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## MAY ONE EAT IN A SUKKAH ON SIMCHAT TORAH?

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On Talmud Rosh Hashanah 28b, Abbayay asks Rava with incredulity: "If what you say is true, then someone who slept in a sukkah on the eighth day would receive lashes (for violating *bal tosif*/DO NOT ADD)?!" Rava responds that one only violates *bal tosif* beyond the time of the mitzvah if one intends to fulfill the mitzvah. The halakhic consensus follows this dialogue. It therefore seems that one cannot violate *bal tosif* by eating in a sukkah on Shemini Atzeret or Simchat Torah, which are not the time of the mitzvah, unless one is deliberately eating for the sake of fulfilling the mitzvah.

However, Raavyah Megillah 562 offers a close reading that qualifies this conclusion both leniently and stringently.

On the lenient side, he argues that there can be no issue at all regarding eating. The fact that we do not make the mitzvah-blessing when eating in the sukkah on Shemini Atzeret demonstrates that we are not extending Sukkot. That's why Abbayay's challenge referred to sleeping rather than eating.

On the stringent side, he suggests that Rava's limits apply only to lashes, but sleeping in the sukkah on Shemini Atzeret may still constitute a non-punishable Biblical violation of *bal tosif*. However, Mordechai (Sukkah 764) reports that Raavyah meant only a Rabbinic prohibition of "appearing to violate *bal tosif*."

Sefer Agudah (Sukkah 4:43) cites a position that limits this lesser violation to Israel. In the Diaspora, one may/must sleep in the Sukkah on Shemini Atzeret just as one may/must eat there.

The position cited by Agudah points to an essential difficulty with Raavyah. In fact, we do eat in the sukkah on Shemini Atzeret for the sake of the mitzvah, in case it is really the seventh day of Sukkot – so why doesn't this violate *bal tosif*? The easy solution is that the Rabbis imposed this obligation on us, and Rabbinic obligations are by definition not *bal tosif*, but Raavyah rejects this approach. Instead, he argues that the purpose of the 2<sup>nd</sup> day of yom tov generally is only to avoid possible Biblical prohibitions of forbidden labor. It should not apply at all to Shemini

Atzeret, which is more stringent than Chol HaMoed Sukkot! The only reason we allow any entry to the sukkah on Shemini Atzeret is because eating without a *berak'bah* of *leishein basukkah* demonstrates that we're only doing it on the off chance that this really is its time, not because we are extending its time. (Reshimot Shiurim (Sukkah 48a) reports a similar argument from Rav Soloveitchik, but not within Raavyah.)

Regardless, it seems clear that for Raavyah, **eating** in the sukkah on Simchat Torah is absolutely permitted; the only possible issue is **sleeping** in the sukkah.

Raavyah points to Mishnah and Talmud Sukkah 48a for possible solutions to the sleeping issue. The Mishnah there states that on the afternoon of the seventh day of Sukkot, one should remove one's utensils from the Sukkah. The Talmud asks: What should one do if one has no place to remove them to? and offers a series of options. Raavyah apparently understands both the Mishnah and the Talmud as providing ways to demonstrate that sleeping in the Sukkah is not intended to fulfill the mitzvah, and thus of avoiding the appearance of *bal tosif*.

However, the language of the Mishnah does not support Raavyah's reading. The Mishnah states that one should remove the utensils "for the sake of the honor of the last day of Chag," which in context seems to refer to Shemini Atzeret. It seems difficult to relate this language to *bal tosif*.

Rambam (Hilkhos Sukkah 6:11-14) accordingly understands the Mishnah as telling us how to prepare for Shemini Atzeret, not how to avoid *bal tosif*. He reads the Talmud's options as serving the same purpose. If removing one's utensils is impractical, one finds other ways of indicating that one is done with the Sukkah, such as putting objects in it that may interfere with fulfilling the mitzvah.

The obvious problem with Rambam's approach is that "being done with the Sukkah" is not the same thing as "preparing for Shemini Atzeret." The Mishnah's case involved bringing the utensils from the sukkah *back to the house*, thus preparing for the Yom Tov meal. The Talmud's

options, all of which make the Sukkah unusable or unpleasant, have nothing to with preparing for yom tov.

Reshimot Shiurim notes a tradition that the Vilna Gaon cited our sugya as the explanation for his customs of making havdalah at the end of Pesach on beer, of eating *chadash* on Chol HaMoed Pesach, and for the halakhah that havdalah after Shabbat is made on a flame. The Gaon apparently held that there is a halakhic principle of marking the end-times of mitzvot. It seems likely that he was following Rambam. Moreover, this approach may enable us to understand the Mishnah literally as requiring the utensils to be moved for the sake of honoring “the last day of *chag*.”

If we understand the Rambam this way, there is no hint here that any sukkah activities on Shemini Atzeret or Simchat Torah could run afoul of *bal tosif*. Perhaps Rambam held, like Raavyah, that not making the berakhah of *leishein basukkah* when eating was obviously sufficient to resolve such issues.

Rashi offers a radically different view of the sugya. He understands the gemara’s question “what if he has no place to remove the utensils to” as meaning “what if he has no place other than the sukkah to eat in?” In other words, the Mishnah assumes that one will eat indoors on Shemini Atzeret, and has no relevance to *bal tosif*, but the Talmud assumes that eating in the Sukkah on Shemini Atzeret would violate some degree of *bal tosif* if its solutions are not used.

Rashi’s reading is difficult for many reasons. The simplest one is this: he must understand all the Talmud’s proposed solutions as being implemented **while one is eating the yom tov meal of Shemini Atzeret or Simchat Torah in the Sukkah**. The problem is that these solutions make eating in the Sukkah dangerous (e.g. introducing a flame into a tiny sukkah), uncomfortable (e.g. making the sukkah hot or crowded), or unappetizing (e.g. leaving used dishes uncleared). How can it be appropriate to use such solutions with regard to yom tov meals?

Tur understands the sugya the way Rashi does, but Mechaber carefully adapts his language to conform to Rambam rather than Rashi. So we might argue that standard halakhah should believe that eating in the *sukkah* on Shemini Atzeret (or Simchat Torah in the diaspora) is not a problem of *bal tosif* at all. The question is only whether, if one is planning to eat in the Sukkah, one should find some other way of marking the end of the obligation of sukkah. This could probably be done by adopting the Talmudic option that does not require discomfort, namely invalidating a symbolic 4x4 handsbreadth section of the Sukkah. SBM alum Rabbi Shlomo Brody notes that this

can be done by putting a tablecloth over a section of the *skhakh*.

Note that some understand this Talmudic option as requiring invalidation of the entire sukkah, and Rashi’s language supports that reading. However, Tosafot note that the measurement of 4x4 has no bearing on the invalidation of *skhakh* – the relevant measurement is 3x3. One might suggest that it refers to invalidating the wall of a minimum-size 7x7 sukkah by removing a majority, but Rashi explicitly rejects limiting its application to that case. Therefore, I suggest that Rashi as well requires only a symbolic rather than an actual invalidation of the sukkah. This also seems reasonable because Rashi clearly identifies the issue as the appearance of *bal tosif* rather than actual *bal tosif*.

What emerges as practical halakhah from the rishonim through the Shulchan Arukh, then, is that a symbolic invalidation is preferred, but that if it is forgotten or for some reason impractical, one may eat in the sukkah anyway.

However, R. Yoel Sirkes (BaCH OC 666) raises a new challenge. He suggests that in earlier generations there were **two** markers that eating in the sukkah on Shemini Atzeret was different: the absence of the *berakhah* **and** the fact that we were not sleeping in the sukkah. He notes that Rashi understood the Talmud as raising the issue of *bal tosif* regarding eating only in a case where one had no place to remove one’s utensils **and bedding**, and therefore would also have to sleep in the sukkah. It follows that in a time and place where people do not sleep in the sukkah **during Sukkot**, so that not sleeping in the sukkah does not differentiate Shemini Atzeret from Sukkot, the issue of *bal tosif* may reemerge according to Rambam, and maybe even according to Raavyah.

In response, I note that Tzitz Eliezer 19:54 addresses the question of whether a shul can provide a kiddush in its sukkah on Simchat Torah. One element of his response is that the concern is lest others mistakenly perceive what is happening as *bal tosif*, and there is a general principle that we do not worry about such suspicions when dealing with a halakhically observant multitude. It seems to me that a similar logic applies to our case, where there is both a generally known non-mitzvah reason for eating in the sukkah, namely the pandemic, and also various public halakhic rulings acknowledging this. So perhaps in our place and time, there is no concern of appearing to violate *bal tosif* at all.