

Dissenting opinion – Kitniyot on Pesah

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The observance of Passover enables us to identify with the original Exodus story: both the suffering of our people and the celebration at their eventual freedom. We recline like royalty at the seder, eat a lavish meal, and sing songs of praise (Hallel) and at the same time for seven days (or eight in the Diaspora) remember the shame and backbreaking work of forced labor, family separation, dependence and fear. Laws and traditions around food form a large part of the Passover experience: the traditional seder foods (matzah, maror, haroset, salt water etc.); thorough home cleaning which is focused on the kitchen; traditional community or family recipes; separate dishes etc. Many people observe Pesah strictly even though they may not keep kosher during the year, and their attachment to the holiday traditions may be deeply ingrained in their emotional and spiritual psyche, not only a product of book learning.

While the Torah's main instruction regarding Passover is not to eat, own or benefit from hametz (leaven, or the 5 species of grains that are forbidden on Passover), an Ashkenazic minhag (custom) developed in the middle ages to not eat legumes, in Hebrew called "kitniyot."

The Mishnah Berurah, a 20th century expansion on the Shulhan Arukh code of law, (453:6 & 464:5) cites three reasons for the custom (a) these legumes are harvested and processed in the same manner as hametz, (b) they are ground into flour and baked just like hametz [so people may mistakenly believe that if they can eat kitniyot, they can also eat hametz], (c) it may have hametz grains mixed into it [and cause people to eat hametz by accident]. Although there were objections to the minhag at the outset and at various junctures afterward, it has become an accepted part of Pesah in all Ashkenazic communities.

Rice, buckwheat/kasha, millet, beans, lentils, peas, sesame seeds and mustard were mentioned specifically by halakhic decisors (Beit Yosef O.C. 453, Rema 453:1 & 464:1 and Mishnah Berurah 453:4, 7 & 11) and corn, green beans, snow peas, snap peas, chickpeas, soybeans, sunflower and poppy seeds have become forbidden as they shared the characteristics of the other kitniyot. (Sha'arei Teshuvah 453:1, Hayei Adam 127:7 and www.kashrut.org/ OU). Peanuts do not share these characteristics and there is no reason to avoid them or their derivatives (peanut oil, peanut butter), as long as they contain no hametz mixed in. (See Rabbi Moshe Feinstein, Iggeros Moshe (O.C. III:63) and Rabbi Ben Zion Bergman, "A New Look at Peanuts. From the Ground Up" accepted by the CJLS January, 1986). All other fruits, vegetables, grains, meat and dairy products, eggs, fish, etc. are acceptable for Passover, and only need supervision if processed.

The Conservative movement began permitting derivatives of other kitniyot in Rabbi Meyer Rabinowitz's Pesah guide from 1984 (p. 259-262 in the collection OH 453:1984). He writes, "Some Ashkenazic authorities permit, while others forbid, the use of legumes in a form other than their

natural state, for example, corn sweeteners, corn oil, soy oil.” However, it was not clear whether he was recommending the strict or lenient view, and whether the lenient ones were a tiny minority or not. In either case, Rabbi Rabinowitz required a hashgacha (rabbinic supervision) for oil, and the most recent Passover guide (approved by CJLS in January 2012) reflected this. Also, when discussing kitniyot, it says, “The processed products, whether liquid or solid, from קטניות (kitniyot) [sic.] are also forbidden by most Ashkenazic rabbinical authorities. These might include but not be limited to ascorbic acid (vitamin C), corn oil, corn sweetener, and soy oil.”¹

The teshuvot of Rabbis Levin and Reisner and Rabbi Golinkin seek to erase the Ashkenazi minhag, to permit eating of actual kitniyot as well as their derivatives. Arguments range from wishing to enhance the joy of the holiday, reducing costs of Pesah observance, lessening the difference between different edot of Jews, and simply abolishing a minhag that had a mistaken or baseless reason/ beginning (minhag sh’tut or minhag ta’ut). In our opinion, these reasons are not strong or plausible enough to justify the ruling, and do not take into account possible side effects of such an abrupt change.

The main reason to change law or custom is to address an ethical dissonance between halakha and the prevailing values of our generation. We do not see such a compelling reason in this case. It is part of the Pesah experience to have restrictions, and food choices are the main way the Torah and sages developed to convey this sense of identification. Compared to slaves in Egypt, Jews who fled their native lands at other times in history, leaving behind their homes and all their belongings, and Jews who crossed deserts on foot and lived in the most primitive conditions, avoiding kitniyot for a week seems a small symbolic way to identify with the Passover message.

Furthermore, the other reasons are less than convincing justifications to overturn a longstanding tradition. Eating rice and beans may replace a side dish or other vegetable but will not replace expensive meat, desserts, jams, wines and other usual items at a meal. Meat or fish do not need kosher for Passover supervision if bought fresh, and should be no more expensive than the rest of the year. Supervision will still be needed for kitniyot-derivative items to make sure they are not mixed with hametz, so the need for / cost of supervision will not be reduced.

The joy of the holiday can be enhanced with dedicating it to leisure and celebration in other ways than just food. Certainly this is easier in Israel when it is a vacation from work and school, but even here one can decorate the home, take trips or walks on Sundays or after work, or invite guests, or play music after yom tov, or otherwise enhance the holiday without relying on food.

Blurring distinctions among Jewish communities might be an excuse but does not seem the real reason: we happily accept differences in melodies, liturgy, and other ritual differences between Ashkenazim and Sephardim. For example, singing Shir Hashirim Friday night, waking up every morning the entire month of Elul for selihot and not just the week of Rosh Hashanah like Ashkenazim, and even the different roles of men and women in synagogue and home. If we seek to erase these distinctions we should be consistent about it, not just use it as an excuse when it is convenient to choose a more lenient stance. Furthermore, erasing the distinction between Sephardic and Ashkenazi will widen other rifts between Orthodox and Conservative Jews, as well as within the

¹ Thank you to Philip Gibbs, CJLS secretary, for locating this citation.

Conservative/Liberal Jewish community, where some people will choose to accept this leniency and others Ashkenazis will not. Effectively this will simply shift the division, not create a united practice.

Finally, it is a great responsibility to overturn an earlier custom. Even if we agree with Levin and Reisner that it is somewhat less drastic than overturning a *gezeirah* (rabbinic enactment), for which we need a court greater in number and in wisdom than the court that enacted it (Talmud Gittin 36b in the context of the *prozbul*), we still have a sense that *minhag* is binding, and even rabbis who thought the *kitniyot* prohibition was unfounded were reluctant to overturn it for this specific reason. Chajes even says that “a custom that has spread is considered as a full law of the Torah.”² What has changed that allows us to change where they did not?

Rabbi Golinkin thoroughly treats this topic by citing no less than 16 different instances of *poskim* arguing to overturn established customs in their times. At the outset, Rabbi Golinkin notes the challenge in overturning a long and established custom, even if its origins and legitimacy are questionable. Many of the examples he cites are ancient, and therefore make it difficult to judge how entrenched such a custom was in a community, and how quickly after the rabbi’s ruling the practice changed (if at all). Indeed, this is one of the challenges of *minhag* – its staying power is not always rational, rather it maintains because its practice is something that one feels in their gut. For this reason, many practices we take for granted today were once labeled as “foolish” or “mistaken” customs. The best example of this is *Kol Nidre*. Beginning in the 8th century, we find a strong prejudice against reciting *Kol Nidre* on Erev Yom Kippur from the Babylonian Geonim. Amram Gaon, head of the Academy of Sura in the 9th century, even called it a *minhag sh’tut*, a “foolish custom.” Rabbenu Tam (France 12th century), whom Rabbi Golinkin cites as someone who said both “the custom of our forefathers is Torah” and also that “there are customs that should not be relied on even where we learned that ‘everything should follow the local custom’”, tried to make *Kol Nidre* more palatable by changing its text to reflect future vows instead of past vows. It is this version that most synagogues use today. Yet many significant authorities, including Rabbi Mordecai Jaffe (16th century Prague), Rabbi Jacob Emden (17th century Germany), and the Vilna Gaon (18th century Vilna) continued to take issue with *Kol Nidre*. Rabbi Jaffe, in his late 16th century work *Levush Malkhut*, even wrote “most of the text of *Kol Nidre*, as it is now printed in the *Mahzorim*, makes no sense and is quite unintelligible; the only thing that gives it substance and meaning is the melody...”³ We see here the power of emotional attachment to custom, even when the reasoning and the wording are not watertight. Customs endure because religion is not always rational; visceral, emotional attachments to practice are an important part of the religious experience. Not eating *kitniyot* on Pesah may indeed be a foolish custom, but it has been part of Pesah observance for Ashkenazi Jews for centuries. It allows them to identify in the smallest measure with the Hebrew slaves, connects them to their ancestors, and makes Passover very different from all other times of year. Without a compelling ethical reason to change it, we think this practice should continue.

² See R. Resiner and Levin p. 4. The examples of change that Levin and Reisner offer are not all of the same character and do not serve as convincing proofs; some seem more sociological phenomena that were not entrenched as religious customs, such as smoking, and others such as refraining from doing *kaparot* with live chickens involved simply refraining from doing something *שב ואל תעשה*, not actively doing something that was previously forbidden as in the case of *kitniot*.

³ See the excellent section on the history surrounding *Kol Nidre* in [The High Holy Days](#) by Rabbi Herman Kieval pages 264-276.

Additionally, some of the reasons for prohibiting kitniyot still apply. They can be sold in a barrel that was recently used for hametz, they can be ground into flour, and they may have other grains mixed in.

We acknowledge, however, that the reasons for preventing kitniyot do not apply to their derivatives such as oils made from soybeans, corn, etc. We choose to follow the poskim who permit derivatives of kitniyot with proper supervision. We accept the tradition that new grains that were discovered after the medieval custom developed (such as amaranth and quinoa) are not in the category of the five prohibited grains or kitniyot. There is no problem with sunflower or canola oil which are also not kitniyot. And we affirm the position of Rabbi Moshe Feinstein (Iggeros Moshe (O.C. III:63) and Rabbi Ben Zion Bergman “A New Look at Peanuts. From the Ground Up” accepted by CJLS January, 1986) that peanuts are not kitniyot and peanuts and all derived products (unless mixed with hametz) are kosher for Passover.

We understand that some vegetarians or vegans and some Ashkenazi-Sephardi blended families will choose to eat actual kitniyot, and they have something on which to base their choice, perhaps being an *istinis* (extremely sensitive person, who is permitted for example to wash hands on fast days), or *hishamer lekha* (taking care of your body, based on Deuteronomy 4:9). We even accept that some Ashkenazim will eat at Sephardic homes where kitniyot are served (they can choose to eat the kitniyot *mipnei darchei shalom* – so as not to offend their hosts). Furthermore, we would agree that as kitniyot are not hametz, they do not affect the status of Passover dishes, even though this is not the universal opinion.⁴ One could sit at a table with others eating kitniyot and enjoy the holiday together.

However, we do not see the need to overturn this custom for all Ashkenazim. We feel it would accustom people to do something they feel instinctively is “wrong” and we fear it would lessen their respect for other laws and customs, even if rationally they are in a different category, and even if the kitniyot stringency is excessive or even illogical. If our predecessors refused to permit kitniot even in times of famine (see Levin and Reisner p. 4 citing Rabbi Tzvi Hirsch Chajes, *Minhat K’naot*, mid 1800’), we should be able to maintain this tradition proudly.

Psak: The Ashkenazi custom not to eat kitniyot remains relevant and compelling and remains in force. Vegans and vegetarians may eat kitniyot for health reasons if necessary.

We permit the eating of derivatives of kitniyot with proper supervision and also affirm the power of custom and tradition for those who choose not to eat even the derivatives of kitniyot.

⁴ Rabbi Ovadia Yosef allows Ashkenazim to eat at the homes of Sephardim and says the dishes are kosher. “Kitnios is *batel b’rov*, which means that if someone accidentally put kitnios into their Pesah food, the food is *b’dieved* permitted assuming the food contains more non-kitnios than kitnios (Rema 453:1 as per Mishnah Berurah 453:9). This means that although the food may have a pronounced taste of kitnios, the food is permitted (unless there are recognizable pieces of kitnios which haven’t been removed).” (www.kashrut.org/ OU)

Other poskim prefer Ashkenazim to use separate dishes/ pots or wait 24 hours before using them on Pesah. *Yehaveh Daat* 5:32.