such awareness is not surprising is that ball playing was one of the most common athletic activities in Hellenistic culture<sup>5</sup> and had apparently been introduced into Judea by the Hellenizing High Priest Jason around the year 175 B.C.E., when he tried to reconstitute Jerusalem as a Greek *polis* and initiated a Greek "gymnasium" and its attendant athletic activities.<sup>6</sup>

What is surprising is rather the absence of any express condemnation of ball playing in either *tannaitic* literature or in *Talmud Bavli*. This, in contrast to the mishnaic

<sup>1</sup> *Bava Qama* 82a. See Moses Bloch, *Shaarei Torat Ha-Taqanot*, vol 1, pp. 107–112, Makor Press, Jerusalem, 1971.

<sup>2</sup> See A.Z. Idelsohn, *Jewish Liturgy*, p. 145, Schocken Books, New York, 1967.

<sup>3</sup> *Mishna Qelim* 28:1. For other *tum'ah* issues related to balls see *Mishna Qelim* 10:4, and 23:1.

<sup>4</sup> *Sanhedrin* 77b.

<sup>5</sup> Oskar Seyffert, *Dictionary of Classical Antiquities*, revised edition, p. 91, Meridian Books, N.Y., 1957.

<sup>6</sup> Victor Tcherikover, *Hellenistic Civilization and The Jews*, pp. 161–165, Atheneum Press, N.Y., 1974.

prohibition against mud wrestling on *shabbat*,<sup>7</sup> an activity which had previously been condemned in the Maccabean period, together with discus throwing.<sup>8</sup> The sole condemnatory passage related to ball playing in the Talmudic period, appears in the *Talmud Yerushalmi*,<sup>9</sup> and in slightly different form in *Midrash Eikhah Rabbati*,<sup>10</sup> passages to which we will now turn.

The relevant passage in the *Talmud Yerushalmi* arises in the midst of a discussion of the fall of Betar, to which the *mishna* had referred as one of the events commemorated on *Tisha B'Av*. The *gemara* then records:

“Tur Shimon<sup>11</sup> used to provide three hundred loaves of bread (for the poor) every eve of *shabbat*. Why then was it destroyed? One says, due to licentiousness. Another says, because they used to play ball.”

The *Talmud Yerushalmi* provides us with no further clarification on this matter. What was the nature of the sin of playing ball? Why was that act of such severity as to warrant the destruction of an otherwise extremely righteous city? What is the nature of the balance between the two proposed reasons—licentiousness and playing ball?

The simplest solution to all of these problems would be to suggest that the wrongfulness of ball playing had to do with the idolatrous context of Hellenistic athletic activities. General Rabbinic opposition to athletics never had to do with the activity itself, but with the fact that the activity usually took place either in the nude, and or within

the context of worship of some foreign deity.<sup>12</sup> This explanation would certainly account for the gravity of the crime, and for the particular association with licentiousness. The combination of idolatry and licentiousness is a common combination in explaining destruction.<sup>13</sup>

However, the second version of this *aggadah*, found in *Midrash Rabbah* to the Book of Lamentations, seems to propound an alternative solution to the disparity between the crime and the punishment. The account has other interesting variants and is therefore worth looking at in its entirety.

Mount Simeon used to distribute three hundred barrels [of thin cakes among the poor every Friday]. Why were these places destroyed? If you answer that it was on account of the harlots, is it not a fact that there was only one girl there [who was a harlot] and they expelled her? R. Huna said: The reason was because they used to play a game with ball on the sabbath.<sup>14</sup>

This reworking of the *aggadah* contains two prominent elements. Firstly, the sexual integrity of the town is defended by the fascinating proposal that there had only been one prostitute to begin with and that she had been driven out. This sustains the credibility of the original accusation, but credits the town with having dealt with the problem in an appropriate fashion. Which however, leaves only a single explanation for the destruction, and the weaker one at that. The second element of the reworking, in the name of Rav Huna, then proposed that

<sup>7</sup> *Mishna Shabbat* 22:6. See the treatment of this issue by Saul Lieberman in *Greek In Jewish Palestine*, pp. 92–97, Phillip Feldheim Inc., N.Y., 1965.

<sup>8</sup> II Maccabees 4:12–17.

<sup>9</sup> *Talmud Yerushalmi* (Venice edition) *Ta'anit* 4:8, 69a, lines 38–39; (Vilna edition, *Mif'al Yerushalayim*, 1960) *Ta'anit* 4:5, 24b, lines 44–46.

<sup>10</sup> *Midrash Eikhah Rabbati* 2:5, Lewin-Epstein edition, Israel, 1962, vol. 2, part 2 (*Meggilot*), p. 92a, end of second column.

<sup>11</sup> Mount Simon was the name of a town approximately 25 kilometers north of Jerusalem, two thirds of the way to Mount Gerizim. Michael Avi-Yonah, *Atlas Carta of the Periods of The Second Temple, the Mishna and the Talmud* (Hebrew), p. 82, map # 123, Carta, Jerusalem, 1966.

<sup>12</sup> Tcherikover, *op cit.*, at p. 28. See also, Norman Bentwich, *Hellenism*, pp. 95–96, Jewish Publication Society, Philadelphia, 1919; and Lawrence H. Schiffman, *From Text To Tradition*, p. 144, Ktav, Hoboken, N.J., 1991.

<sup>13</sup> See, for example, *Yoma* 9a–9b, and *Midrash Rabbah* Numbers 7.

<sup>14</sup> *Midrash Rabbah*, Lamentations II, 2, 4, p. 162, Soncino Press, London, 1951.

the sin of playing ball had to do with the activity taking place on the sabbath.

The *midrash* offers no further explanation as to the nature of the sabbath violation that was involved. However, the reference to sabbath violation in and of itself was sufficient, since in the rabbinic mind there was already a powerful awareness of the connection between violation of *shabbat* and destruction. The Talmud had already asserted that “Jerusalem was destroyed because of the violation of the *shabbat*.”<sup>15</sup> Secondly, there had always been a powerful connection between violation of *shabbat* and idolatry,<sup>16</sup> so that the mere suggestion of *shabbat* violation would be sufficient grounds for punishment even in the absence of detailed indication of sinfulness.<sup>17</sup>

So the matter apparently remained for hundreds of years. No specific indication existed of the impermissible nature of the act of playing ball on *shabbat*. Yet some hesitancy about the activity had clearly existed, either related to the association with idolatry and licentiousness, or related to some amorphous notion of breach of *shabbat* spirit sufficient to warrant Divine retribution. No more detailed deliberation on the question seems to have been offered until the period of the *rishonim*.

## B. The Period of The Rishonim

The first direct reference to playing ball during the period of the *rishonim*, appears in *Tosefot* to *Beitsah* 12a.<sup>18</sup> The *mishna* there had recorded the following debate between

the Schools of Shammai and Hillel.

The School of Shammai say, one may not carry out a child, or a *lulav*, or a scroll of the law into the public domain [on *yom tov*]; but the School of Hillel permit it.<sup>19</sup>

The *gemara* attempts to ascertain the basis for this debate. It arrives at the conclusion that the debate hinges on the extent to which “carrying” was permitted on *yom tov* as contrasted to *shabbat*. According to the School of Shammai, only such carrying was permitted as was directly necessary for the preparation of food or other bodily needs. Therefore, by their opinion, since the carrying of a *lulav*, a child or a scroll of the Torah serve no bodily need, they are prohibited on *yom tov* as on *shabbat*. By contrast, according to the School of Hillel, the principle of “*mitokh*” applies, that is, since the prohibition against carrying was lifted for purposes of “need”, it was lifted also for instances in which there was “no need”.<sup>20</sup>

While the *halakhah* was determined to be in accordance with the position of the School of Hillel, a debate arose amongst the *rishonim* as to the proper understanding of that position. Rashi maintained that according to *Beit Hillel*, carrying on *yom tov* was permissible even as to objects which had no utility whatsoever, that is, “no need” literally. However, Rashi agrees, there may be a separate Rabbinic prohibition, unrelated to carrying, in regard to objects like rocks, where the absence of utility is combined with the burdensome nature of the act,

<sup>15</sup> *Shabbat* 119b. A more general indication that violation of *shabbat* may cause a variety of forms of human suffering is found in *Shabbat* 33a.

<sup>16</sup> The explicit equation is made in *Eruvin* 69b. An alternative form of the equation is found in *Shabbat* 118a where the *gemara* suggests that the observance of *shabbat* is sufficient grounds for divine forgiveness for the crime of idolatry.

<sup>17</sup> In the light of this one can better understand the reaction of the Sages to horseback riding on *shabbat* in *Yevamot* 90b.

<sup>18</sup> *S.v. Hach Garis Rashi*

<sup>19</sup> *Mishna Beitsah* 1:5.

<sup>20</sup> *Betza* 12a.

<sup>21</sup> Rashi to *Beitsah* 12a, *s.v. ela midelo iflug be'avanim*.

<sup>22</sup> Rambam, *Mishneh Torah, Sefer Zemanim, Hilkhhot Yom Tov* 1:4. See particularly analysis of *Magid Mishna ad loc.*

resulting in restriction.<sup>21</sup> This position was likewise the position of Rambam,<sup>22</sup> and through him that of all of *hakhmei sefarad*.

By contrast, the *Ba'alei Ha-Tosefot* contended that even according to Beit Hillel, carrying for literally “no need” would be prohibited *m'deoraita*, by revealed law. All that was permissible was carrying for even “slight need.” The notion of “slight need” would then go far beyond the limits of bodily need insisted upon by Beit Shammai, and would therefore allow the carrying of a child, for the sheer parental pleasure involved; the carrying of a *lulav*, for the pleasure in doing of a *mitzvah*; and the carrying of a *Sefer Torah*, for the *yom tov* pleasure achieved in study on that day. However, according to the *Ba'alei Hatosefot*, the carrying of articles such as rocks, for which there is no need at all, would remain proscribed as part of the residual *d'oraita* prohibition against unnecessary carrying on *yom tov*.<sup>23</sup>

A third position in *Ashkenaz* was that of Rabbenu Hananel. He maintained that the illustrations of the *mishna* indicated that even according to Beit Hillel the form of “need” necessary to achieve permissibility on *yom tov* was only that of *mitzvah*. He contended that even the instance in the *mishna* of taking out a child, referred only to carrying the child to his own circumcision.<sup>24</sup>

The *Ba'alei Ha-Tosefot* explicitly reject both the more permissive position of Rashi, and the more restrictive posi-

tion of Rabbenu Hananel. In rejecting the latter, they contend that the *mishna's* permission, according to Beit Hillel, to carry a child, refers not only to taking him to his own circumcision, but even just to take a pleasure stroll (*tiyul*) on *yom tov*. Likewise, Tosefot then comments, “we find that people play with a ball on *yom tov* in the public domain even though it is only for simple pleasure (*tiyul*).”<sup>25</sup>

The position of the *Ba'alei Ha-Tosefot* was uniformly accepted by Franco-German *rishonim*, to whom it was clear that activities involving carrying on *yom tov* did not need “*mitzvah*” purpose to justify them. The sufficient justification was “*tiyul*”, simple personal pleasure, such as playing ball.<sup>26</sup> This permissibility was even more obvious within the position of Rashi and Rambam for whom carrying on *yom tov* was deemed permissible with “no need” whatsoever.

An alternative position in regard to ball playing did, however, develop in Italy in the 13th century. R. Zedekiah ben Abraham Anav, author of *Shibalei Ha-Leqet Ha-Shalem*, prohibited the handling of balls on shabbat and *yom tov*.<sup>27</sup> As a student of *Ashkenaz*, possibly even a student of Rabbi Meir of Rothenberg, the *Shibalei Ha-Leqet* clearly would not reject the dominant position of the *Ba'alei Ha-Tosefot* deeming simple pleasure to be sufficient to allow carrying on *yom tov*.<sup>28</sup> Indeed, his explicit combination of “*shabbat*” with *yom tov* in the proscription indicates that he is not basing his proscription on a reinterpretation of the principle of “*mitokh*”.

<sup>23</sup> *Tosefot* to *Beitsah* 12a, s.v. *Hakhi garis Rashi*.

<sup>24</sup> Rabbenu Hananel to *Beitsah* 12a, as per *Tosefot op cit*.

<sup>25</sup> *Tosefot op cit*. at note 23.

<sup>26</sup> See Rabbenu Asher to *Beitsah* 12a, Ch. 1, sec. 18. Also see Mordecai to *Bezah* 12a, Chapter 1, sec. 658 (albeit, the *responsum* there quoted in the name of R. Meir of Rothenberg might be read more in consonance with the position of Rabbenu Hananel.) See also Rabbenu Nissim to *Rif Beitsah* Ch. 1, 5b–6a, s.v. *aval avanim*.

<sup>27</sup> *Shibolei Haleket Hashalem*, sec. 121, ed. by Samuel K. Mirsky, Philipp Feldheim Inc., N.Y. 1966, page 404. Our text is identical in the earlier edition edited by Solomon Buber, Vilna 1886, reprinted by Menorah, N.Y., 1959.

<sup>28</sup> He begins that passage by quoting R. Eliezer of Touques, who was the editor of our *Tosefot* to *Bezah*, based on the *Tosefot* of Sens and Evreux. See Mirsky, *op cit*, p. 403, note 1; Ephraim Ohrbach, *Baalei Ha-Tosefot*, at p. 480; and M. Kasher, *Sarei Ha'eleph*, 2nd edition, vol. 1, p. 209, *Beit Torah Shelemah*, Jerusalem, 1978.

The issue for him is not carrying. It is the fact that the ball would be filthy from prior use in the mud and dirt, and therefore would fall under the category of “disgusting” objects that are rabbinically prohibited from being handled on *shabbat* and *yom tov* under the principles of *muktsab*. This approach to banning the use of the ball not on the grounds of carrying, but on the grounds of *muktsab*, would work both according to the approach of the *Ba’alei Ha-Tosefot*, and also according to the approach of Rashi and the Rambam. It would be dependent solely on the reality, whether the balls in fact became muddied and filthy in their prior use.

Was this simply an end run around a clearly permissive law motivated by social circumstances? The particular form of ball playing to which *Shibalei Ha-Leqet* was addressing himself was probably an early form of tennis, which was common in France and Italy during those centuries.<sup>29</sup> However, in Italy, it appears that the game became particularly obnoxious to rabbinic authorities because the competition was held for gambling purposes.<sup>30</sup> Not able to ban the activity on the direct legal grounds of carrying, it is possible that *Shibalei Ha-Leqet* turned to the subsidiary grounds of *muktsab* as a way of deterring the activity, apparently to no avail.

Indication that this might have been the motivation of R. Zedekiah is enhanced by the fact that he is the first, and only, *rishon* to cite the passage of the *Midrash Eikhah* in discussion of the law of playing ball.<sup>31</sup> Whether he was aware that the passage also appeared in the *Yerushalmi* is

not known, but it would, in any case, only be the version of the *midrash* that would be useful to him since only that version associates the wrongful ball playing with *shabbat*.

The passage in the *Shibalei Ha-Leqet* is cited subsequently, again in Italy, by R. Jacob ben Judah Landau, author of the *Aggur*, in the late 15th century. The *Aggur* indicates clearly that the issue at stake in playing with balls on *shabbat* and *yom tov* is definitely not the question of carrying. Citing the *Shibalei Ha-Leqet* approvingly, he bases the prohibition on the fact that the balls are “disgusting, having become filthy due to the mud and dirt.”<sup>32</sup> The prohibition then is not the activity but is the *muktsab* character of the balls.

It is worth noting at this point that none of the sources mentioned heretofore attended to the question of who was playing. In contrast to other games that were apparently commonly played only by children and women,<sup>33</sup> ball playing appears to have been common to adult men as well.

### C. *The Shulhan Arukh and Its Aftermath*

We are now able to understand the positions of R. Joseph Caro and R. Moshe Isserlis as they appear in the *Shulhan Arukh* and the *Mapa*.

In *Shulhan Arukh, Orach Hayim, Hilkhhot Yom Tov, siman 518, par. 4*, the *Mehaber* presents the law of carrying on *yom tov*. In the face of the debate between Rambam and

<sup>29</sup> Israel Abrahams, *Jewish Life In The Middle Ages*, p. 379, Jewish Publications Society, Phila., 1958. (In note no. 1 on that page Abrahams misquotes the *Midrash Eikhah Rabbah* as having considered ball playing on *shabbat* to have been one of the causes of the destruction of the Temple, rather than of the town of Mount Shimon.)

<sup>30</sup> Cecil Roth, *The Jews in The Renaissance*, pp. 28–29 and footnotes on p. 342, Jewish Publications Society, Phila., 1959. The *responsa* cited by Roth in this regard serve as powerful evidence of the persistent nature of this *shabbat* practice.

<sup>31</sup> *Shibolei Ha-leqet Ha-Shalem, op cit.*, at end of sec. 121, at p. 404.

<sup>32</sup> Jacob ben Judah Landau, *Sefer Ha-Agur Ha-Shalem, Hilchot Shabbat*, sec. 521, edited by Moshe Hirschler, Moznayim, Jerusalem, 1960.

<sup>33</sup> An enlightening treatment of the issue of childhood playing is to be found in an article by Ephraim Kanarfogel, “Attitudes Toward Childhood and Children In Medieval Jewish Society,” especially at note 55, in *Approaches To Judaism In Medieval Times*, vol. 2, edited by David R. Blumenthal, Scholars Press, Chico, California, 1990.

the *Ba'alei Ha-Tosefot*, and in the light of the fact that he considered it possible that Rambam actually agreed with *Ba'alei Ha-Tosefot*,<sup>34</sup> The *Mehaber* chose language that could accommodate to either position. He indicates that carrying a child, a *lulav* or a *sefer Torah* would be permissible. He says further that carrying rocks would be prohibited, but does not indicate whether the prohibition would be *m'deoraita*, in accordance with the *Ba'alei Ha-Tosefot*, or *mid'rabbanan*, in accordance with the position of Rambam.

In *siman* 518, the *Mehaber* makes no explicit reference to carrying a ball since it raises no possibility of prohibition. According to Rambam there is certainly no carrying problem on *yom tov* at all, and according to the *Ba'alei Ha-Tosefot* there was explicit and universal agreement that no carrying problem existed.

The Rama, in elaborating the position of *Ashkenaz* as notations to the text of the *Mehaber*, adds two comments. Firstly he makes explicit that “slight need” is necessary in order for any carrying on *yom tov* to be permissible. Secondly, he distinguishes balls from rocks, indicating that, “It is permissible to play with a ball, even in public domain, even though the sole purpose is personal pleasure (*tiyul be'alma*).” While the first of these points is typical only of the *Ba'alei Ha-Tosefot*, the latter was true according to all positions on “*mitokh*” except for the rejected position of Rabbenu Hananel.<sup>35</sup>

To these notations, R. Moshe Isserlis adds one other, “If he had placed an *eruv*, then it is permissible to carry and take out any utensil whatsoever, even if there is no need for it that day at all.” Without entering into the broad

debate surrounding this separate question of whether and how laws of *eruv* in apply to *yom tov*, let us just note that, according to Rama, even were there a limit on the handling of balls which derived from the law of carrying, such a constraint would be eliminated by the presence of an *eruv hatzerot*.

In contrast to *siman* 518, Rabbi Yosef Caro does directly address a halakhic issue relating to playing with a ball in *Orach Hayim, Hilkhhot Shabbat, siman* 308. That lengthy chapter deals extensively with the laws of *muktsab*, and therein, in paragraph 45, the *Mehaber* says simply, “It is prohibited to play on *shabbat* and *yom tov* with a ball.” His source for this conclusion is spelled out in detail in his Beit Yosef to the *Tur*. The *Tur* himself had been totally silent on the question of the use of balls on *shabbat*, even within the context of the laws of *muktsab*. In his commentary, Rabbi Caro cites the *Aggur* in the name of *Shibbolei Ha-Leqet* as contending that playing with a ball is prohibited on the grounds of its being “disgusting” due to the mud and filth encrusted on it.<sup>36</sup>

Caro properly understood *Aggur* as basing the prohibition solely on the principle of *muktsab*,<sup>37</sup> since there had been no dissent whatsoever on the “carrying” question. Therefore, he could only record the constraint in *siman* 308, not in *siman* 518.

The Rama immediately responds by recording the dominant position of *Ashkenaz* even in relation to the *muktsab* issue. He says, “There are those who permit this, and the practice is to permit it.” Indeed, why the *Mehaber* himself had chosen in this instance to decide in accordance with a minority position in *Ashkenaz*, against both the

<sup>34</sup> See his comments in Beit Yosef to *Tur Orach Chayim, siman* 518, *s.v. Ule'inyan halakhah*.

<sup>35</sup> Rama to *Shulhan Arukh, Orach Hayim, siman* 518, par. 4.

<sup>36</sup> Beit Yosef to *Tur Orach Hayim, Hilkhhot Shabbat, siman* 308, *s.v. Katav be'Aggur*, at end of the *siman*.

<sup>37</sup> Samuel K. Mirsky in his notes to *Shibbolei Ha-Leqet* points out that Rabbi Caro clearly had not seen the *Shibbolei Ha-Leqet* itself, but had only quoted his opinion from the *Sefer Ha-Aggur*. This is indicated when the Beit Yosef quotes the earlier part of this same passage in his comments to *Tur, Orach Chayim, siman* 318, *s.v. katav Rabbenu Yerucham*. There, he speculates about why certain other games are prohibited on *shabbat* according to *Shibbolei Ha-Leqet*, when the latter explicitly indicates his own reasons, reasons which were omitted by *Sefer Ha-Aggur*.

majority of *Ashkenaz* and the silence of Sephardic decisors, remains an interesting question. But, despite the *Mehaber*, the law for *Ashkenaz* was clear—playing ball was permissible on both *shabbat* and *yom tov*; on *shabbat* of course, only within private domain or the confines of an *eruv*.<sup>38</sup>

A sharp attack on the permissive position of the Rama was launched by his contemporary and relative, Rabbi Shlomo ben Jehiel Luria. In his *Yam Shel Shlomo*, Luria differs with the commonly accepted interpretation of the position of the *Ba'alei Ha-Tosefot* as to the principle of “mitokh”. He argues that the Tosafists are really closer to the position of Rabbenu Hananel. While preserving the language of “slight need”, he insists that the need must be of a *mitzvah* nature. Thus, carrying a child on *yom tov* would be permissible even as “*tiyul*”, that is, for personal pleasure that would fuel one’s sense of joy on the holy day. By contrast, he sees no redeeming *mitzvah* purpose in playing ball.

“It is astonishing that anyone would permit playing with a ball on *yom tov*. It has no utility at all related to the day (of *yom tov* itself). It is only a game for children who are not yet obligated (in *mitzvot*)—let them be. As for adults, it appears to me to be an evil custom, not like “*tiyul*” (personal pleasure), but child’s play and levity. As for the ascription by Rabbenu Yerucham of this (permissive) position to Rabbenu (Jacob) Tam, this seems to me unlikely. But, perhaps he only desired to reconcile (the law) to existing practice, for they engaged in this practice.

If I had the power to do so, I would nullify this (practice).<sup>39</sup>

A number of significant elements of the position of the MaHaRSHaL need to be noted carefully. Firstly, he offers us an important description of the reality. Apparently from the time of the earliest *Ba'alei Ha-Tosefot* until the late 16th century, ballplaying on *shabbat* and holy days was common for adults as well as for children in Franco-Germany as well as now in Poland.<sup>40</sup> The fact that Luria bemoans his inability to eliminate the practice is a certain indication of the rootedness of the activity. Purely coincidentally we have a contemporaneous report from Italy of the persistence of the practice in that country as well, despite the prior opposition of the *Shibalei Ha-Leqet* and the *Sefer Ha-Aggur*.<sup>41</sup>

Secondly, the halakhic objection by Luria bears no relationship whatsoever to the prior objection by *Shibalei Ha-Leqet* and *Sefer Ha-Aggur*. Luria makes absolutely no reference to the issue of *muktsah*. Is it possible that the realities of playing balls changed in the intervening centuries, or was Luria simply unwilling to follow a minority position against the majority of the Tosafists, against common practice and against the utter silence of the Talmud?

Thirdly, Luria bases his entire objection to ball playing on his novel interpretation of the principle of “*mitokh*”, and his ascription of that position to the Tosafists. Thus the grounds of his objection are solely that the activity of ball playing has no purpose related to a *mitzvah* relevant to

<sup>38</sup> So indicated explicitly by Rabbi Moshe Isserlis in his *Darkhei Moshe* to *Tur, Orach Chayim, siman* 308, sec. 11.

<sup>39</sup> Rabbi Shlomo ben Jehiel Luria, *Yam Shel Shlomo, Beitsab* Ch. 1, sec. 34, Goldman Press, N.Y., 1953 (The heading on page 8b erroneously reads *Gittin* Chapter 8.)

<sup>40</sup> See Israel Abrahams, *op cit.*, and Cecil Roth, *op cit.* See also Myer S. Lew, *The Jews of Poland*, p. 132, Edward Goldston Press, London, 1944.

<sup>41</sup> Cecil Roth, *op cit.*, at pp.28–29 refers to a series of *responsa*, the first by Rabbi Moses Provenzal of Mantua in 1560, who permitted playing a form of tennis by hand but not with strung rackets. A further *responsum* by his grandson, Rabbi Eliezer Provenzal, sustained both the laxity and the severity of the earlier holding. Roth, at p. 342, note 28, cites I. Rivkind in *Tarbits*, vol. 55, pp. 366–376 (actually in Vol. 4, 1933 at those pages). See also Robert W. Henderson, “Moses Provenzal on Tennis,” *J.Q.R.* vol. 26, no.1, July 1935, pp. 1–6, also cited by Roth.

the day of *yom tov* itself. For this reason, Luria speaks only of ball playing on *yom tov*. It is striking that he offers no discussion at all of the same activity on *shabbat*. The reason is that on *shabbat* the elements are perfectly clear—the object is not *muktsah*, and the question of carrying is solely dependent upon the character of the location.

Based on this latter point, Luria makes it abundantly clear at the very end of this passage that if the location is such that no “carrying” problem can exist, such as within private domain or within an *eruv*, that no further legal objection to the activity would remain. He, in closing, quotes Rabbenu Nissim approvingly as having said that even on *yom tov* an *eruv* would make permissible the carrying of objects for which there is “no need” whatsoever. He himself therefore recommends as common practice the inclusion of a reference to *yom tov* in the declaration made at the time that an *eruv* is established and the food for it set aside.<sup>42</sup>

#### D. Period of The Aharonim

The early *aharonim* in their commentaries to the *Shulhan Arukh* address the position of the MaHaRSHaL. Rabbi David ben Samuel haLevi (1586–1667), author of the *Turei Zahav* (Taz), and of the Magen David to *Shulhan Arukh Orach Hayim*, appropriately omits any reference to Luria in his comments to *siman* 308. After all, Luria did not agree with *Shibbolei Ha-Leqet* that a ball was *muktsah*. Therefore, he could be presumed to have agreed with Rama in his dissent from the restrictive position of the *Mehaber*.

In reference to *siman* 518, the Taz does cite the position of Luria contending that ball playing on *yom tov* should

be viewed as equivalent to a “no need” activity, and therefore subject to the prohibition against “carrying” on *yom tov*. However, the Taz then goes on to say, as did Luria himself, that the problem is really ephemeral since the standard form of our *eruv* formula includes reference to *yom tov*, and that even “no need” objects can therefore be carried.<sup>43</sup> Thus, while the Taz pays lip service to the additional severity of the position of Luria, in practice he actually sustains the permissive position of the Rama.

Rabbi Abraham Abele Gombiner (c. 1637–1683), in his Magen Avraham to *Shulhan Arukh Orach Hayim*, likewise cites Luria in his comments to *siman* 518. He too, like the Taz, explicitly recognized that in regard to this particular game there would be a difference between *shabbat* and *yom tov*, since the basis of any prohibition would be the prohibition against carrying, which differs on *yom tov* from on *shabbat*.<sup>44</sup> Likewise, he cited the language of Luria suggesting that only children should be allowed to engage in ball playing on *yom tov*, since for adults there is no sufficient “need”. However, he too, like the Taz before him, recognized that in the reality no restriction existed due to the operation of the laws of *eruv* on *yom tov*.<sup>45</sup> *Machatzit Ha-Shekel* to Magen Avraham notes immediately that Rabbi Gombiner himself insisted that the formula for *eruv* include reference to *yom tov*.<sup>46</sup>

Rabbi Gombiner’s treatment of the *muktsah* issue in *siman* 308 is of particular interest. He initially presents a position that argues that even the Tosafists permitted the use of a ball only on *yom tov* but not on *shabbat*, thus explaining why the *Mehaber* had indicated restriction only on *shabbat*. Rabbi Gombiner, however, rejects that position and contends that as far as *muktsah* restrictions are concerned, *yom tov* is even more severe than *shabbat*,

<sup>42</sup> *Yam Shel Shlomo*, *Beitsah* end of sec. 34.

<sup>43</sup> Taz-Magen David to *Shulhan Arukh Orach Hayim*, *siman* 518, at par. # 2.

<sup>44</sup> Magen Avraham, *id.*, at par. # 4.

<sup>45</sup> *Id.*, at pars. # 5–6.

<sup>46</sup> Rabbi Samuel ha-Levi Kolin, *Machatzit Ha-Shekel* to *Shulhan Arukh*, *Orach Hayim*, *siman* 518, par. # 5.

and that therefore, if the Tosafists permitted playing ball on *yom tov*, then that activity would certainly be permissible on *shabbat*.<sup>47</sup> He thus sustains the position of the Rama against that of Rabbi Yosef Caro.

The Magen Avraham then cites the position of the MaHaRSHaL, that ball playing, even according to the Tosafists, is really prohibited by law, but that people's practice is lenient. The inclusion of a reference to Luria in *siman* 308 led some to erroneously conclude that Magen Avraham was ascribing to Luria the position of the *Mehaber*, that the ball was prohibited on the grounds of *muktsah*. This is certainly not the case. In fact, Rabbi Gombiner explicitly upheld the position of Rama against that of the *Mehaber*. The citation of Luria was simply a cross-reference to the related question of carrying on *yom tov*, which Gombiner treats directly later on in *siman* 518, in the manner that we have already seen.<sup>48</sup>

A further element in this matter is filled in by the Vilna Gaon. In his attempts to identify the earliest sources of all laws in the *Shulhan Arukh*, the Vilna Gaon refers to the *aggadic* passage in the *Yerushalmi*, referring to the cause of the destruction of Tur Shimon, as the source of the position of the *Mehaber* considering balls to be *muktsah*. Clearly, the Gaon is reading the *Yerushalmi* in accordance with the expanded version in *Midrash Eikhah Rabbati*, which connects the act of ball playing to *shabbat*. However, this raises another problem. How do the Tosafists account for the *Yerushalmi*? The response of the Vilna Gaon to this question is simple and elegant. The Tosafists agree that a *shabbat* violation caused the destruction of Tur Shimon. It was not violation of the Rabbinic law of *muktsah*, but violation of the *d'oraita* prohibition against carrying in a public domain while playing ball,

which resulted in such dire punishment.<sup>49</sup> Therefore, so long as no such prohibition of carrying was involved, either because the game took place in private domain or within an *eruv* for *shabbat*, no stigma of evildoing would attach to the game.

An appropriately clear summation of this entire question is offered by Rabbi Yehiel Michel Epstein in his extraordinary, albeit not yet sufficiently recognized, masterpiece, the *Arukh HaShulhan*. In *Orah Hayim*, *siman* 308, par #70, he notes the debate around the *muktsah* question and indicates that our practice is in accord with the Rama. He does, however, then take note of the *Yerushalmi* without assigning any force to it.<sup>50</sup>

In *Orah Hayim*, *siman* 518, par. #8, Rabbi Epstein says as follows:

Our teacher, the Rama, wrote that, "It is permissible to play with a ball even in public domain, even though it is only general pleasure." There are those who object to this on the grounds that this is not (religious) joy or pleasure except to children, but not for adults. In truth this is not a valid objection for since it is precious to him within his own undeveloped (religious) consciousness, how can we withhold this from him? Additionally, he (himself, Luria) wrote that if he had set up an *eruv*, then it would be permissible to move and to carry out anything which is considered a utensil, even if it is for "no need" related to the day (of the holy day) at all.

There is a two-fold significance to the position of Rabbi Epstein. Firstly, he recognizes the power of the subjective element in determining what constitutes "slight need" in

<sup>47</sup> Magen Avraham to *Shulhan Arukh*, *Orah Hayim*, *siman* 308, par #73.

<sup>48</sup> See *Machatzit Hashkel*, *id.*, at par. #73.

<sup>49</sup> *Be'ur HaGra* to *Shulhan Arukh*, *Orah Hayim*, *siman* 308, par. #45.

<sup>50</sup> Rabbi Epstein cites the *Yerushalmi* as explicitly referring to playing ball on *shabbat*. *Korban HaEdah* (R. David Fraenkel, 1707–1762), had offered this and an alternative explanation of the passage. He considers the possibility that the wrongfulness of ball playing had nothing to do with *shabbat* but with the general involvement with such athletics to the exclusion of study of Torah. J.T. *Ta'anit* 4:5, *s.v. shehayu mesachakin bekaddur*.

the experience of the day of *yom tov*. He therefore takes direct issue with the position of Luria who propounded an objective determination that ball playing would not serve as a sufficient need. It is also possible that Rabbi Epstein recognized in the formulation of Luria a move away from what had classically been the position of the Tosafists, towards the position of Rabbenu Hananel, and, thereby, towards the position of Beit Shammai. This movement alone might have motivated Rabbi Epstein's sharp repudiation of the conclusion of Rabbi Shlomo Luria.

Whatever the motivation, the position of the *Arukh HaShulhan* cut through the haziness in its restoration of the position of Ashkenaz in accordance with the explicit indication of the *Ba'alei Ha-Tosefot*. "Slight need" would continue to include the sources of subjective, permissible pleasure that each individual found to be enjoyable on *yom tov*.

The second element of significance in the position of the *Arukh HaShulhan* resides in the recognition that in the final event, even according to the MaHaRSHaL, there is no legal constraint against ball playing on *yom tov* within the confines of an *eruv* which had been established for *shabbat* use. This conclusion, consistent with the way in which all of the prior *acharonim* understood Luria, is also consistent with Luria's own specific language. There is nothing novel in the contention that even according to Luria, on both *shabbat* and *yom tov*, playing ball within private domain or within an *eruv* is totally permissible.

Rabbi Israel Meir HaCohen Kagan, makes no reference to Luria in his comments to *Orah Hayim, siman 308*. Again,

simply because Luria does not disagree with Rama on the matter of *muktsah*. The *Mishna Berurah*, therefore concludes that the *halakhah* is in accordance with Rama, and that playing ball on *yom tov* even in a public domain is completely permissible, so long as the play is on a hard surface.<sup>51</sup>

In his commentary to *Orah Hayim 518:1*, the *Mishna Berura* does in fact cite the position of Luria.<sup>52</sup> He even appears to attempt to support Luria's position by noting the restrictive position of the *Mehaber* on the *muktsah* question.<sup>53</sup> Nevertheless, he, like all of his predecessors amongst the *acharonim*, immediately indicated that Luria's hesitancy is completely overcome by the presence of an *eruv* even on *yom tov*.<sup>54</sup> The practical significance of his citation of Luria and of his reference to Caro on the *muktsah* issue, is to support the contention that ball playing is prohibited on *shabbat* in public domain or in *carmelit* which lacks a proper *eruv*. This point he makes quite explicitly.<sup>55</sup>

The issue that Luria raised was perceived throughout as a technical problem in the law of carrying on *yom tov*, not an overarching critique of the activity of ball playing itself. Thus, so long as the "carrying" problem could be adequately dealt with, on either *shabbat* or on *yom tov*, through containing the activity within a private domain or within the confines of an *eruv*—the activity itself was simply not objectionable.

This pattern has carried into contemporary times, as outstanding Ashkenazik decisors of this generation have confirmed the permissibility of ball playing within

<sup>51</sup> *Mishna Berura to Shulhan Arukh, Orah Hayim, siman 308, par. #158, N.Y., 1952*. I was just informed that the Chief Rabbinate of Tel Aviv made precisely this decision in the mid-1980s, in permitting the Israel Tennis Centers to remain open on *shabbat*. The fact that play took place in an enclosed area, on a hard surface, with racquets which are not normally repaired by the players, were apparently sufficiently consonant with the conditions referred to by *Mishna Berura* and his antecedents.

<sup>52</sup> *Mishna Berura to Shulhan Arukh, Orah Hayim, siman 518, par #9*.

<sup>53</sup> This, despite that fact that he had offered no indication in *siman 308* that he supported the position of Caro against that of the Rama.

<sup>54</sup> *Mishna Berura, Shulhan Arukh, Orah Hayim, siman 518, par. #10*.

<sup>55</sup> *Mishna Berura, Shulhan Arukh, Orah Hayim, siman 308, par. #158*.

reasonable limits. Rabbi Shlomo Zalman Auerbach, as cited by Rabbi Yehoshua Y. Neuwirth in his *Shemirat Shabbat Ke'hilkhatah*, permits ball playing,<sup>56</sup> but forcefully prohibits soccer, generally playing on grass or earth fields, and the use of inflated balls that are tied to keep the air in (such as balloons and some beach balls).<sup>57</sup> In like fashion, Rabbi Moshe Feinstein, is quoted as having resolved simply the question that agitated the *rishonim*, in contending that playing balls are definitely “utensils”; and, in accordance with the whole of Ashkenazik tradition, are not *muktsab*.<sup>58</sup>

Most interesting, however, is to observe the progression of three versions of the language of Rabbi Neuwirth, in *Shemirat Shabbat Ke'hilkhatah*. In the first edition, published in 1964, he states:

Ball playing—except for the game of soccer— involves no prohibition, even outside of the house (in a place where there is an *eruv*), as the law is likewise in regard to the game of table tennis (ping pong).<sup>59</sup>

In the second, revised and expanded edition, published in 1978, the language is slightly more tentative:

Ball playing should not be [declared to be] prohibited—except for the game of soccer—even outside of the house (in a place where there is an *eruv*).<sup>60</sup>

An English translation of the second edition, done “in close collaboration with the author,” and including “modifications as are felt to be appropriate for an English edition,” was published in 1984.<sup>61</sup> It expands the paragraph by including the constraints, both directly and by cross reference:

A. Subject to the restrictions referred to in paragraphs 7, 8 and 9 below, there is no reason to forbid ball games played on a hard surface, such as an asphalt or concrete court or a ping-pong (table-tennis) table, whether indoors or out, provided that, where necessary, an *eruv hatseivot* has been made properly, as described in Chapter 17.

B. Ball games should not be played on earth or grass.<sup>62</sup>

The subtle, but clear progression in these three presentations; moving from “involves no prohibition”, to “should not be prohibited”, to “there is no reason to forbid” conjoined with detailed restrictive specifications, is indicative of a growing sense of discomfort with the permissive position.<sup>63</sup> Nevertheless, Rabbi Neuwirth does not attempt to deny the clarity of the tradition of *pesak halakhah* in the Ashkenazic tradition.<sup>64</sup>

The call to limit ball playing on *shabbat* and *yom tov* does not, then, derive from a valid place in the literature of *halakhah*. Where then does it come from? Why has it

<sup>56</sup> Rabbi Yehoshua Y. Neuwirth, *Shemirat Shabbat Ke'hilkhatah*, 2nd edition, Ch. 16, par. 6, Moriah Press, Jerusalem, 1978.

<sup>57</sup> *Id.*, at paragraphs 6, 8 and 9, and footnote 24 on p. 184.

<sup>58</sup> Rabbi Yisroel Pinchos Bodner, *The Halachos of Muktzah*, pp. 25–26 and at footnote 27 on p.26, Feldheim Publishers Ltd., New York, 1981. Rabbi Feinstein is there recorded as having told Rabbi Bodner that rackets of permissible sports, such as tennis, racquetball, ping-pong and handball are, like the ball itself, not *muktsab*, since they are “utensils of permissible activities”.

<sup>59</sup> Rabbi Yehoshua Y. Neuwirth, *Shemirat Shabbat Ke'hilkhatah*, Chapter 15, par. 6, at p. 101, Feldheim Pub. Co., Jerusalem, 1964.

<sup>60</sup> *Id.*, 2nd edition, Chapter 16, par. 6, at p. 183, Moriah Press, Jerusalem, 1978.

<sup>61</sup> Rav Yehoshua Y. Neuwirth, *Shemirat Shabbat*, English edition prepared by W. Grangewood, Feldheim Pub. Ltd., New York, 1984, inside cover page and Preface, p. xiv.

<sup>62</sup> *Id.*, Chapter 16, par. 6, at p. 189.

<sup>63</sup> Rabbi Neuwirth was clearly aware of the significance of the variation in his language, but attempts to blur the distinction by insisting that it is really based on the same sources, the *Arukh Ha-Shulhan* and the *Mishna Berura*. Compare footnote no. 14 on p.101 in the 1st edition, with footnote no. 18 on p.183 in the 2nd edition.

been so recurrent? Further, what response ought to be made to this concern? To deal with these questions we need to turn to an entirely separate discussion of the spiritual condition of our community.

## II. The Public Policy Question

As I indicated at the outset of this paper, I believe that we as a community have a problem in regard to the use of time on *shabbat*. We seem to have evolved only three activities through which we positively and effectively enhance the holiness of the day. First, “*davening*” time; second, meal time; and third, learning time. Whatever time cannot be consumed in one of these three activities remains available for sleep.

Is this really it? In God’s whole wide world the only permissible activities which can serve spiritual purposes on *shabbat* are *davening*, learning and eating, leaving then only sleeping as the residual means of consuming time not otherwise able to be put to positive use?

My life experience, as a person, as a parent, as a rabbi, as a teacher, lead me to the conclusion that these three areas are simply not sufficient for most people, and are certainly not sufficient for children and young adults. Adults are somewhat able to cope with the bad situation. As time grows heavy on their hands, meals protract into feasts, *davening* time protracts to fill some of the available time, and people will take a *sefer* with them to bed, or just sleep more.

It seems to me that we need to be looking to expand the base of activities through which meaningful spiritual experiences can be had. If we want the time of *shabbat* to

so infuse the life of the Jew with meaning that the rest of the days of the week could be lived in its shadow, then we need to discover additional frameworks through which such meaningful transmissions can take place.

In regard to children, the problems are even more severe. In recollecting my own childhood, and now in observing the similar experiences of my own children, as well as now reflecting upon very active youth programs in a number of congregations—I see more clearly than ever the inadequacies of the pattern that we have inherited. *Davening*, learning and eating will simply not grab most kids’ attention for protracted periods of time; certainly not for twenty-five hours. Besides which, kids know instinctively that sleeping is a waste of valuable living time and is to be engaged in only under duress (parental or bodily).

Telling people not to play ball on *shabbat* or *yom tov* is not a solution to this problem. All it will do is shift people’s engagement to some other equally non-spiritually productive activity. This is particularly so in regard to children and young adults for whom the sheer release of physical energy in ball playing will invariably be replaced with another activity providing the same release of energy.

It seems to me that the challenge before us is two-fold. Firstly, can we sustain a limited form of ball playing and turn the activity toward a religious purpose? For example, is it possible to develop a form of ball playing in which the goals are cooperative rather than competitive, in which there could be a more conscious awareness that improving the well being of the body is itself a form of service of *Ha-Shem*. Is there a way of modifying the rules of an existing game so as to make the experience of playing, not only a release of physical energy, but an acquisition of ethical energy?

<sup>64</sup> A step yet further in the restrictive direction is taken by Rabbi Yisroel Pinchos Bodner, *op. cit.*, p.25, “Ball playing (inside one’s house or *eruv*) although not proper, can not be prohibited (since technically no Shabbos prohibitions are violated). Therefore, all types of balls, such as basketballs, tennis balls, raquetballs, baseballs, handballs, etc. are not *muksab*.” Notice the significant omission of reference to soccer balls and footballs, which Rabbi Bodner apparently could not bring himself even to mention as falling amongst objects not deemed to be *muksab*.

Secondly, we need to seek out wholly new additional frameworks for the transmission of Jewish values on *shabbat*. In some combination of intellectual and physical activities, we need to identify ways in which families can achieve spiritual renewal without being bored to death in the process. For young people in particular, we need to rethink the values that need to be transmitted to them and what mechanisms could achieve that transmission.

Simply telling people that ball playing on *shabbat* is now prohibited will not achieve either of these purposes, nor will it really improve in the slightest the positive experience of *shabbat* by any Jews. It will, on the other

hand, further convince many Jews that Jewish asceticism is alive and well, and that they can look forward to ever increasing ascetic "*humrot*" as the rabbinate flounders in its attempt to make Judaism meaningful in the modern world.

Ball playing on *shabbat* and *yom tov* is a vacuous, pointless activity, almost as useless as sleeping hours on end. But it is halakhically permissible and serves a perceived need for relaxing, enjoyable and physically energetic activity time. Let's not take that away from people until we can replace it with something that serves approximately the same purposes, and also serves to enrich their religious and ethical beings.