

***Kitniyot on Pesach***

(Adapted from A Rabbinical Assembly Teshuvah Permitting  
Ashkenazim to Eat Kitniyot on Pesah

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She'elah: Since it is recognized that Sephardim permit the eating of kitniyot (legumes, rice and corn) on Pesah, although Ashkenazim traditionally do not do so, might kitniyot be permitted to Ashkenazim?

1. On its face hametz and matzah might serve as a metaphor for polar opposites, but in fact that is not the case. Rather, they were understood from the first to be opposite sides of a coin. Only that which can become hametz can be used to make matzah and only that which can be made into matzah can become hametz. Flour of that type alone is marked by the special rule that a portion of the dough must be set aside, a rule known as hafrashat hallah, or simply hallah.

2. Thus Mishnah Hallah 1:1-2 specifies: There are five things that must have challah [taken from them]: Wheat, barley, spelt, oats and rye -- these require [taking] hallah... If one eats of them an olive's-worth of matzah on Pesah one has fulfilled one's obligation. An olive's-worth of hametz -- one is liable for karet. and Mishnah Pesachim 2:5 lists only these as fulfilling the mitzvah of matzah.

3. The Talmudic discussion is short and clear: These yes; rice and millet, no. From where [in the Torah] do we learn this? Rabbi Shimon ben Lakish said, and so they taught in the House of Rabbi Yishmael and in the House of Rabbi Eliezer ben Ya'akov: the verse said: "you shall not eat hametz with it [the Pesach offering], for seven days thereafter you shall eat matzot" (Deut. 16:3) – foods that become leavened through man's efforts can be used to fulfill the obligation of eating matzah. This comes to exclude things that do not become hametz, but rather sirahon [decay]. (Pesachim 35a)

4. And the discussion in the Yerushalmi puts this on a scientific basis. They checked and found that nothing can become matzah or hametz save the five species of grain; all the other species do not become matzah or hametz, they only become sirahon.

5. Why then do Ashkenazim avoid eating kitniyot on Pesah?

Jacob bar Asher addresses this in the aforementioned paragraph of his code. He writes: There are those who prohibit eating rice and all sorts of kitniyot in a cooked dish because varieties of wheat mix into them. This is an excessive stricture and it is not customary to do so.

6. In early medieval Ashkenaz the custom of avoiding kitniyot seemed to have aroused some debate. The most sustained discussion of this can be found in the comments of Rabbeinu Peretz (France, 13th c.) to the Sefer Mitzvot Katan of his teacher Isaac of Corbeil, Mitzvah 2222 . He writes as follows: Concerning kitniyot... our rabbis customarily prohibit altogether eating them on Pesah.... But many great sages permit them. My teacher Rabbeinu Yehiel would eat the white bean called "favas" and said [that he did] so in the name of great sages. And he cited as proof that even rice [n.b. about which the Talmud briefly considers if it might also be a grain fit as matzah and hametz] ... the Talmud said no one considers this [to be true] ... Nevertheless, it is very difficult to permit a thing that everyone since the earliest sages treats as prohibited (for surely they did not prohibit is as true hametz, for they did not err in a matter clear to the most elementary student of the law, for it is there in Pesahim that nothing becomes hametz save the five species).

7. Therefore it appears that we should support the custom and prohibit all kitniyot on Pesah, Not as true hametz, for that is an error, but as a decree because kitniyot are cooked, as grain is cooked, in a porridge, and were we to permit kitniyot [people] might come to substitute and species, as it says in chapter HaSokher et haPoalim [n.b. Bava Metzia 87a where bread of kitniyot flour is considered]..., and there are places that regularly make bread of them just like from the five species [of grain] and [people] might come to substitute, for they are not Torah learned. [Kitniyot] are not similar to vegetables... that do not resemble grain at all and will not be substituted. It is [therefore] a fit custom to refrain from all kitniyot, as I explained... Even though the Talmud permitted rice, this was specifically in their day when all were fluent in the laws of prohibition and permission, but in these latter generations it is clear that one should be restrictive, as I have said.

8. The dispute in 13th century France arose again in the 18th century<sup>4</sup> . In his commentary to the Tur, Moru-K'tzi-ah, when addressing Orah Hayim 453, the primary locus of the rule of hametz and matzah, Jacob Emden, known as Ya'avetz (Germany, 18th c.), the son of Tzvi Hirsch Ashkenazi, known as the Hakham Tzvi, wrote sharply against the Ashkenazic custom of avoiding kitniyot on Pesah. I testify that my illustrious father, that sainted man, suffered greatly on account of this. Throughout Hag haMatzot<sup>5</sup> he would rant and say, "If I had the strength I would abolish this terrible custom, a stringency... which causes harm and error... Because types of kitniyot are not available for the masses to eat their fill, they must bake much matzah... because of this they are not as careful with the dough as they should be... and they certainly err in a matter of karet. And matzot are expensive; not everyone can afford as much as they need... but kitniyot are available cheaply and easily and are permitted, so that they [the restrictive school] come to prevent the joy of the holiday through this stricture that has no reason..." Therefore I say: He who cancels this custom of avoiding eating kitniyot, I shall be with him. Hopefully other great scholars in this place will agree with me... All my days I have waited anxiously, when will I have the opportunity to publicize my father's views to overturn this line of strictures that the public cannot abide... to establish law for [future] generations, to benefit the masses, and to remove a stumbling block from the path of my nation. This will surely be accounted a great

mitzvah.

9. The basic law that would permit kitniyot is clear. But so is the custom of Ashkenaz since at least the thirteenth century, and perhaps before. The question remains, are we beholden to the custom of our ancestors in medieval Ashkenaz, as is the advice of Isserles, Taz, Moellin, Sha'arei Teshuvah (Chaim Margolioth) and Chajes? If, of course, the reason for their custom remained applicable to us, then we would answer: "yes, without a doubt". We have already encountered three different answers, however, and it appears from the language of the writers that the reason, even in their day, had been lost to history. Rabbenu Peretz suggests that permitting kitniyot could be confused with permitting grains either because of the mode of their use (in porridge or bread) or because of the mode of their storage. Jacob bar Asher more confidently asserts that the concern was the possible mixing of wheat into the kitniyot (most likely as a result of their storage in the same bins). David Golinkin, in his responsum<sup>12</sup>, uncovered several other variations. Perhaps, one sage speculates, it was customary to cook kitniyot with wheat and it was considered impossible to permit one without dragging along the other.

10. None of these reasons appear cogent, however, in the present age when we purchase our flours, rice and beans in discrete packages, well-marked as to their content, under governmental supervision. In such a marketplace there should be no concern of confusing a permission of kitniyot with one of grains and it should be eminently possible to prohibit one while permitting the other. Yet, as a rule we seek to maintain the customs of our ancestors even when the original reasons lapse. Concerning the continuation of the second day of Yom Tov, a practice begun to account for uncertainty of the calendar, the Talmud concludes on Beitzah 4b that the old practice should continue even after the calendar had been standardized, because -- the custom of our ancestors is in our hands, and that becomes a well-used principle of Jewish law.

11. But custom can and does change. Much of that is through the operation of cultural and social drift. It proceeds unremarked. While there are communities that insist upon dressing as did the Jews of Poland several centuries ago, in our community that has been allowed to change. The American Jewish community is not that of medieval Ashkenaz, not in territory, time nor tenor. Yet we are bidden to be cautious about changing custom, particularly signature custom, particularly custom as hard won as this custom appears to be, which was the point made again and again by Ashkenazic sages. There must be a justification to abandon entrenched custom.

12. Conclusion and Psak Halakhah: In order to bring down the cost of making Pesah and support the healthier diet that is now becoming more common, and given the inapplicability today of the primary concerns that seem to have led to the custom of prohibiting kitniyot, and further, given our inclination in our day to present an accessible Judaism unencumbered by unneeded prohibitions, more easily able to participate in the culture that surrounds us,

we are prepared to rely on the fundamental observance recorded in the Talmud and codes and permit the eating of kitniyot on Pesah.

Some Details of This Psak:

1) Fresh corn on the cob and fresh beans (like lima beans in their pods) may be purchased before and during Pesah, that is, treated like any other fresh vegetable.

2) Dried kitniyot (legumes, rice and corn) can be purchased bagged or in boxes and then sifted or sorted before Pesah. These should ideally not be purchased in bulk from bins because of the concern that the bin might previously have been used for hametz, and a few grains of hametz might be mixed in. In any case, one should inspect these before Pesah and discard any pieces of hametz. If one did not inspect the rice or dried beans before Pesah, one should remove pieces of hametz found in the package on Pesah, discarding those, and the kitniyot themselves remain permissible.

3) Kitniyot in cans may only be purchased with Pesah certification since the canning process has certain related hametz concerns, and may be purchased on Pesah.

4) Frozen raw kitniyot (corn, edamame [soy beans], etc.): One may purchase bags of frozen nonhekhshered kitniyot before Pesah provided that one can either absolutely determine that no shared equipment was used or one is careful to inspect the contents before Pesah and discard any pieces of (hametz). Even if one did not inspect the vegetables before Pesah, if one can remove pieces of (hametz) found in the package on Pesah, the vegetables themselves are permissible.

5) Processed foods, including tofu, although containing no listed hametz, continue to require Pesah certification due to the possibility of admixtures of hametz during production.

6) Even those who continue to observe the Ashkenazic custom of eschewing kitniyot during Pesah may eat from Pesah dishes, utensils and cooking vessels that have come into contact with kitniyot and may consume kitniyot derivatives like oil ( )