

When Will it End?

Rabbi Pinchos Lipschutz

This author was recently asked an interesting sheilah which touches on several inyanim pertinent to us all: “May I make a meat barbeque on Rosh Chodesh Av, or would I need to make a siyum to allow it?”

In other words, the question behind the question is whether or not Rosh Chodesh Av itself is considered part and parcel of the Nine Days, and is thereby included in its various restrictions, or whether Rosh Chodesh Av itself maintains some semblance of Rosh Chodesh autonomy, thus allowing one to still partake of some pre-Nine Days meat.

But to properly understand the nuances of the issue, some background is in order.

Bein HaMetzarim

The Three Week period of mourning that the Midrash refers to as “Bein HaMetzarim”,^[1] or ‘Between the Confines (Straits)’, heralds the beginning of the tragedies that took place prior to the destruction of both Batei Hamikdash, from the breaching of the walls of ancient Jerusalem on the 17th of Tamuz, until the actual destruction of the Beis HaMikdash on the Ninth of Av. As detailed in the Mishnah and Gemara Ta’anis, both of these days have since become communal Fast Days, in remembrance of the tragedies that happened on these days.^[2]

In order to properly commemorate and feel the devastation, halachah dictates various restrictions on us^[3] during these “Three Weeks”, getting progressively stricter up until Tisha B’Av itself.^[4] These “Three Weeks” restrictions include not getting married, not getting haircuts unless extenuating need, refraining from public music and dancing, not putting oneself in an overly dangerous situation, and not making the shehechiyanu blessing on a new item (meaning to refrain from purchasing a new item which would require one to make said blessing).

The Mishnah in Maseches Ta’anis (26b) famously teaches that “Mishenichnas Av Mema’atin Besimchah”, ‘When the month of Av arrives (Rosh Chodesh Av), we lessen our joy’. These further restrictions include not eating meat or chicken, drinking wine,^[5] doing laundry, wearing freshly laundered clothing, or pleasure bathing.^[6] Many of these restrictions are generally still in effect until midday (Chatzos) of the next day, the tenth of Av (see Shulchan Aruch, Rema, and main commentaries to Orach Chaim 558), with some being makpid the whole next day for some of the restrictions (except in a year when Tisha B’Av is actually being observed on the tenth of Av, since it fell out on Shabbos).

Ashkenazic or Sefardic Halachah?

However, this aforementioned timeline follows the general Ashkenazic minhag. On the other hand, many Sefardim only start most restrictions at the beginning of the week that Tisha B’Av falls out on (‘Shavua Shechal Bo’).

Although there is no mention of such in the Gemara, these 'Three Week' restrictions are indeed binding Ashkenazic practice as instituted by many Rishonim[7] and later codified by Ashkenazic authorities including the Rema, Derech Hachaim, Shevus Yaakov, Chayei Adam, Kitzur Shulchan Aruch, Aruch Hashulchan, and Mishnah Berurah.[8]

While several later Sefardic authorities, including the Knesses HaGedolah, Ben Ish Chai, and Kaf Hachaim,[9] maintain that Sefardim should follow the Ashkenazic minhag and start the restrictions from Rosh Chodesh Av, nevertheless, most Sefardim are only noheg these restrictions from the actual week of Tisha B'Av, as per the actual ruling of the Shulchan Aruch (Orach Chaim 551: 10).[10] However, there are several restriction that Sefardim indeed commonly observe during the Nine Days, including the proscription of partaking of meat and wine.[11]

Queuing Up?

Back to our attempted barbeque, is Rosh Chodesh Av considered part of the Nine Days or not? Quite interestingly, the answer also seems to be a divergence between Sefardic and Ashkenazic practice.

Indeed, although the Mishnah Berurah (551: 58) explicitly rules that "Rosh Chodesh bechlal, vechein haminhag b'medinoseinu", the Ashkenazic practice is to consider Rosh Chodesh Av as part of the Nine Days with all of its restrictions and ramifications.[12] Conversely, the Kaf Hachaim (551: 125 -126) qualifies that "zeh rak l'Ashkenazim, d'Sefardim nohagin b'Yom Rosh Chodesh Atzmo le'echol Bassar", that Sefardic practice is to allow eating meat on Rosh Chodesh Av.

As mentioned previously, the Kaf Hachaim was one of the Sefardic Acharonim who ruled that Sefardim should follow the Nine Days restrictions as per Ashkenazic minhag. Yet, even so, eating meat (and drinking wine) on the day of Rosh Chodesh Av itself seems the lone exception to the rule.

Other Sefardic poskim who maintain this Rosh Chodesh leniency include the Chid"ra, Knesses Hagedolah, Pri Adamah, Kol Eliyahu, Shulchan Melachim, Rav Chaim Pala'gi, and the Ben Ish Chai.[13] This would mean that our barbeque's permissibility on Rosh Chodesh Av would depend on whether the questioner was Sefardic or Ashkenazic. A Sefardi may certainly be meikel and an Ashkenazi required to be machmir.

Role Reversal

On the other hand, that klal may not be so simple, as there are several Sefardic poskim who averred meat avoidance on Rosh Chodesh Av, including Rav Moshe Ibn Mechir, the Eidus B'Yehosef, and Rav Daniel Tirani, author of Ikrei Dinim.[14]

And, on the other side, we find that there is also a minority opinion among Ashkenazim who professed leniency. Rav Aryeh Leib Broyde, Av Beis Din of Lvov, in his Shu"t Mitzpeh Aryeh (Orach Chaim Tinyana, 12) cites that the mashmaos of the famed Bnei Yisaschar (Maamar

Tamuz - Av 10) is that on Rosh Chodesh Av it's permitted to eat meat. Rav Broyde explains that although this is not our minhag, there nonetheless are "Rabbanim Chassidim who are makpid to eat meat on every Rosh Chodesh because of Seudas Mitzvah",^[15] and they therefore may also eat meat on Rosh Chodesh Av. He then defends this practice with several proofs where throughout Shas and halachah we find that "lo ad bechlal", meaning that when a rule is set for a time period there is some uncertainty as to when the exact starting and ending dates are. Hence, since it states that the restrictions are in effect 'M'Rosh Chodesh Av', the prohibition may not truly include Rosh Chodesh Av itself.

The Mishkenos Haroim (Nachalah L'Yisrael 37: 72) writes similarly that it is unclear whether we rule "ad bechlal" in this instance. He concludes that it is better not to eat meat, but, nevertheless, "Minhag Rabboseinu is to eat meat on Rosh Chodesh Av, and on Motzai Shabbos and Erev Shabbos Chazon, and on this we say "V'ameich Kulam Tzaddikim, Your entire nation is righteous".

Sefer Darkei Chaim V'Shalom (668), based on the famed Minchas Elazar in his Shaar Yissachar (Maamar Chodshei Tamuz - Av 9), cites that this is indeed the minhag in Muncacz, that one who is makpid to eat meat on every Rosh Chodesh can eat it on Rosh Chodesh Av as well.^[16]

Meaty Melaveh Malkah?

In a similar vein, the Chid"ra (Birkei Yosef, Orach Chaim 551: 6; quoting the Kol Eliyahu and Mahar"ra Yitzchaki) allows one to eat the Melaveh Malkah Seudah on Motzai Shabbos during the Nine Days with cooked meat that is left over from Shabbos. In fact, there are several Sefardic^[17] and Chassidic poskim who do follow the Chid"ra's psak, and allow a meaty Melaveh Malkah with leftover Shabbos food.

On the other hand, many dispute the Chid"ra's proof.^[18] The Pischei Teshuva (Yoreh Deah 341: 12) cites that the Noda B'Yehuda would not have accepted it at all. The Shaarei Teshuvah (ad loc. 9, s.v. b'Shu"ra) strongly argues as well that there is no dispensation for such a leniency.^[19] Rav Moshe Feinstein (Shu"t Igros Moshe, Orach Chaim vol. 4, 21: 4) also opposes such a view regarding eating meat for Melaveh Malkah on Motzai Shabbos during the Nine Days, even for those who are makpid to do so every week, adding that they don't need hataras nedarim. Rav Yisrael Yaakov Fischer wrote similarly that we see from the fact that Seudas Melaveh Malkah is not mentioned as one of the exemptions to the Nine Days meat prohibitions, that it is still proscribed to partake of meat.^[20]

Additionally, we find that this hetter was also not accepted by other Chassidim, including the renowned Yismach Moshe, as cited by the Lekutei Mahariach, nor the Rebbes of Kamarna or Belz, all of whom avoided a meaty Melaveh Malkah and Rosh Chodesh Seudah in the Nine Days.^[21]

To sum it up, as mentioned previously, the mainstream Ashkenazic opinion is to prohibit a fleishig Seudah, both on Rosh Chodesh Av, as well as on the Motzai Shabbos of the Nine Days

(even with Shabbos leftovers), while it seems that the mainstream Sefardic opinion is to permit both. Certainly before getting the barbeque grill fired up, one should ascertain with his own halachic authority which opinion he should personally follow. Or at least make sure that there is going to be a proper Siyum.

Postscript:

Many people living in Eretz Yisrael, when making a bris, will make sure that the bris seudah is fleishig. Even though the very thought of this, to many American expatriates to whom a bris means bagels and lox, is as foreign as eating burritos for the Shabbos Seudah, here in Israel, it's practically de riguer. Not only that, it's actually cheaper to make a full fleishig bris seudah than to make a milky bagels and lox one, due to the law of supply and demand.

The reason is actually very interesting, and is based on our above discussion, the custom to abstain from eating meat products during the Nine Days.

As we know, there are several exceptions to this prohibition: Shabbos is not included, as the mitzvah of Oneg Shabbos overrides this prohibition. Also, Seudas Mitzvah, even during the week, will also take precedence over it, and meat may be served. This is where it gets interesting. The examples of a Seudas Mitzvah listed by the Rema include: a celebration on concluding a Masechta of Gemara, a Pidyon HaBen, a betrothal seudah (Erusin), and... a bris milah!

This means that the seudah at a bris milah is considered a seudas mitzvah, and is of such significance that those celebrating may even eat meaty, and not only during the Nine Days, but even during the actual week of Tisha B'Av! Although the Rema concludes that on shavua shechal bo only ten others beside (some say including) immediate family should partake of the meat,[22] and others hold that this applies to the Nine Days as well,[23] nonetheless, this rule emphasizes that all things being equal, the proper minhag is to eat fleishigs at a bris seuda, due to its importance and status as a seudas mitzvah. If a standard bris has such ability, why should one wait until the Nine Days to make a fleishig bris? Thus, it turns out that the proclivity and propensity for Fleishig Brissos in Eretz Yisrael is actually based on the Halachos of the Nine Days. Fascinating indeed.

This article was written l'zechus Shira Yaffa bas Rochel Miriam v'chol yotzei chalatzecha for a yeshua sheleimah teikif u'miyad!

For any questions, comments or for the full Mareh Mekomos / sources, please email the author: yspitz@ohr.edu.

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[1] This three-week season is referred to as such by the Midrash Rabbah (cited by Rashi in his commentary to Eicha Ch. 1, verse 3).

[2] See Mishna in Maseches Ta'anis 26b and accompanying Gemara. According to Rav Saadiah Gaon, as cited by the Shiblei Leket (263, Ha'arugah HaTishiis, Seder Taanis, Din Arbah Tzomos, pg. 252), these three weeks are the same three weeks that Daniel fasted, and therefore he maintains that we should not eat meat or drink wine the entire 'Three Weeks'! Additionally, the Kol Bo (62) adds that since on Shiva Assar B'Tamuz the Korban Tamid and its Nisuch HaYayin were batul, there are those who are nahug not to eat meat or drink wine already starting from then. However, it must be noted that others, including the Shiblei Leket himself, are of the opinion that Daniel fasted during Chodesh Nissan; and that although several authorities cite such an opinion [see for example Tur & Shulchan Aruch (Orach Chaim 551: 9), Chayei Adam (vol. 2, 133: 8) and Ben Ish Chai (Year 1, Parshas Devarim 15); not that they actually rule that way), nevertheless, abstaining from meat and wine the entire 'Three Weeks' is not the normative halacha.

[3] An interesting side discussion pertains to Teimanim / Yemenites, who generally follow the Rambam's psakim. The Rambam (Hilchos Taanis Ch. 5: 7) rules that one must abstain from meat for the Seudah Hamafsekes on Erev Tisha B'Av. Otherwise, according to his shittah one need not refrain during the Nine Days. Rav Ben Tzion Abba Shaul (Shu"t Ohr L'Tzion vol. 3, Ch. 26: 3 s.v. v'ulam) mentions that this is the prevailing Taimani Minhag as well. On the other hand, Rav Ovadiah Yosef (Chazon Ovadiah on Arbah Taaniyos, pg. 170 s.v. achainu) maintains that this is only applicable when they are still in Yemen. However, once they come to Eretz Yisrael, where everyone keeps at least some semblance of Nine Days restrictions, they would be beholden to keep them as well.

[4] See Tur, Shulchan Aruch, Rema and their commentaries to Orach Chaim 551.

[5] Although non-alcoholic, grape juice would technically nonetheless not be any more preferential a drink during the Nine Days. We refrain from meat and wine in the Nine Days as a symbol of mourning for the destructions of the Batei Hamikdash - where Korbanos were brought daily - mainly Zevachim (which was meat) and Nesachim (its wine libation). The Shulchan Aruch (Orach Chaim 551: 10) mentions that any wine, including freshlymade wine, is forbidden during the Nine Days. The Mishnah Berurah (ad loc. 66) explains that even though it is sweet and weak, and could not be used as a libation in the Bais HaMikdash, it is nonetheless forbidden because the accepted restriction does not differentiate, but rather is to refrain from all types of wine. Since this weak beverage is still considered a 'wine', we do not drink it during the Nine Days. The same would apply to our ubiquitous grape juice, which is still considered a type of wine. See Shu"t Minchas Shlomo (vol. 1, 64), Shu"t Rivevos Efraim (vol. 8, 177; citing many poskim), Moadei Yeshurun (pg. 130) and Mesores Moshe (vol. 1, pg. 174 s.v. mitz) quoting Rav Moshe Feinstein, Shu"t Even Yisrael (vol. 9, Haaros on Mishna Berura, Hilchos Tisha B'Av pg. 110 s.v. vtz"a), Shu"t Teshuvos V'Hanhagos (vol. 2, 259), Shu"t Ohr L'Tzion (vol. 3, Ch. 26, 8), Rav Chaim Kanievsky's Moadei HaGra"ch (317 and 318), Rav Shmuel Kamenetsky's Kovetz Halachos (Dinei Bein HaMetzarim), Sefer Nechemas Yisrael (pg. 114, 295), Halichos Even

Yisrael (pg. 348: 1 and footnote 1), Netei Gavriel (Hilchos Bein HaMetzarim vol. 1, Ch. 39), Piskei Teshuvos (vol. 5, 551, 42), and the Belz Dvar Yom B'Yomo Luach (5776; pg. 647). Rav Asher Weiss (the renowned Minchas Asher) has recently averred the same to this author.

[6] The issue of bathing during the Nine Days was discussed at length in a previous article titled 'Showering During the Nine days?!'.

[7] Including the Ramban (Toras Ha'Adam pg. 81, 4th column), Rashba (Shu"t vol. 1: 306), Rokeach (310 s.v. mihu), Orchos Chaim (Hilchos Tisha B'Av 10), Ohr Zarua (vol. 2: 414), Machzor Vitry (263), Tur (Orach Chaim 551; citing the Yerushalmi), Kol Bo (62), and Abudraham (pg. 69b; citing Rav Hai Gaon).

[8] Rema (Darchei Moshe, Orach Chaim 551: 5 & Hagah ad loc. 2 & 4), Derech Hachaim (ad loc. 1), Shu"t Shevus Yaakov (vol. 2: 35), Chayei Adam (vol. 2, 133: 8), Kitzur Shulchan Aruch (122: 1), Aruch Hashulchan (Orach Chaim 551: 8) and Mishnah Berurah (ad loc. 18).

[9] Knesses HaGedolah (Orach Chaim 551: Haghos on the Tur 5), Ben Ish Chai (Year 1, Parshas Devarim 4, 5, & 12), and Kaf Hachaim (Orach Chaim 551: 44, 80, & 142).

[10] Based on the Rambam (Hilchos Taanis Ch. 5: 7). For more on this topic, see Shu"t Yabea Omer (vol. 6, Orach Chaim 46 and vol. 9, Orach Chaim 50: 1), Shu"t Yechaveh Daas (vol. 1: 41 and vol. 4: 36), Rav Mordechai Eliyahu's Darchei Halachah glosses to the Kitzur Shulchan Aruch (122: 19), and Yalkut Yosef (Kitzur Shulchan Aruch, Orach Chaim 551: 1).

[11] See Shu"t Ohr L'Tzion (vol. 3, Ch. 26: 3), Shu"t Yechaveh Daas (vol. 1: 41), Rav Mordechai Eliyahu's Darchei Halachah glosses to the Kitzur Shulchan Aruch (122: 12) and Yalkut Yosef (Kitzur Shulchan Aruch, Orach Chaim 551: 1).

[12] As per Ashkenazic Mesorah - see Maharil (Drashos, Hilchos Tisha B'Av), Arizal (as cited in Rav Chaim Vital's Shaar Hakavanos (pg. 84 ,3rd column), Magen Avrohom (Orach Chaim 551: 26), Elyah Rabbah (ad loc. 19), Ba'er Heitiv (ad loc. 26), Shu"t Vayomer Yitzchak (30: 2), Maharam Ash (as cited in Sefer Zichron Yehuda pg. 39a), Ma'amar Mordechai (Orach Chaim 551: 9), Siddur Ya'avetz, Derech Hachaim (ibid. 8), Chayei Adam (vol. 2, 133: 19), Nezirush Shimshon (Orach Chaim 551), Bnei Chayei (557), Divrei Shaul and Yosef Daas (Yoreh Deah 341: 1 s.v. ubazeh), Kitzur Shulchan Aruch (122: 8), Mishnah Berurah (ibid.), Rav Yechiel Michel Tukachinsky's authoritative Luach Eretz Yisrael (5776; Menachem Av, Rosh Chodesh, pg. 71), and Rav Yosef Eliyahu Henkin's essential Luach Ezras Torah (5776; Chodesh Av pg. 121).

[13] Shiyarei Knesses Hagedolah (Orach Chaim 551: Haghos on Beis Yosef 26), Chid"u (Morah B'etzba 233), Pri Adamah (vol 4, pg 8, 4th column), Shu"t Kol Eliyahu (vol. 1 Orach Chaim 45), Shulchan Melachim (Orach Chaim 551: 8), Rav Chaim Pala'gi (Moed L'chol Chai 10: 7), Ben Ish Chai (Year 1, Parshas Devarim 15), and Rav Mordechai Eliyahu's Darchei Halachah glosses to the Kitzur Shulchan Aruch (122: 12). See also Shu"t Yabea Omer (vol 9, Orach Chaim 50: 1),

Shu"t Yechaveh Daas (vol. 1: 41) and Yalkut Yosef (Kitzur Shulchan Aruch, Orach Chaim 551, Din Achilas Bassar M'Rosh Chodesh Av 1).

[14] Rav Moshe Ibn Mechir (Seder HaYom), Shu"t Eidus B'Yehosef (41), and Ikrei Hadat (27: 1).

[15] See Tur and Shulchan Aruch and commentaries to Orach Chaim 419.

[16] This rationale is also cited by the Toras Chaim (Orach Chaim 551), Lekutei Mahari"ach (vol. 3, pg. 51a), and later by the Netei Gavriel (Hilchos Bein Hametzarim vol. 1, Ch. 26: 2). The Piskei Teshuvos (551: 33) cites this as well, adding that it is also the minhag in Kamarna. The only problem with that is that in Sefer Minhagei Kamarna (printed in the back of sefer Shulchan Hatahor; Dinei Bein Hameitzarim v'Tisha B'Av 375) it is explicitly written that the Kamarna Rebbe was makpid on Rosh Chodesh Av to only eat dairy items and not meat at all. So, whoever's minhag it may be, it is certainly not Kamarna.

[17] See Kaf Hachaim (Orach Chaim 551: 143 and 144), Rav Mordechai Eliyahu's Darchei Halachah glosses to the Kitzur Shulchan Aruch (122: 14), Shu"t Yabea Omer (vol. 3 Choshen Mishpat 7 and vol. 10 Orach Chaim 40), Halichos Olam (vol. 2, pg. 146), Chazon Ovadia (Arba Taaniyos pg. 177) and Yalkut Yosef (Kitzur Shulchan Aruch, Orach Chaim 551, Din Achilas Bassar M'Rosh Chodesh Av 11).

[18] See, for example, Bnei Yisaschar (ibid.), Shu"t Noda B'Yehuda (Tinyana 64), Shu"t Chelkas Yaakov (new print; Orach Chaim 214), and Chazon Ovadia (Arba Taaniyos pg. 177 and on). Several contemporary authorities explain that the main concern for the Chid"ra was that of Baal Tashchis, wasting food, as if one could not eat the fleishig Shabbos leftovers it would spoil and need to be thrown out. Nowadays, with our ubiquitous freezers and fridges this should be much less of an issue.

[19] Shu"t Noda B'Yehuda (Tinyana 64). The Shaarei Teshuva states simply 'u'vmdinoseinu lo shama'ati mi shemeikil bazeh, u'mi shemeikil bazeh hu b'chlal poretz geder'.

[20] See Halichos Even Yisrael (pg. 354, 19, citing Even Yisrael on Mishnah Berurah 300: 2 and 551: 74).

[21] Lekutei Maharia"ch (vol. 3, pg. 51a- b), Sefer Minhagei Kamarna (Bein Hameitzarim v'Tisha B'Av 375), Belz Dvar Yom B'Yomo Luach (5776; pg 646 and 653). See also Shu"t Chelkas Yaakov (new print; Orach Chaim 214), who use a tziruf of the above sevaros to allow ('yesh al mi lismoch') one who regularly eats a meaty Melaveh Malkah to have a fleishig soup (sans meat) consisting of Shabbos leftovers on Motzai Shabbos in the Nine Days.

[22] Rema (Orach Chaim 551: 10), citing the Sefer HaMinhagim (Hilchos Chodesh Av) and the Maharil (Hilchos Shiva Asur B'Tamuz v'Tisha B'av). The Taz (ad loc. 12) is seemingly more lenient, allowing any close friend or family member who would normally be invited to partake of meat even during Shavua Shechal Bo, and the Minyan Metzumtzam mentioned is for ten

additional people. The Derech Hachaim (Dinim M'dvarim she'ein osrim rak M'Rosh Chodesh Av 12) implies this way as well (see Shaar Hatziyun 551: 87). On the other hand, the Magen Avraham (ad loc. 35) seemingly understands the Rema's Minyan Metzumtzam of who may eat meat during Shavua Shechal Bo to be composed of said relatives, and not an addition. See next footnote for a more stringent view.

[23] The Levush (ad loc. 10) equates the Nine Days and Shavua Shechal Bo for this purpose, that aside from the Baalei Simchah and close relatives, only a Minyan Metzumtzam of friends and family is allowed to eat meat at the Seudas Mitzvah. The Elyah Rabbah (ad loc. 26), Chayei Adam (vol. 2, 133: 16) and Kitzur Shulchan Aruch (122: 8) rule similarly. The Magen Avraham (ibid.) seems to prefer this option as well, averring that one may not combine the Kulos of the Rema and Levush (see Levushei Srad and Bigdei Yesha ad loc. for explanation). Interestingly, neither the Mishnah Berura (ad loc. 77) nor the Aruch Hashulchan (ad loc. 30) is machria in this machlokes. The Aruch Hashulchan, however, concludes that one thing is certain: only one who would have attended the Seudah had it been held during the rest of the year may partake of meat. Conversely, one who simply showed up just to get a meat meal during the Nine Days would be prohibited from eating fleishigs, "V'zehu Daas Kol HaGedolim".

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda.