

## A Teshuvah Permitting *Ashkenazim* to Eat *Kitniyot* on *Pesah*

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The following teshuvah was approved by the CJLS on December 24, 2015 by a vote of nineteen in favor, one opposed, and two abstaining (19-1-2). Voting for: Rabbis Kass Abelson, Aaron Alexander, Pamela Barmash, David Booth, Elliot Dorff, Baruch Frydman-Kohl, Susan Grossman, Reuven Hammer, Joshua Heller, Jeremy Kalmanofsky, Adam Kligfeld, Gail Labovitz, Amy Levin, Jonathan Lubliner, Daniel Nevins, Paul Plotkin, Avram Reisner, Elie Spitz, and Jay Stein. Voting against: Rabbi Micah Peltz. Abstaining: Rabbis Miriam Berkowitz and Noah Bickart.

### **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*?

### **Teshuvah:**

A] 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*. Thus *Mishnah Hallah* 1:1-2 specifies:

חמישה דברים חייבים בחלה: החטים והשעורים והכוסמין ושבולת שועל והשיפון -- הרי אלו חייבין בחלה... האוכל מהם כזית מצה בפסח יצא ידי חובתו. כזית חמץ -- חייב בהכרת.

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*. 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)

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*.

Clear in the *Mishnah* and *Talmud*, this was codified as law in all four of the pillars of early medieval Jewish Law that served as the legal references collected by Rabbi Joshua Boaz (Italy, 16<sup>th</sup> c.) in his legal annotation of the *Talmud* page above -- *En Mishpat Pesachim* 35a.4: Maimonides, *Mishneh Torah*, Laws of *Hametz* and *Matzah* 5.1 and 6.4 (Egypt, c. 1200), *Sefer Mitzvot Gadol*, Negative Commandment 79

*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

(Moses of Coucy, France, 13<sup>th</sup> c.) and *Arba'ah Turim* and *Shulhan Arukh Oraḥ Hayim* 453.1 (respectively by Jacob bar Asher, Spain, 14<sup>th</sup> c. and Joseph Caro, Israel, c. 1500).

Interestingly, all four *halakhic* sources mention the finding recorded in the Yerushalmi that *kitniyot* cannot become *hametz* along with their recording of the permission to use them on *Pesach*. As a finding of legal fact, then, it is clear that *kitniyot* may be eaten on *Pesach*. As a matter of law, even those who continue to observe the Ashkenazic custom of eschewing *kitniyot* may eat from *Pesach* dishes, utensils and cooking vessels that have come into contact with *kitniyot*.

B] Why then do *Ashkenazim* avoid eating *kitniyot* on *Pesach*?

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.

Though writing in Spain, Jacob was of *Ashkenazi* provenance and was well aware of the custom there. It is unclear when he reported that avoiding *kitniyot* was not customary whether he had in mind Spain where he resided or intended to rule for all of Jewry.<sup>1</sup>

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, 13<sup>th</sup> c.) to the *Sefer Mitzvot Katan* of his teacher Isaac of Corbeil, *Mitzvah* 222<sup>2</sup>. He writes as follows:

Concerning *kitniyot*... our rabbis customarily prohibit altogether eating them on *Pesach*.... But many great sages permit them. My teacher Rabbenu 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 *Pesachim* that nothing becomes *hametz* save the five species). Therefore it appears that we should support the custom and prohibit all *kitniyot* on *Pesach*, 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 permit [grain-based] porridge... and it is something grain-like (*midi d'midgan*<sup>3</sup>) like the five

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<sup>1</sup> In a similar situation regarding a custom to prohibit certain foods due to a possible admixture of forbidden food (whey, lest it have unkosher milk mixed in), Jacob bar Asher reports the following position in the name of his father (*Arba'ah Turim*, *Yoreh Deah* 115): "My father the Rosh would say that he does not know a clear reason to prohibit, though that was the custom. Therefore he would not object to those in a place that permitted, but if most of the people in one place customarily prohibit, one should not diverge." This appears to concern the possibility of creating communal dissension (לֹא תִגְדֹּדוּ) and does not address whether a full community may alter its custom.

<sup>2</sup> This *teshuvah* is extensively dependent upon the research that David Golinkin has published in his responsum for the Israeli *Va'ad Halacha* in 1989 (*Eating Kitniyot (Legumes) on Pesach*, Responsa of the *Va'ad Halakhah* of the Rabbinical Assembly of Israel, Vol. 3, pp. 35-56).

<sup>3</sup> Generally "*midi d'midgan*" is understood to mean something piled up in a mound for storage, as grain is stored. Further to this definition see the Talmud on *Nedarim* 55a and the concern of the Mishnah there that "*dagan*" in an

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.

The restrictive side of this debate won the day, though the weight of the permissive school can still be felt in *Ashkenaz* in the middle of the 16<sup>th</sup> century, in the language of Rabbi Moses Isserles's note to Caro's permissive ruling:

Some prohibit. The custom in *Ashkenaz* is to be restrictive. One should not diverge from this.

Even a century later, in the comment of David ben Samuel haLevi (the *Taz -Magen David* ad locum):

All this is nothing but an added restriction. But one should not diverge from it because they were accustomed to behave in this way.

C] The dispute in 13<sup>th</sup> century France arose again in the 18<sup>th</sup> century<sup>4</sup>. In his commentary to the Tur, *Mor u-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, 18<sup>th</sup> 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*<sup>6</sup>. 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*.

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oath might include certain beans that are treated, apparently in storage, as grain. Here, however, Rabbeinu Peretz's reference in Bava Batra is not to the quality of the storage but to the quality of being suitable to make flour.

<sup>4</sup> Several articles have been written on the history of the controversies over the law of *kitniyot*. See Shlomo Yosef Zevin, *HaMoadim BaHalakhah*, Tel Aviv 1953, pp. 255-262 and Gedaliah Felder, *Yesodei Yeshurun* Vol. 6, NY 1970, pp. 397-425.

<sup>5</sup> The Festival of *Matzot*. An alternative biblical name for the holiday of *Pesach*.

<sup>6</sup> A divine punishment of shortened life-span, the punishment associated with eating *hametz* on *Pesach*.

Emden admits that his father never acted to overturn the prohibition of *kitniyot*, and that entrenched custom does not easily succumb. Addressing these problems he says:

Though it seems, concerning my father's opinion, that he did not consider permitting it without the agreement of the majority... [I]t seems he was sensitive to the talk of the people, that the town not speak ill of him and say "this is a lenient court." When the sages of *Ashkenaz* agree to break the bonds of this stringency, it is clear that there would be no reason to hesitate. There is no concern about [overturning] something customary, even as a fence [around the law], nor about a latter court being unable to overturn another court unless it were greater, etc., for in a matter that causes harm this principle does not apply.

Emden's passionate call did not bear fruit. Some half a century later Tzvi Hirsch Chajes penned a retort in an extensive footnote to his monograph attacking Reform, *Minhat K'naot*, precisely focused on the question of faithfulness to prior custom.

There have been many extensive stringencies that great sages have attempted to overturn and failed...<sup>7</sup>

Citing the case of Emden and his desire to release the prohibition of eating *kitniyot* on *Pesah*, Chajes insists, citing Maimonides *Hilkhos Mamrim* 2:2, that even where the original justification for a ruling has lapsed, a greater court is required to overturn it (see *Mishnah Eduyot* 1:5) even, contra Emden, where there is harm being caused by the older practice.

with regard to the decree of *kitniyot*, which has spread among us, among all *Ashkenazim*... in such a case even if the reason is no longer valid, even if we now have a reason to overturn the original enactment..., as with regard to *kitniyot*, wherein, on account of this decree it is difficult to fulfill the joy of the holiday as one should, and even though it might lead to transgressing *karet*,<sup>8</sup> nevertheless it is only a greater court than the originators [who can overturn it], for a custom that has spread is considered at law as a full law of the Torah... There is no possibility of overturning it.<sup>9</sup>

He further tells the tale of an attempt to permit *kitniyot* one year due to famine.<sup>10</sup> While being respectful of the sage who permitted *kitniyot* in that situation, he notes that "the great sages" opposed the ruling, arguing that "since the decree had spread among all *Ashkenazim*, it is not in our hands to overturn it." He refers to *Sha'arei Teshuvah* to *Shulhan Arukh, Orach Hayim* 453 who reports on an earlier incident (early in the nineteenth century), that "in one place some sages wanted to break out in this matter, but they were unsuccessful because the sages of that generation, among the greatest of *Ashkenaz*, rose up against them, stood in the breach, seconded the words of the sages and confirmed

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<sup>7</sup> Tzvi Hirsch Chajes, *Minhat K'naot*, Zolkiew 1849, p. 20a

<sup>8</sup> Chajes here is repeating Emden's strongest arguments.

<sup>9</sup> Op cit. 21a.

<sup>10</sup> A lovely little article by Seymour Siegel tells the story of such an incident in 1868 in Lithuania (this cannot be the same incident of which Chajes speaks, since his pamphlet was published in 1849 and the names and geographic details differ), "*The War of the Kitniyot (Legumes)*", *Perspectives of Judaism: Essays in Honor of Wolfe Kelman*, NY 1978, pp. 383-393.

the prohibition in these lands,” then cites Jacob Moellin (Germany, 15<sup>th</sup> c.) that one who permits *kitniyot* on *Pesah* “transgresses [the Biblical prohibition of] “לא תסור / Do not diverge” [Deut. 17:11].”<sup>11</sup>

D] 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.

None of these reasons appear cogent, however, in the present age when we purchase our flours, rice and beans in discrete packages,<sup>13</sup> 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 מנהג אבותינו בידינו -- the custom of our ancestors is in our hands,<sup>14</sup> and that becomes a well-used principle of Jewish law. But custom can and does change.<sup>15</sup> Much

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<sup>11</sup> There is an irony here, or perhaps we are penetrating his divided soul. In the entry about Chajes in *Encyclopedia Judaica* [EJ Vol. 5, pp. 327-329, Jerusalem 1971] he is lauded as having “devoted his efforts to introducing modern critical methods in talmudic studies” and being a “vigorous champion of a more modern approach to Jewish education” who was in close contact with the *Haskalah*. Nevertheless, “despite his leaning toward *Haskalah* and secular studies, he was a staunch defender of Orthodoxy.” That he quotes Moellin to taint those who permit *kitniyot* with transgressing the biblical prohibition of “לא תסור / Do not diverge” in *Minhat K’naot* in 1849, runs in the face of his own determination in 1836, in a chapter on “Do not diverge” [“*Ma’amar Lo Tasur*,” *Torat N’vi-im*, Zolkiew 1836, pp. 125-137] that that applies only to rulings established while the High Court sat, and that subsequent to that time there exists no biblical mandate to follow the rulings of the sages (let alone their customs).

<sup>12</sup> *Op cit*.

<sup>13</sup> There are grocers dispensing from bins (increasingly popular in natural food stores, for example). Even if the prohibition of *kitniyot* is discontinued, it remains wise not to buy in bulk in such a situation.

<sup>14</sup> In the actual text of the Talmud the principle is enunciated in a letter from Israel to the Babylonian community which says מנהג אבותיכם בידיכם / the custom of your ancestors is in your hands. See also the anecdote of *Bnei Beishan* at the bottom of *Pesachim* 50b.

<sup>15</sup> As part of the discussion antecedent to the vote on this teshuvah, we were asked to provide examples of prior cases of changes in practice. The ancient reliance on amulets (*kameiot*) and the enactment by Rabbenu Gershom

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<sup>16</sup>. 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.

Emden offered as justification that the demand for greater production of *matzah* might lead to carelessness in their preparation and, God forbid, to *hametz*. We, who are not preparing large amounts of *matzah* by hand and have large scale industrial production under rabbinic supervision do not seem to be affected by that concern.

His second justification was that the joy of the holiday would be enhanced. Arguably, that justification is greater in a world which is moving, for health reasons, away from large scale consumption of meat and a greater focus on the nutrition of vegetables and beans. Beans, in particular, serve in the absence of meat as a significant source of protein. The argument that the joy of the holiday suffers is much more powerful today when we are lessening our consumption of meat than it was in Emden's day. And in particular, the positive mitzvah of joy on the holiday (ושמחה בהגך) will not be well expressed on the depleted table of those who do not eat fish or meat, or even cheese and eggs.<sup>17</sup>

And there is another matter -- the extremely inflated cost of products under *Pesah* supervision. Were *kitniyot* to be permitted, beans and rice could be served with vegetables and dairy to largely supplant the demand for other packaged products and more expensive sources of protein for those who chose to do so, an option that is significantly limited, today. It is a well-known *halakhic* aphorism that the Torah is concerned to protect the money of Israel (הס הכתוב על ממונם של ישראל).<sup>18</sup> Indeed, this concern to prevent commercial gouging predicated on Jewish consumers' needs on *Pesah* was documented already

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to forbid polygamy came up in the discussion. Further examples might be the permission of certain gentile-prepared foodstuffs (shemen akum, pat palter, pat akum) or the permission to write the texts of the oral Torah. More recent examples might be the custom of kapparot on the eve of YK or of drunkenness on Purim. Another interesting modern example might be the ongoing battle to end smoking wherein against the dawning awareness of the health risk there arose cries of minhag avoteinu b'yadeinu, that our teachers, great tzadikim, all smoked. In any change of minhag a long process of objection and hesitation might be expected to accompany the change.

<sup>16</sup> In his *teshuvah*, Rabbi Golinkin speaks of the affirmative value in Israel of the ingathering of the exiles (קיבוץ גלויות). While that value proposition does not apply in this country, it is nevertheless the case that since the rise of the State of Israel, *Ashkenazim* are much more aware of our *Sephardic* co-religionists. In the Conservative Movement that expresses itself in our Hebrew pronunciation and in our liturgical willingness to accept prayers into our prayer book that are not part of the traditional *Ashkenazic* prayer service (*Y'did Nefesh* and *Shachar Avakeshka* on Shabbat, *El Nora Alilah* and *Lekh B'simchah* on Yom Kippur). This finds expression on the shelves of the kosher supermarkets which are stocking products kosher for Passover only for those who eat *kitniyot* imported from Israel or produced here.

<sup>17</sup> Yerushalmi *Pesahim* 4:5 tells the tale of the abolition of the custom of the fishermen of Tiberias to take off on *Hol haMoed* (ostensibly a praiseworthy minhag honoring the holiday) because it kept fresh fish off the table on the latter days of the holiday, thus diminishing the joy of the holiday.

<sup>18</sup> *Tosefta Sh'vuot* 1:2, this gets transformed by the midrash into חס הקב"ה and appears multiple times in the midrash and later Jewish writers.

in third century Babylonia, and came to be the *halakhah*. We refer to the famous passage on *Pesahim* 30a

אמר רב: קדירות בפסח ישברו... ושמואל אמר: לא ישברו, אבל משהי להו לאחר זמנו ועביד בהו... ואזדא שמואל לטעמיה דאמר שמואל להנהו דמזבני כנדי: "אשווי זביני אכנדייכי, ואי לא דרשינא לכו כרבי שמעון."  
Rav said: Dishes should be destroyed at *Pesah*... and Samuel said: They should not be destroyed, but saved until after *Pesah* and used... Samuel [who ruled like R. Shimon, who permitted residue of *hametz* after *Pesah*] was consistent. For Samuel had said to the pottery merchants: "Standardize the price of your dishes. If not, I will expound [the law] in accordance with R. Shimon."

That Samuel had to threaten the merchants was an indication that at that place and time the law was taken to be that of Rav. Pottery dishes, relatively easily replaced, were routinely destroyed at *Pesah* and replaced with a new set for *Pesah* and the coming year<sup>19</sup>. But the market played its predictable games, and new dishes became more expensive on the eve of *Pesah*. That our law accords with Samuel may be a precedent for our own *halakhic* action to reduce the cost of observing *Pesah*.<sup>20</sup>

And there is a third matter. In the tone of Isserles' "one should not diverge," even more so in *Sha'arei Teshuvah*'s praise of the sages who "stood in the breach" one hears the all too human voice of reaction to change. It is not surprising that alongside his monograph against Reform, Chajes found an opportunity to excoriate an Orthodox voice seeking change. His language, too, that custom has become the "full law of the Torah... There is no possibility of overturning it" seems to us to be overstated. We have called ourselves a movement of tradition and change. Understanding when to pursue one and when the other is our great challenge. If resistance to change is the sole reason not to consider a change in custom, as it seems to be here, and all else points to the permissibility and desirability of change -- then we need not be as concerned as the *Hakham Tzvi* about being labeled a "lenient court." Indeed, we more often cite the Talmudic adage, "כה דהתירא עדיף / the strength of leniency is to be preferred. In fact, Rabbi Abraham Isaac Kook utilized that principle in permitting oil pressed from *kitniyot* for use during *Pesah*."<sup>21</sup> In its primary location on *Beitzah* 2b Rashi comments: "It is desirable for him to teach us the

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<sup>19</sup> No need to store *Pesah* dishes, but an expense to be amortized.

<sup>20</sup> It is instructive that this very example is chosen by Hezekiah daSilva in his commentary to *Shulhan Arukh*, *Pri Hadash*, to *Orah Hayim* 496, in an addendum on *Minhagei Isur* to illustrate an abolition of minhag which is not in the standard category that they discuss. Generally, the sages discuss the abolition of customs, likening them to personal vows and their abolition to the release from a vow. But here, since there was a legal issue at the heart of the matter (whether to rule like Rabbi Shimon on the matter of the residue of *hametz* or not), "if they have a proper authority (חכם מובהק) he may instruct them to be lenient in the matter, for they did not observe thus except on the basis of [their earlier] authority." Now the matter at issue before Samuel was a legal matter, and the issue of *kitniyot* we have found to be purely a matter of custom. By DaSilva's own categorization this would fall into the general category and be treated as a vow (and not be released unless a case could be made that the vow was made in error). But we might reasonably ask whether this is less like a vow taken by this community today than it is like a community following the rulings of its past authorities, now being led by different authorities. If so, this very precedent of Samuel does support overruling prior behavior. See ahead.

<sup>21</sup>R. Abraham Isaac haKohen Kook writes forcefully of the value of lenient rulings, in his response *Orah Mishpat* to *Orah Hayim* 112: "The tendency toward excessive stringencies (הומרות יתירות) where there is a clear path based on the ways of Torah to be lenient is not a pious thing (מילתא דחסידותא) at all... Truly, the way of my teachers... was not to lean to stringency when there was a possibility to be lenient, particularly when the foundation for it [the stringency] was not strong in the words of the sages in the Talmud." But it must be noted that while he says this

force of the position of the one who permits who relies on the wisdom he has received (שמרעות) and is not afraid to permit; whereas the force of those who forbid is no proof, for anyone can be strict, even in matters that are permitted.”<sup>22</sup> In a world of freedom and choice it may be best to put forward a forward-looking face.<sup>23</sup>

### **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*.<sup>24</sup> 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 non-hekhshered *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 חמץ (*hametz*). Even if one did not inspect the vegetables before *Pesah*, if one can remove pieces of חמץ (*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 (מי קטניות).

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with regard to the prohibition of *kitniyot* on *Pesah*, he does so in defense of easing the ramifications of the prohibition of *kitniyot*, and permitting derivatives of *kitniyot*, not permitting *kitniyot* altogether. He continues: “It is sufficient for us that we do not depart from the custom of our authorities.”

<sup>22</sup> *Tosafot* ad locum preserve a somewhat different version of Rashi. They write: “Rashi explained: This is why the force of leniency is to be preferred -- when a person permits, he relies on the wisdom he has received (שמרעות) and he must bring proof of his position; but with regard to prohibition, a person may be strict without reason.”

<sup>23</sup> Anecdotally we hear of many observant Jews of *Ashkenazic* descent who are choosing to throw over the custom of their forebears and eat *kitniyot* on *Pesah*. This is testimony that allegiance to this *Ashkenazic* custom is being challenged at the grassroots.

<sup>24</sup> This is intended to activate the rules of nullification (one in sixty) for any *hametz* that may contaminate the product during processing which is not under supervision. These rules apply exclusively before *Pesah*, but not on it. Readers may be aware of a rule of nullification (one in sixty). Although this principle has a number of applications, it does not apply to discrete and perceptible particles of *hametz*. See further details of this *psak*.