The Sefira Restrictions

View PDF



Rabbi Alan J. Yuter, a highly respected American Orthodox rabbi, went on Aliyah with his wife upon his retirement. They currently reside in Jerusalem. Rabbi Yuter is associated with Torat Reeva Jerusalem..

Rabbi Alan J. Yuter, a highly respected American Orthodox rabbi, went on Aliyah with his wife upon his retirement. They currently reside in Jerusalem. Rabbi Yuter is associated with Torat Reeva Jerusalem..

When we walk on the Streets of Boro Park. NY,
or Park Heights, Baltimore, Md., we see some Orthodox men walking on the street with beards during the seven weeks between the Passover and Shavuot holidays. This season Is taken to be a period of mourning which seems to require a seasonal beard as well as a prohibition of music. According to the ultra-Orthodox decisor and spokesman, R. Yisroel Belsky,

“Lately, it has become a trend to take every possible pleasure that one can think of and figure out ways to make them permissible at all times. Whether it is the imitation of non-kosher foods, making all chometzdike delicacies kosher l’Pesach, or other similar things, we find this attitude now more than ever. People cannot live for one minute with compromising on pleasures that they are used to or wish to experience. Often, the heteirim

[dispensations] *to permit such activities are, at best, based on very weak reasoning.*

One such example is the desire to listen to music during Sefirah and The Three Weeks. It has become a trend to produce “Sefirah tapes,” referred to musically as ‘a cappella “ The wide acceptance of such tapes has not been with rabbinic

approval. Indeed, many of the gedolei rabbonim [great rabbis] have ruled that one should not listen to this type of music during Sefirah and The Three Weeks. Unfortunately, because the music albums are being sold in the stores, people think that they must be glatt kosher. If they aren't acceptable, people say, why would a Jewish store sell them?"

Rabbi Belsky assumes that hearing music during this season is a violation of Torah propriety. It is apparently also improper to have pleasures that are permitted if those pleasures show license or allow people to feel good. Digital music is also banned because

"For example, a click with one's mouth, or a chhhh sound, can be equalized to sound like a drum. If the tonal balance is changed beyond the capabilities of what a human can do, then the music can no longer be considered human sounds, but rather computer-made sounds, and would be prohibited during Sefirah and The Three Weeks."

Although some have objected to the observance of *Yom Ha-Shoah*, the day of commemoration for the murder of six million Jews during the Holocaust, because it falls out during the festive month of Nisan, other voices indicate that remembering the tragedies that befell the Jewish People during the period of *Sefirat Ha-Omer* has its precedents.

Official Religion Jewish Law

1. Orthodox Judaism not only professes commitment to Torah law, it requires the conscience driven conversation regarding the clarification of that law. The only **law** of the Sefirah period [from Passover to Shavuot] is the obligation to count Sefirah [Numbers 23:15]. Some consider this law as Scriptural and others Rabbinic. Since this Scripture is not designated as Rabbinic in the Oral Torah, it seems that Sefirah counting should be taken literally and as a Torah mandate.
2. bYevamot 62b reports a **legend** that 24,000 students of Rabbi Akiva died between Passover and Shavuot, with the deaths ending on the 33rd day of the count. There is **no Oral Torah legislation** designating this period as a

period of mourning. Furthermore, there is no independent attestation for the historicity of this *aggadic/*legendary claim, which may or may not have a historical core.

3. Mourning practices are first reported in the post-Talmudic Gaonic collection called **Sha'arei Teshuva** 278.

The Tur [OH 493] reports the Gaonic **custom** that weddings do not take place during the Sefirah season and some but not all communities restrict haircuts as well. The Tur treats this period **as akin** to the mournful month of Av when we diminish joy from the beginning of Av to the fast day on the 9th of the month, [mTaanit 4:6] **innovatively creating** a new season of mourning unattested in the Oral Torah. Upon unpackaging the Tur we find that:

1. The original invented practice was to restrict weddings and at that time nothing else was restricted.
2. The restriction on haircuts is a later **innovation** or **reform.**
3. **Shulhan Arukh** (493:1-2) cites both of these customs which restrict weddings and haircuts. There is at this moment in the history of Halakha no mention of restrictions on music, shaving, or other pleasures the ignoring of which seems to bother Rabbi Belsky.
4. Unaddressed by Rabbi Belsky is the Babylonian Amora Samuel's legal principle that the law follows the lenient view [and we do not search for strictures] in matters of mourning. [Moed Katan 20a].
5. The Sephardi Maimonides and the Ashkenazi Rashi's school Mahzor Vitry know nothing of this season of mourning, indicating that neither of these plain sense and common sense sages believed that the innovative Sefirah mourning practices are normative and binding.

During the Middle Ages, these mourning practices became normative and were justified after the fact:

1. The Crusades made Jews feel insecure so the Jews made their Judaism understandably more morose. The Ashkenazi Yizkor memorial service dates from this period as well and was enacted over and against the

competing Oral Law concern that mourning is not done on holidays.

2. Taz [OH 483:2] assigns the Medieval mourning practices to medieval decrees against Jewry. Rabbi Jacob Emden offers the same report in his *Siddur.* People had the practice to mourn during this period and were looking for contemporizing reasons.

3. While in medieval times, Judaism was allowed to contemporize classical values to their immediate present, in modernity, elements of Orthodoxy now *object* to Holocaust Day because it falls in the happy month of Nisan, which commemorates freedom and redemption. However, these same groups do not object to observing Sefirah mourning during Nisan or the Ashkenazi memorial Yizkor service that by convention is observed on the last day of Passover, when mourning is forbidden by law. Rabbi Haim David ha-Levi questioned the propriety of such prayers on happy Jewish festivals. This inconsistency actually reveals what is at stake in the conversation regarding Sefirah strictures; a living religion responds religiously to contemporary realities while insecure religion pines for a past that never was because it fears the present that it dreads to confront.

4. While religious innovations for spiritual expression are presented as forbidden in modern times, increased restrictions evolve in any case in spite of the Talmudic rule cited above that the Jewish mourning law prefers the lenient view.

5. Nowhere in the Oral Torah canon is music forbidden for personal mourning.

6. Rabbi Meir Kagan [Mishna Berura 493:3] allows a *shiddukhin* [engagement] repast during this period while disallowing dances. On one hand, R. Kagan cites as his source R. Abraham Gumbiner [Magen Avraham, *supra.* n. 1]. The latter sage innovates a restriction on dancing; the former sage innovatively adds a restriction on music.

7. It may be reasoned that since dancing reflects joy, **all** joy must innovatively be forbidden as per the Tur, and since music leads to dancing, music "must" be now forbidden as well.

8. Realizing that mimetic usage trumps Torah statute in the living religion of Orthodoxy, the Hareidi sage, R. Yitzchok Weiss [Minchas Yitzchok 1:111] astutely notes that music is not forbidden by statute but by custom, which is akin to a vow. Note well that the notion that mourning law is to be lenient is unaddressed, as is the right to establish innovative customs of restriction. In Oral Torah Judaism, vows must be articulated with the lips [Leviticus 5:4, Baba Mezia 36a, and codified by, Maimonides, Oaths, 2:10].

9. Rabbi Solomon Ganzfreid restricts music and dancing both during Sefirah and the three weeks between the 17th of Tammuz and the 9th of Av as well [Kitsur Shulhan Arukh 122:1].

10. Reflecting popular culture Orthodoxy that assumes that music is forbidden by rule, as assumed by Rabbi Belsky, R. Moses Feinstein [Ingot Moshe YD 2:137] extends the rule even further to include tape recordings, which could not have been forbidden when the practice first evolved. Innovative stringency has become acceptable, even if the innovation violates Halakhic principle, because stringency valorizes religious heroism which emerges as the "new spirituality."

11. It is reported that R. Joseph B. Soloveitchik argued that new customs "must" follow pre-existing Halakhic paradigms [R. Herschel Schachter, **Nefesh ha-Rav**, 191]. On one hand, the Tur accesses the Mishnaic idiom regarding what in that Mishnah is an *unspecified* of decreasing joy in Av and innovatively assigns the stringency to the Sefirah; on the other hand, the Tur did not flinch from innovation and R. Soloveitchik proclaimed but did not demonstrate his requirement that customs **must** conform to pre-existing paradigms. In his web post, "Masorah and Change," R. Schachter provides the operational rules of contemporary Orthodoxy; *hiddush* [innovation] that continues antecedent paradigms and are apparently not socially discordant are acceptable, while *shinnui* [change, reform] that projects discontinuity, is unacceptable. According to this paradigm, the religious benchmark is not the statute and principle but is located in the innovative and heroic zeal of social convention and collective mood as determined and approved by the Great Sage.

12. I was once asked by the MetroWest Federation to issue a ruling regarding the propriety of music during the Sefirah and I ruled leniently. A modern Orthodox rabbi then chided me for my ruling because Orthodox Jews could and would not participate. I responded that since music is forbidden during Sefirah by late, innovative convention, Orthodoxy may have a right to ask the larger community to observe Torah and Rabbinic law but ought not to impose latter day innovations that are disputed in the halakhic literature, and that if modern Orthodox laypeople were exposed to a historical halakhic conversation and not to social pressure to conform, they likely would agree that Orthodoxy should not waste its moral currency in order to impose a culture that is not law upon those not yet committed to Orthodoxy and Jewish law. At the 2011 International Rabbinic Fellowship conference, live music was permitted before the 33rd Omer day, reflecting a principled rather than policy driven approach to Jewish ritual practice.

It has been reported there is a custom not to take a haircut during Sefirah. This restriction has been *extended* to shaving [Rabbi Feinstein, *supra.,* OH 2:96]. Note that leniencies are available for those who have to work in a non-Jewish environment [Supra. 4:102]. If there was indeed a real rule here, outlawing shaving as opposed to restricting haircuts by custom, no leniency would be available. In point of fact, this "custom" was proclaimed but not promulgated as an official communal enactment and instead serves as an identity marker that identifies the truly Orthodox affiliate, i.e., the person who submits to discipline of the "really" Orthodox rabbis. It is reported that R. Soloveitchik argued that Sefirah cannot be more rigorous a period of mourning than the twelve month mourning period for the loss of a parent, and therefore permitted shaving daily. Given R. Soloveitchik's larger concern for custom conformity, I suspect that his penchant for pragmatism led him to rule leniently on the matter of shaving.

In conclusion:

1. *There is no legislated restriction regarding mourning restrictions during Sefirah.*
2. *The original customary practice disallowed weddings and not haircuts*
3. *Shaving is not the same as having a haircut; while customs should be respected, the ever increasing stringencies that are innovated in present times may rightly be questioned and rejected.*
4. *The law follows the lenient view in mourning; strictures require explanation, not merely declaration.*
5. *Individuals have a right to be heroically strict if they do so without arrogance.*
6. *On Israel Independence Day, one should not appear disheveled with unkempt beard of facial stubble, **even if** one would otherwise not shave at this time. Surely the State of Israel is at least as real as the Talmudic Aggadah* regarding the demise of 24,000 students.
7. If it is proper to innovate a mourning custom and change Jewish practice in the Middle Ages [the halakhically questionable Ashkenazi Yizkor prayers], we have precedent for innovation [Israel Independence Day] in our time as well.
8. It **is** proper to observe communal customs; these customs are however not laws and since they are innovations, they are themselves subject to conversation and when appropriate, change. When we add restriction to

restriction and erect fences around fences, Jewish law will be wrongly seen to be offensive.

9. Those who claim that today's rabbis are not on the spiritual level don't have the right to have an opinion have themselves not reached the spiritual level whereby they are empowered to invalidate the considered, reasoned, and demonstrated opinions of others. According to the Orthodoxy of the Oral Torah, *Halakhic* legitimacy resides in the demonstrated logic of the law, not the charismatic intuition of the claimant.