

CENTER FOR MODERN TORAH LEADERSHIP



How Rav Moshe Feinstein Prevented America From Becoming a Halakhic Melting Pot By Rabbi Aryeh Klapper

In the Roadrunner cartoons, Wile E. Coyote often runs off cliffs into midair. He keeps running without falling, as if he were still on solid ground, until he makes the mistake of looking down. Contemporary halakhah often functions like Wile E. Coyote. Igrot Moshe OC 1:159 looks down.

The teshuvah is dated 18 Adar 5718 (1956), and addressed to the President and members of the Vaad HoRabbonim of Flatbush. Rav Moshe begins with his formulation of the question he was asked:

Regarding weddings during Sefirah –

Here in New York and Brooklyn, where people have gathered from many places that had disparate customs – in essence (*b'etzem*) each of them should act in accordance with the custom of the place they came from, because this is like a situation of two rabbinic courts in the same city, in which case {according to Yebamot 14a} there is no issue of “Do not form factions (=lo titgodedu) {even though the people of the city adopt differing halakhic practices depending based on the court they follow}–

but also the customs of many places have been forgotten {presumably because of the Holocaust -so even if people know where they come from, they don't know what custom to follow}–

You wish to know my poor opinion as to how to practice.

The rule in Mishnah Pesachim 4:1 is that people are bound by the stringencies of their geographic customs, relative to the customs of the places they go to, only if they leave temporarily. People who leave permanently adopt the customs of their new home. Holocaust survivors coming to America should therefore have been released from any obligations connected to their prior residences.

However, this very sensible principle broke down, if I understand correctly, in the aftermath of the Spanish expulsion. Sefardim arriving in Ashkenazic lands wished to maintain their distinct identities and communities rather than assimilating. Halakhic authorities essentially supported this goal. The end result is that even though the Talmud warns against having distinct customs in the same place can lest the Torah “become two Torahs”, Ashkenazim and Sephardim are halakhically distinct everywhere. Has the Torah become two Torahs? It depends on whether you view the Shulchan Arukh/Mapah as two books or one compound book.

Talmud Yebamot 14a concedes that once rabbinic courts mandating different practices are established within a city, there is no way to force a common practice. The question is how strongly to resist the establishment of a second, independent court. With regard to the Sefardic immigrants, the overall decision was not to resist.

Just about all geographic customs forbade weddings for approximately 33 days of the sefirah period, but they differed as to which 33 days. But the tossed salad Jewish community of post-Holocaust New York made it hard to find a date that all important guests could halakhically attend. Also, many survivors simply had no way of knowing what dates they should observe.

Post-Holocaust New York presented a situation somewhat similar to post-Expulsion Christian Europe. The new immigrants had not chosen to switch cultures; many of them desperately sought to cling to halakhic remnants of their past.

But the situation was also different in at least three crucial ways. First, the survivors were not arriving in communities that had clear halakhic identities and deeply grounded customs. There was very little for them to assimilate to. Second, the institutional memory of many source Jewish communities had been destroyed or was at the time inaccessible. Many survivors knew their communities of origin but had no way of knowing what that meant in terms of customs. Third, there was no unified practice to preserve against the background of a clearly different practice. The basic parameters of European Jewish practice were no different than those of America. The identities to be preserved were those of microcommunities.

Rav Moshe might have decided that these microcommunities were not worth preserving. He might have tried to declare a new Minhag New York based on his assessment of which custom most likely commanded a majority. Or he might have given rabbis the authority to decide the minhag of their own synagogues or neighborhoods or boroughs.

Each of these approaches would have recognized that the traditions of Europe were dead. At most, they had halakhic force over the survivors themselves. Children born in the United States would have no halakhic relationship to them at all, because geographic customs are not hereditary.

Rav Moshe instead developed a complex system for the specific issue of wedding dates. First, he allowed people with one custom as to the dates of omer-mourning to attend a wedding on a date permitted only according to a different custom. Second, he allowed people to switch their custom regarding omer-mourning dates without notice from year to year, but not within a single year.

What underlies Rav Moshe's position?

Rav Moshe argues (with some complexity irrelevant to this discussion) that the various mourning date customs are grounded in a common rationale. However, it appears that he does not base the permission to freely choose and change one's minhag on the absence of a standard minhag where one lives. Instead, he claims that in principle the choice was always free – that the mere fact of a standardized local practice has no per se halakhic force, so long as one can fulfill that practice's underlying theme by different means.

In my humble opinion, this is a tremendous chiddush – how should one determine the degree of specificity that defines a custom? However, this can also be seen as just a variant of the general problem of how and whether to change the practical requirement of a halakhah in order to better fulfill its rationale(s) in new circumstances.

I was careful above to note that Rav Moshe said that the choice was always free in principle, and similarly that the mere fact of a standardized local practice has no per se halakhic force. In practice, Rav Moshe identifies two reasons that generally require one to follow whatever local practice happens to be standard – the obligation to avoid controversy (*machloket*), and the prohibition of *lo titgodedu* (factionalism, making the Torah two Torahs). Rav Moshe sees these as distinct issues; I have written elsewhere that Rambam defines *lo titgodedu* as a prohibition against causing controversy, while Rashi defines it as a prohibition against accepting divergent practices without controversy. I don't know that Rav Moshe fully adopts my reading of Rashi, but he clearly dissents from Rambam. Regardless, Rav Moshe concludes that neither *machloket* nor *lo titgodedu* applies to the case of divergent omer-mourning in Brooklyn, on the grounds that a) *Machloket* occurs only when people are unaware of the existence of alternate customs, but in Brooklyn, everyone is aware of the range of options (as, indeed, is anyone who reads Shulchan Arukh), and b) *lo titgodedu* applies only when the divergent practices represent substantive disagreement.

Rav Moshe reasons further that if the variant practices embody a halakhically unified minhag, there should be no bar to switching from one to the other, so long as in any given year one fulfills the requirements of the ur-minhag in some way.

But what about attending a wedding permitted according to another's omer-mourning practice, but not one's own? Does this not undermine one's own custom?

Here Rav Moshe introduces another creative wrinkle, arguing that wedding-attendance is separable from other omer-mourning customs such as haircutting, so that one can attend a wedding without violating one's underlying minhag (The details of his argument, and its extended engagement with Shut Chatam Sofer OC 142, are beyond this essay's ambit). Rav Moshe additionally makes the fascinating suggestion – it's not clear to me that how willing he is to rely on it halakhically – that *lo titgodedu* is violated only if no process of abstraction is required. In other words: If two people in the same town act on the basis of opposing rabbinic instructions (let us assume the presence of all necessary boundary conditions, e.g. a universally acknowledged local beit din), they violate *lo titgodedu* “only if the contradiction would be evident to someone unaware of their rationales”. Therefore, since a visiting Martian would not see any contradiction in seeing someone unshaven attending a wedding, one may attend weddings scheduled according to alternate omer-mourning practices.

The intellectual firepower R. Moshe brings to bear on this question may seem like overkill – three or more independent and broad-reaching halakhic claims! But perhaps weddings on sefirah were a useful way of thinking about the American Orthodox situation, in which we remain a nation of immigrants several generations after the collective arrival of our various ancestral groups. How do we justify our failure to jump into the halakhic melting pot and instead remain a gorgeous mosaic (or inelegant tossed salad)? Can we achieve a unifying communal identity while modeling halakhic diversity?

One strategy Rav Moshe's teshuvah potentially opens is the reconstruction of a baseline Halakhah, which we then give individuals freedom to implement in individually creative ways. But how creative, and how individual? Here's a thought question – what would Rav Moshe say to someone who thought of, and wished to follow in practice, a previously unrecorded way of meeting all the specifications of the ur-minhag constructed by this teshuvah? For example: What if a person whose mourning date custom ordinarily ends on Lag B'Omer chose not to shave until Omer day 35, in order to make up for shaving on Yom HaAtzmaut and Yom Yerushalayim?

Shabbat shalom!