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MUSIC DURING THE OMER? A MODEL MODERN ORTHODOX RESPONSUM

Rabbi Aryeh Klapper, Dean

Dear Rabbi Klapper,

What are your thoughts listening to live music during the Omer? I know that different people do different things regarding this.

Thanks!

Jack Smith

Dear Jack,

Thank you for your question! Every halakhic question is vitally important in and of itself, but your formulation properly raises a really “big” and broad issue: How should an individual Jew in America today (or Israel, but that deserves separate treatment) decide or discover what their *minhag* is on issues where multiple legitimate *minhagim* exist?

A good first step is to study about the existing options. For an excellent survey of halakhic positions regarding “mourning”, I encourage you to read the essay by Rabbi David Brofsky [here](#). A very different and valuable presentation is by Rabbi Eliezer Melamed [here](#). (It may be instructive to compare the breadth and depth of each to the presentations that come up first on Google.) I won’t try to duplicate their work here, and to some extent will rely on them. Rather, I will try to frame the discussion in a way that empowers you to make informed and meaningful choices, and look forward to further correspondence.

Mourning is the secondary halakhah of the omer period. The primary halakhah is the Biblical mitzvah of counting the omer. This mitzvah connects the barley and wheat harvests, the pilgrimage holidays of Pesach and Shavuot, and marks the period between the Exodus and the Revelation at Sinai. The counting seems intended to create throughout an atmosphere of excitement, celebration, and anticipation that is wholly incompatible with mourning. Even without the Beit Hamikdash, and therefore without the mitzvot of sacrifices and pilgrimages, it seems

inappropriate to be mourning while on the way to Sinai.

The Omer period begins with Chol HaMoed and the last Yom Tov of Pesach, which override any mourning restrictions. The rest of Nisan is a period in which certain forms of public mourning, such as eulogies, are forbidden. If mourning begins on day 1, the first sixteen days are our “Vulcan” period, in which the restrictions of Pesach, Nisan and the Omer combine to forbid both happiness and sadness. It seems that we are required to be purely rational and emotionless, at least in public. But that doesn’t seem realistic or healthy, and one needs to think about how to handle situations in which, for example, insisting on the absence of music would constitute obvious mourning. Then Yom HaAtzmaut comes only five days later (or six; another issue deserving separate treatment)! At the other end, the 3 Days of Hagbalah immediately preceding Shavuot, which commemorate our preparation for Revelation, are also clearly a time of joy. The New Moons of Sivan and Iyyar also fall within the Omer period. So how can we mourn?

Yet there is no denying that just about every pre-20th century community observed an Omer mourning custom of 32 or 33 days, starting either from Omer day 1 (=16 Nissan) or else on 1 or 2 Iyyar. These customs are generally connected to the report that vast numbers of Rabbi Akiva’s students died during the first 32 or 33 days (as the result of interpersonal misbehavior, the Bar Kochba revolt, or both). The regnant explanation of the later starting dates (1 or 2 Iyyar) is that the mourning period was shifted in some parts of Ashkenaz in order to commemorate the Jewish victims of the Crusades, which reached Ashkenaz in Iyyar. But why move the dates, rather than just extending them? I wonder if it was an excuse to leave at least Nissan’s happiness unblemished.

The shifting of the dates yields a very odd halakhic result. A doubtful custom cannot overcome a certain prohibition (and there is room to question the power of a definite

custom as well). Because there are divergent customs with regard to all dates except Iyyar 2-4 and 6-18, and the vast majority of American Jews do not belong to geographic communities bound by a particular custom, a good formal halakhic argument could be constructed to forbid mourning on many or all the other dates. Instead, the standard halakhah in practice has been that at least those who identify as generic Ashkenazim may adopt any of the preexisting customs as to dates, and even to change their custom from year to year without *batarat nedarim*. One should ideally develop a consistent practice over time, and strive for consistency within any given year; but there is much space for accommodating the needs of friends who have different minhagim, e.g. friends' celebrations or roommates who listen to music. And speaking of music...

There are two basic frameworks for Omer mourning

1) Simchat m'reut - essentially, parties. In this framework there is no issue with live music per se, only with the atmosphere often generated by live music. So for example chamber music concerts in a concert hall, when you're not allowed to talk, would be fine (but receptions before and after would not be, even if there were no music). Conversely, a party with dancing to recorded music would be forbidden. Generally any combination of alcohol and music would be forbidden.

2) Specific customs - Obviously there can be no minhag going back more than a century about recorded music. Various practices have developed as to whether and how to extend a prior minhag about live music.

These options may reflect two radically divergent approaches to religious expression generally.

The first approach, which was championed (at least in this case) by Rav Yosef Dov Soloveitchik, contends that formal halakhah should set the pattern for all religious behavior. Ritual creativity is inherently suspect as a potential violation of *bal tosif* (adding to the Torah) or as an imposition of subjective desire onto objective obligation.

By contrast, Rav Ovadiah Yosef sees popular intuition as a valuable guide to balancing conflicting religious emotions and spiritual sensibilities. The omer period is legitimately a time of both mourning and celebration. I contend that this balance is and should be affected by the establishment of the State of Israel and the development of Yom

HaAtzmaut, Yom Yerushalayim, Yom HaZikaron, and Yom HaShoah.

If your friends and religious peers do not have a clear practice regarding dates and/or music, and a broadly respected local halakhic authority hasn't taken a firm stand, and you haven't been clear about your approach in previous years, there's a great deal of room for personal choices, but one should have in mind "beli neder" if you want to be able to switch again next year.

I think you should aspire to adopt consistent frameworks for making those choices.

How do you balance the advantages and risks of giving halakhic force to popular spiritual intuition? Do you see halakhah as a stabilizing force, a kind of spiritual insurance, that enables risk-taking? As a potentially stultifying and homogenizing force that must be balanced by creativity? As the best or sole method of turning self-satisfying human actions into service of G-d?

What role does music, recorded or live play in your life and the life of the communities? Is it an essential and constant background that accompanies all emotions, or limited to celebratory contexts? Does its periodic conscious absence enable you to focus on religious ideas and contexts that you might otherwise give short shrift to? Does it make you more susceptible to dwelling unconstructively on negative emotions? Bear in mind that a powerful halakhic argument can be made that music should always be forbidden while we have no Beit haMikdash, but is nonetheless permitted as a concession to our emotional and religious psychology.

How do you balance the "background" religious emotions generated by the ongoing state of the world and condition of the Jewish people? Should that balance be different in Israel and the United States?

While you grapple with these questions, I suggest that the default American Modern Orthodox framework is that one should not listen to live music in any context from after Pesach through day 32 (other mourning practices may continue through day 33 for those who identify as Sefardim), excluding Yom Ha'atzmaut, but that listening to recorded music is generally permitted.

Bivrakhah,
Aryeh Klapper