

Rice, beans and kitniyot on Pesah – are they really forbidden? By Rabbi David Golinkin

This responsum was originally written in Hebrew for the Va'ad Halakhah of the Rabbinical Assembly of Israel in 1989 and published in the Responsa of the Va'ad Halakhah 3 (5748- 5749), pp. 35-55 (which can be accessed at www.responsafortoday.com/vol3/4.pdf). It was aimed at Israel where hundreds of products are labeled "Kosher for Pesah for those who eat Kitniyot" and where many Ashkenazim marry Sephardim. This revised translation is addressed to all Jews. In this version, we have added some new sources and references, but we have also abbreviated some sections by referring to the Hebrew original. Since this responsum is quite lengthy, I have included a brief summary at the beginning. DG
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Question: Why do Ashkanazic Jews refrain from eating rice, beans and kitniyot on Pesah? Is there any way of doing away with this custom which causes much hardship and also divides Jewish communities and even members of the same family?

A Brief Summary of the Responsum:

1) In our opinion it is permitted (and perhaps even obligatory) to eliminate this custom. It is in direct contradiction to an explicit decision in the Babylonian Talmud (Pesahim 114b) and is also in contradiction to the opinion of all the Sages of the Mishnah and Talmud except one (R. Yohanan ben Nuri, Pesahim 35a and parallels). It also contradicts the theory and the practice of the Amoraim, the Geonim, and of most of the Rishonim in all geographic areas (more than 50 early medieval authorities!).

2) This custom is mentioned for the first time in France and Provence in the thirteenth century by R. Asher of Lunel, R. Samuel of Falaise, and R. Peretz of Corbeil and others - - from there it spread to various countries and the list of prohibited foods continued to expand. Nevertheless, the reason for the custom was unknown and, as a result, many rabbis invented at least twelve different explanations for the custom. As a result, R. Samuel of Falaise, one of the first to mention it, referred to it as a "mistaken custom" and R. Yeruham called it a "foolish custom".

3) Therefore, the main halakhic question in this case is whether it is permissible to do away with a mistaken or foolish custom. Many rabbinic authorities have ruled that it is permitted. 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.

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(and perhaps even obligatory) to do away with this type of "foolish custom" (R. Abin in Yerushalmi Pesahim, Maimonides, the Rosh, the Ribash, and many others).

Furthermore, there are many good reasons to do away with this "foolish custom": a) It

detracts from the joy of the holiday by limiting the number of permitted foods. b) It causes exorbitant price rises which result in "major financial loss" and, as is well-known, "The Torah takes pity on the people of Israel's money". c) It emphasizes the insignificant (rice, beans and legumes) and ignores the significant (hametz which is forbidden from the five kinds of grain). d) It causes people to disparage the commandments in general and the prohibition of hametz in particular -- if this custom has no purpose and is observed, then there is no reason to observe other commandments. e) Finally, it causes unnecessary divisions between different Jewish ethnic groups.

On the other hand, there is only one reason to observe this custom: the desire to preserve an old custom. This desire does not override all that was mentioned above. Therefore, both Ashkenazim and Sephardim are permitted to eat legumes and rice on Pesach without fear of transgressing any prohibition.

4) Undoubtedly, there will be Ashkenazim who will want to stick to the "custom of their ancestors" even though they know that it is permitted to eat rice and kitniyot on Pesach. To them we suggest that they observe only the original custom of not eating rice and kitniyot, but that they use oil from legumes and all the other foods "forbidden" over the years, such as peas, garlic, mustard, sunflower seeds, peanuts etc. (see the list below, paragraph V, 1). Thus they will be able to eat hundreds of products which bear the label "Kosher for Pesach for those who eat legumes". This will make their lives easier and will add joy and pleasure to their observance of Pesach.

5) Finally, a crucial word of caution: In general, if one wants to use kitniyot on Pesach, one should buy products that are labeled "Kosher for Pesach for those who eat kitniyot" because hametz on Pesach is assur b'mashehu [even in the slightest amount]. This includes hundreds of Israeli products and a new line of Pesach products certified by the OU. On the other hand, if one buys kitniyot before Pesach, one can buy pure kitniyot such as rice or beans, because before Pesach any hametz is batel b'shishim, annulled by 60 times its volume (see Orah Hayyim 447:4 and Hazon Ovadia, pp. 60-61).

Now we will prove each of these statements in detail:

I. Talmudic Sources

1) Mekhilta Derabi Yishmael, Masekhta D'pisha, Parashah 8, ed. Horowitz-Rabin, p. 26; ed. Lauterbach, Vol. 1, pp. 60-61: (1)

"Seven days you shall eat matzot" (Exodus 12:15). I might understand this to mean all matzot? But another verse says: "You shall not eat any hametz with it" (Deut. 16:3). I meant only something that can become matzah as well as hametz. And which are they? They are the five species of grain, namely: wheat, barley, kusmim, shibolet shu'al and shifon. (1a) Rice, millet, poppy seed, kitniyot and sesame are excluded because they cannot become hametz or matzah, but only sirahon [decay].

2

2) Mishnah Pesachim 2:5 = folio 35a:

These are the things by which a person fulfills his obligation on Pesach: wheat, barley, kusmin, shifon and shibolet shu'al. (1a)

3) Tosefta Pisha 2:17, ed. Lieberman, p. 148:

R. Yoḥanan b. Nuri says: a person fulfills his obligation even with karmit. (2)

4) Sifrei Bamidbar, Shelah, Piska 110, ed. Horvitz, p. 113:

"When you eat of the bread of the land [you shall offer up a Terumah to the Lord]" (Numbers 15:19). Why was this said? Because it says "as the first yield of your baking,

you shall offer up Hallah [a dough-offering]" (ibid., v. 20), do I also hear that this covers other fruits as well? You deduce: Here it says "bread" and later it says "bread" [regarding Pesah, Deut. 16:3], if the "bread" mentioned later refers to the five species of grain, then the bread mentioned here also refers to the five species of grain. And they are: wheat, barley, kusmin, shibolet shu'al and shifon.(1a) Rice, millet, poppy seed, and sesame are excluded because they cannot become hametz or matzah, but only sirahon [decay].

5) Targum Pseudo-Jonathan (3) to Numbers 15:19:

And behold when you eat of the bread of the grain of the land, and not of rice and millet and kitniyot, you shall set apart a separation before God.

6) Mishnah Hallah 1:1-2 [=Mishnah Menaḥot 10:7, with some changes]:

Five things are liable to hallah [a dough-offering]: wheat, barley, kusmin, shibolet shu'al and shifon.(1a)... A person who eats from them an olive's worth of matzah on Pesah, has fulfilled his obligation; an olive's worth of hametz, is liable to karet [divine punishment by premature death].

7) Tosefta Hallah 1:1, ed. Lieberman, p. 275:

R. Yoḥanan b. Nuri states: the karmit (2) is also liable for hallah [a dough-offering].

8) Yerushalmi Pesahim 2:4, fol. 29b [with corrections based on the parallel source in Yerushalmi Hallah 1:1, fol. 57a]:

It is stated "when you eat of the bread of the land [you shall offer up a Terumah to the Lord]" (Numbers 15:19). I would say that all things are liable to Ḥallah? The verse states "of the bread" and not all bread. If it is "of the bread" and not all bread, then it is only for wheat and barley. From where do we learn that it applies to other grains? But another verse says: "as the first yield of your baking" – it is inclusive. And did it include everything?!... Rabi Mana said: I went to Caesarea and I heard Rabi Aḥva bar Ze'ora say: and my father (4), R. Ze'ora, would say this in the name of Rabbi Yishmael: it says "bread" on Pesah (Deut. 16:3) and it says "bread" in reference to Ḥallah (Numbers 15:19), just as the "bread" mentioned in reference to Pesah is something that can become matzah or ḥametz, so "bread" mentioned in reference to Ḥallah can become hametz or matzah. They checked and found that only the five species of grain can become matzah or ḥametz; all the other species do not become matzah or ḥametz, they only become sirahon [decay]. It was taught: "Rabbi Yoḥanan ben Nuri said: karmit is liable to Hallah because it can become matzah or ḥametz, while the Sages say: it does not become matzah or ḥametz." And let them test it?! On the essence of the testing they disagree: Rabbi Yoḥanan ben Nuri said they tested it and

3

found that it becomes matzah or ḥametz, while the Sages say: they tested it and did not find that it becomes matzah or ḥametz.

9) Bavli Pesahim 35a (the first part also appears in Menaḥot 70b):

These [five species of grains in the Mishnah], yes; rice and millet, no. From where [in the Torah do we learn that matzah is made from these five species only]? 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 ḥametz with it, for seven days 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 leavened, but sirahon [decay]. Our mishnah does not follow

Rabbi Yoḥanan Ben Nuri... as it is taught: "Rabbi Yoḥanan ben Nuri said: rice is a type of grain and the punishment for making hametz out of it is karet, and a person can use it to fulfill his obligation [of eating matzah] on Pesah. And Rabbi Yoḥanan ben Nuri used to say [above, source 7]: "Karmit is liable to Hallah".

10) Bavli Pesahim 114b:

[A baraita ibid. states that they brought before him "two cooked dishes".] What are "two cooked dishes"? Rav Huna said: spinach beets and rice. Rava would look for spinach beets and rice because this was something that came from the mouth of Rav Huna. Rav Ashi said: learn from Rav Huna that there are none who pay heed to the words Rabbi Yoḥanan ben Nuri, for it has been taught [above, source 9]: "rice is a type of grain and the punishment for making hametz out of it is karet, and a person can use it to fulfill his obligation [of eating matzah] on Pesah".

11) Bavli Pesahim 40b:

We refrain from molilin [meaning of Hebrew uncertain] the pot on Pesah, and whoever wishes to do so, adds the flour and then after adds the vinegar. And some say: he even adds the vinegar and then the flour... Ulla said: Both the one and the other are forbidden... R. Papa permitted the stewards of the House of the Exilarch to mash a dish with hasisei [meaning of Aramaic uncertain]. Said Rava: Is there anyone who permits such a thing in a place where slaves are plentiful? [because if we allow the slaves to mix in hasisei, in the end they will mix in flour and make the mistake of violating a prohibition] Some say. Rava himself mashed a pot with hasisei.

II. Rice, Millet and Kitniyot in the Time of the Tannaim, Amoraim and Geonim

Most of the sources cited above (sources 1-9) clearly indicate that in the time of the Tannaim (before 200 CE) there were two main approaches regarding the status of rice, millet and kitniyot. Most of the Sages, including Rabbi Yishmael, were of the opinion that only the five species of grain were liable to Hallah and can become hametz or matzah. On the other hand, Rabbi Yoḥanan ben Nuri was of the opinion that karmit was liable to Hallah and that rice also leavened and could be used to fulfill the obligation of matzah on Pesah. According to the editors of the Yerushalmi (source 8), they tested karmit and Rabbi Yoḥanan ben Nuri and the Sages disagreed over the results of this test. In any case, even without Rav Ashi's explicit ruling (source 10), we would be required to rule according to the Sages because, as is well known, "one [Sage] vs. the majority, the halakhah follows the majority" (Berakhot 9a and parallels).

4

In the time of the Amoraim, Rav Huna ruled that it is permissible to eat rice at the Seder as one of the two cooked dishes and Rava acted according to his ruling (source 10). Rav Ashi concluded from Rav Huna's comments (ibid.) that there wasn't anyone who took Rabbi Yoḥanan ben Nuri's opinion into account.

On the other hand, it is hard to rely on source 11 as a basis for either position. [See the Hebrew version, middle of paragraph II, for a full discussion of this difficult source.] There is no doubt that in the Geonic period they allowed rice and kitniyot on Pesah, according to the Sages, Rav Huna, Rava and Rav Ashi. Indeed this is the explicit ruling of Rav Aḥa of Shivha (She'ilta 87, Parshat Tzav, ed. Mirsky, Vol. 4, pp. 33-34). On the other hand, Rav Yehudai Gaon (Halakhot Pesukot, ed. Sasson, p. 14) and Rabbi Shimon Kayara (Halakhot Gedolot, ed. Warsaw, fol. 30c at bottom = ed. Jerusalem, part 1, p. 295) rule according to the Mishnah (source 2) without mentioning Rabbi Yoḥanan ben

Nuri at all. In Italy as well, during the Geonic period, rice and kitniyot were permitted on Pesah. This point emerges clearly from two early halakhic works:

1. Halakhot Ketzuvot (Italy, ca. 850) writes in the Laws of Pesah: “However, millet and all types of kitniyot are permitted; even if they were soaked in water they are permitted on Pesah and after Pesah. However, the five species of grain are prohibited [on Pesah if soaked in water] and are liable to Hallah. Rice is permitted [on Pesah] and is not liable to Hallah.” At the end of the laws of Pesah, he adds: "And all types of kitniyot are permitted on Pesah and on festivals".(5)

2. On the other hand, Rabbi Meshulam b"r Kalonymus (Lucca, Italy, d. 1010) states his opinion indirectly: “and whoever soaked kitnit in cold water [on Pesah] and found wheat mixed in, since they were not cooked with the wheat, they are permitted” (Teshuvot Geonim Kadmonim, Berlin, 1848, No. 121, and this is stressed by Shir Rapoport in the preface, fol. 12b). In other words, Rabbi Meshulam is concerned about the wheat, but not about the kitniyot themselves.

III. The Rishonim – those who permit eating rice and kitniyot on Pesah

The overwhelming majority of Rishonim who addressed our issue ruled that it is permissible – in accordance with the Sages, Rav Huna, Rava and Rav Ashi. Maimonides is typical of this approach in his Mishneh Torah (Hilkhot Ḥametz Umatzah, 5:1):

There is no prohibition regarding ḥametz on Pesah, other than the five species of grain... but kitniyot such as rice and millet, beans and lentils and the like cannot become ḥametz, so even if one kneads rice flour and the like in boiling water and covers it with a cloth until it rises like dough that has fermented – it is still permitted to be eaten because it is not leavening but sirahon [decay].

The following is a list of the Rishonim who permit eating rice and kitniyot on Pesah.

They are listed chronologically within each geographic area. [The exact references are found in the Hebrew version of this responsum, paragraph III.]

North Africa:

Rabbeinu Ḥananel on both passages in Pesahim; Rif on both passages; Rambam on the Mishnah and in his Mishneh Torah loc. cit.; Rashbatz (Rabbi Shimon bar Zemaḥ Duran);

5

Rashbash (Rabbi Shlomo ben Shimon Duran), who explicitly rejects the French custom we shall encounter below.

Spain:

Rabbi Yitzḥak ibn Giyyat; Rabbi Moshe Ḥalawa; Rabbi Vidal de Toulousa, Magid Mishnah to the Rambam, ad loc.; the commentary attributed to the Ritba on Pesahim 35a; Ran on the Rif in both passages; Sefer Ḥaḥinukh; Rabbi Ya'akov ben Asher, Tur Oraḥ Ḥayyim 453; Rabbi Ḥayyim ben Shemuel of Toledo, Tzror Ḥaḥayyim; Rabbi Menahem ibn Zerah, Tzeidah Laderekh; Rabbi David Abudraham; Ḥiddushei Talmid Harashba Lifsaḥim; Ribash (Rabbi Yitzḥak Bar Sheshet); Rabbi Yosef Karo, Beit Yosef and Shulḥan Arukh, Oraḥ Ḥayyim 453.

Provence:

Rabbeinu Yeruḥam, Toledot Adam Vehavah; Rabbi Shmuel Yerodany, Ohel Moed; Rabbi Meir ben Shimon Hame'ili, Sefer Hame'orot Lifsaḥim; Rabbi Menahem Hameiri, Beit Habeḥira Lifsaḥim (in three places); Rabbi Yitzḥak ben Abba Mari, Sefer Ha'itur; Rabbi Aharon Hakohen of Lunel, Orḥot Ḥayyim = Kol Bo; Rabbi Yehonatan Hakohen of Lunel on Pesahim; Rabbeinu Manoah on the Mishneh Torah, ad loc.

France – Ashkenaz:

Ra'avan (Rabbi Avraham Ben Natan), Even Ha'ezer; Rabbi Eliezer ben Yoel Halevi, Sefer Ra'aviah; Rabbi Eliezer of Metz, Sefer Yere'im; Rabbi Eleazar of Worms, Sefer Harokeah; Rabbi Moshe of Coucy, Sefer Mitzvot Gadol; Rabbi Yitzhak of Corbeil, Sefer Mitzvot Katan; Rabbi Alexander Zusslein Hakohen, Sefer Ha'agudah; Rabbi Mordechai ben Hillel Hakohen, Sefer Hamordechai; Rabbi Yeḥiel of Paris cited by the Mordechai and by Rabbeinu Peretz on Sefer Mitzvot Katan; Rabbi Yehudah Sir Leon cited by Rabbi Samuel of Falaise; Rabbeinu Asher ben Yeḥiel, Piskei Harosh and cf. his Responsa of the Rosh 19:21; Sefer Haneyar.

England:

Rabbi Jacob Hazzan of London, Etz Ḥayyim.

Italy:

Rabbi Yishayahu di Trani, Tosfot Ri" d on Pesahim 35a and also Piskei Ri" d on Pesahim (in three places); Rabbi Yishayahu Aharon z"l, Piskei Ria" z on Pesahim; Rabbi Tzidkiyah ben Avraham Harofe, Shibolei Haleket; Rabbi Yeḥiel ben Yekutiel, Tanya. IV. The Rishonim – the custom of prohibiting rice and kitniyot and its many explanations

In 13th century France we hear for the first time of the custom of prohibiting rice and kitniyot on Pesah. This custom was expressed in three different ways:

A. “Not to eat zeronim [i.e., humus] on Pesah”. So wrote Rabbi Asher of Lunel in his Sefer Haminhagot, written in Provence ca. 1210 (he is quoted by Rabbeinu Manoah on the Rambam, Ḥametz Umatzah, 5:1).

B. To use kitniyot only by halitah, i.e., to put them in water that is already boiling, because even the five species of grain can be eaten in this manner (Pesahim 39b and Rambam, Ḥametz Umatzah, 5:3). This custom was related by Rabbi Samuel of Falaise (in Or Zarua, part 2, fol. 58c) and also by Rabbeinu Peretz (in Hagahot Semak, paragraph 222). The second description is particularly interesting: “And it seems to me that I heard [from our Master and Rabbi, Yosef Shliah Tzibbur of Troyes

6

(13th century) in the name of his mother, the daughter of Rabbeinu Baruch (late 12th century)](6) about the beans that should not be cooked on Pesah other than in boiling water from the moment they are added to a pot”.

C. Rabbeinu Peretz also reports about another custom – a general prohibition on kitniyot: “and on kitniyot such as fèves [white beans] and beans and rice and lentils and the like, our rabbis are accustomed not to eat them at all on Pesah.” Later on he claims that this it is something “that the world has been accustomed to prohibit from the days of the early Sages.” A similar custom is mentioned by Rabbi Aharon Hakohen of Lunel (Provence, early 14th century, in Sefer Orḥot Ḥayyim, Hilkhot Ḥametz Umatzah, paragraph 55) in the name of Rabbi Shemuel bar Mordechai z"l (Provence, ca. 1300): “And the early ones were accustomed [on Pesah] not to eat a cooked dish made from types of kitniyot ever.” And Rabbi Mordechai ben Hillel Ashkenazi relates (in the Mordechai on Pesahim, Chapter 2, paragraph 588): “And Rabbeinu Barukh and Rabbeinu [Shemuel] of Evreux (13th century) did not eat types of kitniyot on Pesah”.

However, as we have seen, there is no proof that this is a custom of the “early Sages”.

Moreover, already in the 13th century, the Rishonim did not know how to explain these

customs. Rabbeinu Peretz himself stresses that there is no prohibition involved: “Obviously [mistama] they did not treat this custom as a prohibition due to concern over actual leavening, as they did not err in a matter that school children who studied the halakhah know, that it says explicitly in Pesahim that only the five species of grain can become hametz” (see sources 2 and 9 above).

As a result, over the course of time, rabbis invented at least twelve different explanations for this custom, but it appears that they do not withstand careful scrutiny. Here are the explanations in chronological order:

1) Rabbi Asher of Lunel quoted above stated (ca. 1210): “And the entire world (sic!) followed this custom of not eating zeronim on Pesah because they become leavened and therefore are called ḥimtzei (Yevamot 63a and Ḥullin 52b). In other words, humus = ḥimtzei is not eaten because its name indicates that it becomes hametz. But this is problematic, as Rabbeinu Manoah asked ad loc.: “and it doesn’t seem reasonable to say that the custom derives from the prohibition at all, because there are no kitniyot in the world that become leavened”. Furthermore, he stresses that even the etymology is questionable; Rashi on Ḥullin 52b explains ḥimtzei to be peas, whereas ḥiftzei are humus!

2) Rabbeinu Manoah himself rejected the custom: “and there is no fear of violating any prohibition”. However, afterward he found written that there is one type of kitnit called vetch that is essentially a type of wheat. In a rainy year it reverts back to being wheat and is referred to as fermented vetch “and therefore they prohibited all types of kitniyot and this reason has a basis”. This explanation is also hard to accept. Firstly, vetch is a type of kitnit, not wheat, and therefore even if it was referred to as fermented vetch, it cannot become leavened. Furthermore, it is hard to believe that all kitniyot were prohibited because of one specific kind of kitnit.

Rabbeinu Peretz himself argues that this custom is a gezeirah [rabbinic decree] and suggests three different explanations (sic!) for it:

7

3) Kitniyot are cooked in a pot and dishes made from grains are cooked in a pot. If we become accustomed to a porridge made from kitniyot, we may err and also eat a porridge made from grain since both are cooked in pots. Therefore, they made the decree.

4) According to Bava Metzia, chapter 7, kitniyot are called “something that is piled up”, like the five species of grain, so if we permit kitniyot, they will think that it is permissible to cook the five species of grain and therefore they made the decree. Later on, he even prohibits mustard because it is something “that is piled up”.

5) In some places, bread is commonly made from kitniyot in the same way as bread is made from the five species of grain, and if we permit the use of kitniyot, they will think it is permissible to bake bread from the five species. Therefore, they made the decree.

However, these explanations are not convincing. Firstly, there never was such a “decree”. Rabbeinu Peretz himself and Rabbi Shemuel of Falaise before him related that this was “the custom” and Rabbi Shemuel who preceded Rabbeinu Peretz by fifty years even stresses that there is no explanation for this custom (and more on this below). Moreover, the phrase “something that is piled up” does not appear in Bava Metzia, chapter 7 in our editions! (Perhaps Rabbeinu Peretz had this reading in Nedarim 55a – see *ibid.*) In any case, even if the Talmud said that kitniyot are “something that is piled up”, the Rashbatz already rejected this comparison (see details in the Hebrew version of this Teshuvah, IV,

5) Furthermore, in Mishnah Nedarim (7:2 = folio 55a), Rabbi Meir states that kitniyot are considered a grain but the Sages disagree and the law is according to the Sages! In addition, Bava Metzia 87a proves that bread and kitniyot differ from each other and if so, this contradicts explanation No. 5! Therefore, there is an attempt here by Rabbeinu Peretz to explain the “decree”, but he did not succeed in doing so.

6) Rabbeinu Ya'akov ben Asher (Ashkenaz and Spain, 1270-1343) gives a different explanation for the custom: “There are some who prohibit eating rice and all types of cooked kitniyot because different grains become mixed in with them”, but he then adds: “and this is an unnecessary stringency and they did not follow this custom” (Tur Oraḥ Ḥayyim 453).

This explanation is also given by five additional Rishonim, (in the Beit Yosef, *ibid.*, in the name of Hagahot Maimoniyot citing the Semak;(7) in the commentary attributed to the Ritba on Pesahim 35a; in Sefer Hamikhtam to Pesahim, ed. Blau, New York, 1959, pp. 45, 99; in Orḥot Ḥayyim, Hilkhot Ḥametz Umatzah, paragraph 55; and by the Meiri in Beit Habeḥirah to Pesahim pp. 111, 242 – but with a variation, see *ibid.*). It is repeated by several later Sefardic sages who stopped eating rice on Pesah because once they found wheat or spelt in it (Rabbi Hizkiya de Silva, Peri Ḥadash on Oraḥ Ḥayyim 453, subparagraph 1; Rabbi Ḥayyim Yosef David Azulai, Kuntress Tov Ayin, at the end of Sefer Va'ad Laḥakhamim, paragraph 9, section 6; and see Ḥazon Ovadia, p. 54 and ET, note 693 for more late Sefardic authorities who maintained this view).

7) R. Moshe (Maharam) Halawa (Spain, late 14th century) discussed this custom in his commentary on the two passages in Pesahim. The first passage (source No. 9) states: “These [five species of grains in the Mishnah], yes; rice and millet, no”, and Rashi explained (in Berakhot 37a) that rice is millet. Maharam Halawa continues: “The Sages of France said that since the Talmud only excludes those which become sirahon [decay], it may be inferred that other types [of kitniyot] are forbidden. And they gave this general principal: ‘Anything that swells when cooked may not be cooked on Pesah because it contains a little ḥametz and

8

therefore they prohibited rice dishes and dishes of zeronim.” (ed. Jerusalem, 1976, p. 104 and cf. *ibid.*, p. 181. This explanation is also cited in the commentary attributed to the Ritba on Pesahim 35a.) In other words, rice and millet become sirahon [decay] and are permitted, but other species that swell up are considered ḥametz noksheh (p. 181) and may not be cooked on Pesah.

However, Maharam Halawa himself already rejected this explanation. After he proved that it is rice, he adds: and these two things (i.e., rice and millet) were included to show that “אורז” even the foods that resemble a species of grain do not become leaven and, all the more so the other types [of kitniyot]. “Therefore, all the other types are permitted” (p. 104). Furthermore, the second Talmudic passage [source No. 10] contradicts the approach of our French rabbis, given that Rav Huna and Rava cooked rice on Pesah (*ibid.*, p. 181)!

Two Aḥaronim (later rabbis who lived after the Shulhan Arukh) tried to justify this custom using some of the Talmudic sources cited above:

8) The above-mentioned Rabbi Hizkiya de Silva refers to Pesahim 40b [source 11]. [See the Hebrew version of this Teshuvah for his explanation.]

9) Rabbi Yehiel Michel Epstein (Arukh Hashulhan, Orah Hayyim 453:5) cites the above Yerushalmi (source 8) where Rabbi Yohanan ben Nuri and the Sages disagreed over the essence of testing, and he continues: “and so it can be inferred by a kal vahomer (an a fortiori argument), that if among the greatest Tannaim there was a disagreement over something that is proven by the senses -- where one says that the senses prove this and the other says the opposite -- then it is all the more so true when it comes to ordinary uninformed people who may err in this when they say that this may also become leavened...! And this is absolute proof of the statements of our holy Rabbis who issued the decree regarding this matter, and they knew the reason behind their decree!” In other words, the disagreement between Rabbi Yohanan ben Nuri and the Sages over karmit after they tested it shows that it really is possible to get mixed up between kitniyot and the five species of grain (as in Rabbeinu Peretz’s approach), and therefore they decreed what they decreed. However, this too is unconvincing. The story of the test does not appear in a Tannaitic source. This is the answer of the editor of the Yerushalmi. It is unclear that they actually conducted such a test. Secondly, there they are discussing karmit, not rice or other types of kitniyot. Thirdly, we have already proved that there never was such a decree. Finally, there is not the slightest hint that the Rishonim who were accustomed not to eat kitniyot on Pesah relied on the Yerushalmi.

10) One of the Aḥaronim searched for a historical reason behind this custom. Rabbi Sha’ul Berlin (Ashkenaz, 1740-1794) published a book of responsa entitled Besamim Rosh in 1793 which he attributed to Rabbeinu Asher (1250-1327). Over time it emerged that Berlin himself had written the work.(8) In any case, the author of Besamim Rosh vehemently objects to the custom being discussed: “It is odd that the matter is explicitly permitted in the Gemara and it is not known from any source that a Bet Din issued a takkanah regarding this matter... but God forbid that we should prohibit that which is permitted for no reason, and especially to assist the poor and needy who do not have enough meat and [matzah] for the entire week of the festival... And the ones who adopt the stringent approach will in the future have to face the consequences”. In his opinion, “it is possible that from the expulsions and chaos this matter became entrenched, as the first expulsion was to Montessin (perhaps: from Montessin?) and there was also a small group of Karaites among them who were expelled and they settled amongst us when they were expelled together with us, and they did not know

9

of the distinction between one type of bread and another and [they thought that] everything becomes leavened” (Responsa Besamim Rosh, No. 348). Indeed, one scholar tried to justify this theory (Yehudah Rosenthal, Mehkarim Umekorot, Vol. 1, Jerusalem, 1967, p. 241). However, this explanation does not withstand careful scrutiny. First of all, nowhere has it been proven that there were Karaites in France at that time. Secondly, we have no record of a city called Montessin in France in the Middle Ages (it is missing in Henri Gross, Gallia Judaica, Paris 1897). Thirdly, we already saw that the custom was first mentioned in France in the 13th century before the expulsions from France. Lastly, it appears that some of the Karaites stopped eating kitniyot at a later point and it is clear that they acquired the practice from the Rabbanites and not vice versa.

In 2006, Prof. Simhah Emanuel published two new medieval explanations for our custom from manuscripts:

11) Rabbi Barukh Hayyim lived in France ca. 1270. His student reports that he heard from Rabbi Barukh Hayyim who heard from his teacher Rabbi Avraham that the reason that beans are forbidden on Pesah is "because they are accustomed on weekdays [i.e., not on Pesah] to put flour in it [i.e., the beans] to make it thick, and they are liable to get confused [and do the same] on Pesah". In other words, out of habit, they will put flour in the beans on Pesah; therefore, they prohibited eating beans on Pesah (Emanuel, p. 52).

12) Rabbi Eleazar of Worms (died 1236) states simply in his sermon for Pesah: "And that they don't eat beans and lentils [on Pesah], because they contain wheat" (Emanuel, p. 90). Prof. Emanuel suggests that at that time in Europe there was a three-year crop rotation between grain, kitniyot and letting the land lie fallow. This method "no doubt led to unplanned growth of a little grain in a field of kitniyot, and perhaps it was this after-growth which caused the Sages to forbid kitniyot on Pesah" (Emanuel, p. 52).

V. Expanding and Spreading the Custom

From the 13th century onward, this custom spread in three directions:

1. In Ashkenaz and in Eastern Europe, they expanded the custom and additional prohibitions were piled on. At different points, the following foods were prohibited -- but the halakhic authority who cites the custom, sometimes disagrees with it. [The exact references can be found in the Hebrew version of this teshuvah.]:

The use of kitniyot oil in a lamp hanging over the table (R. Yisrael Isserlein; R. Ya'akov Mollin); krom kimmel (caraway seeds sold in a store; R. David Halevi, Taz); peas (Rabbi Zvi Hirsch Margaliyot); tea (Rabbi Ya'akov Reisher); coffee (various rabbis); potatoes (Rabbi Ya'akov Emden and Rabbi Avraham Danzig); green Egyptian beans (Rabbi Ya'akov Emden); kitniyot oil (Rabbi Ya'akov Emden); peanuts (ET, note 732); radish and garlic (ibid., note 734; R. Yosef Te'omim; R. Hayyim Hizkiyah Medini); sesame seeds (ET, note 709); tatarke (buckwheat; ibid., note 710); mustard (ibid., note 714); sunflower seeds (ibid., notes 719-720).

Moreover, in Ashkenaz they were so strict with regard to this practice that many prohibited kitniyot even in times of emergency, such as during a famine or plague. This phenomenon reached its peak in the 19th century in an episode known as the "kitniyot wars". On the other hand, there were authorities who permitted kitniyot in

10

times of emergency. (See Rabbi Zevin, pp. 260-262; Rabbi Rosenbaum, pp. 100-101; Rabbi Leiter; Rabbi Seigel; Rabbi Felder, pp. 401-406).

2. Slowly but surely, over the course of time, some Sefardic sages adopted some of the above customs. We have already mentioned Rabbi Hizkiya de Silva and the Hida who prohibited rice because they once found wheat mixed in it. In our day, Rabbi Haim David Halevy, the Sephardic Chief Rabbi of Tel Aviv, wrote (Mekor Hayyim Hashalem 185:16): "The difference in customs between Sephardim and Ashkenazim regarding kitniyot (and oil produced from them) is well-known, and now Sephardic communities also refrain from eating kitniyot on Pesah." The last sentence is incorrect (see, for example, Rabbi Ovadia Yosef, Hazon Ovadia, fol. 54b-55a and the literature cited there), but it indicates how far the custom has spread in the eyes of the public. It should also be noted that Yemenite Jews never followed this custom, and Rabbi Yosef Kafih (Kapah), the leading Yemenite authority in our generation, vehemently rejected this custom (Halikhot Teiman, third edition, Jerusalem, 1982, pp. 16, 18 and cf. Moshe Zadok, Yehudei Teiman, second edition, Tel Aviv, 1983, p. 178).

3. Finally, this custom was even adopted by some of the Karaites and there too it sparked controversy! Eliahu Bashiya (Turkey, 1420-1490) quotes the law of the five species of grain in his *Aderet Eliyahu* (fourth edition, Israel, 1966, fols. 67a-b) and adds: "but other zeronim such as flour made from beans, lentils, peas, millet and rice do not leaven but decay... and some of the fools in our age who try to be clever, do not eat any fermented [food] because it is stated, "and you shall not eat any fermented food" (Exodus 12:20), such as fermented milk or fruit soaked in water and they don't eat beans or rice or anything made from zeronim and this is because of their boorishness and ignorance of the Sages' teachings".

VI. The Approach of the Aḥaronim in Ashkenaz and Eastern Europe

Why were the later rabbis so strict about this topic? Why did most of them refuse to be lenient even in times of emergency? The answer is quite simple. They were unfamiliar with much of the literature we cited above because those books had yet to be printed in their time. On the other hand, everyone was well-acquainted with Rabbeinu Peretz's glosses on the *Semak* (*Sefer Mitzvot Kattan*). As a result, they thought this custom was an ancient *gezeirah* (rabbinic decree) and not merely a custom. Here are two examples among many:

1. The Maharil (R. Ya'akov Mollin, Ashkenaz, 1360-1427) cites the opinion of his teacher, Rabbi Shalom of Neustadt (Austria, died after 1413; the source is *Derashot Maharash*, ed. Spitzer, Jerusalem, 1977, pp. 42-43; I am quoting from *Minhagei Maharil*, ed. Spitzer, Jerusalem, 1989, p. 134): "All types of kitniyot -- Maharash said that we decree not to cook them on Pesah, even though they only the five species of grain can become leaven... in any case, they decreed all types of kitniyot because of them [i.e., the five species]. And a person should not say that since there is no Torah prohibition, he should not worry about this, since anything that the rabbis decreed 'whoever violates it, is liable to death' (*Berakhot* 4b) and he violates the commandment of 'You shall not deviate from what they instruct you' (*Deut.* 17:11)". It is very clear that the Maharash thought that this custom is an ancient rabbinic decree.

11

2. After quoting the *Yerushalmi* (above, source 8), Rabbi Yehiel Mikhel Epstein cited above (*Arukh Hashulḥan*, *Orah Hayyim* 453:4-5) writes: "This is a complete proof of the words of our holy rabbis who issued a decree on this and knew the reason for their decree, and although there are places where they did not follow this stringent custom (sic!), in any case, all the countries of Ashkenaz and France and Russia and Poland 'took it upon themselves and their seed' (*Esther* 9:27), this good stringency... 'and whoever breaks through a fence, a snake shall bite him' (*Ecclesiastes* 10:8). But they specifically accepted (sic!) that if there is perhaps a drought, Heaven forbid, when the poor are hungry, then all the Sages of the town led by the rabbi of the community can permit eating kitniyot on Pesah...". The verse from *Ecclesiastes* is interpreted (*Shabbat* 110a and *Avodah Zarah* 27b) in reference to someone who violates a rabbinic decree and, without a doubt, Rabbi Epstein also felt this was a formal decree issued by the rabbis of Ashkenaz, Russia and Poland.(9)

VII. The Most Reasonable Explanations for this Custom

However, the truth of the matter is there was no rabbinic decree and none of the reasons cited above is the original reason for the custom. Apparently, originally this custom was connected not to Pesah but to all *Yamim Tovim* [festivals]. The above-mentioned

Rabbeinu Manoah (Provence, ca. 1265) already explained this in his commentary on the Rambam (Hilkhot Ḥametz Umatzah 5:1). After rejecting the explanation offered by Sefer Haminhagot, he states: “Rather, it is not proper to eat kitniyot on a festival, since it is written ‘And you shall rejoice on your festivals’ (Deut. 16:14) and there is no joy in eating a dish made from kitnit”.

There is a strong proof that this is the original reason for this custom. This explanation is hinted at 400 years earlier by Halakhot Ketzuvot cited above: “and all types of kitnit are permissible on Pesah and on the festivals” or in a different version: “And all types of kitnit may be cooked, whether on Pesah or on the other festivals” (as quoted by Rabbi Shemuel of Falaise – see note 5). Apparently, already in 9th century Italy, there were those who avoided eating kitniyot on Pesah and on the other festivals because “there is no joy in eating a dish made of kitnit” (Rabbeinu Manoah, above). Why is this so? There are three possible explanations:

1. It is known from many Talmudic sources that the poor and simple folk used to eat kitniyot.(10) In addition, it should be noted that this was also the practice among the Greeks, Romans and Arabs.(11) If so, it is not surprising that there were those who thought that it is forbidden to eat kitniyot on festivals.

2. On the other hand, kitniyot, especially lentils, were eaten by mourners and on Tisha B’Av from the Talmudic period and onward.(12) Likewise, kitniyot were also the food of mourners among different peoples, such as the Romans in antiquity and the Austrians and Germans from the Middle Ages until modern times.(13) Therefore, it is not surprising that some thought that these foods should not be eaten on a festival. One can therefore assume that this is the original reason for the custom. However, over the course of time, a custom that was associated with all festivals was applied specifically to Pesah, apparently because they assumed that if the custom is connected to a food prohibition, it must be connected to ḥametz and matzah. And if you say that this is unlikely, we can reply that the same phenomenon apparently occurred with regard to Shabbat Hagadol. Originally, Shabbat Hagadol was the Shabbat before each of the three pilgrim festivals, but over time, the phrase remained associated exclusively with the Shabbat before Pesah! (14)

12

3. Prof. Ta-Shema in his article on kitniyot (pp. 276ff.) also came to the conclusion that the original custom was to avoid kitniyot on all three pilgrim festivals. Apparently, some Jews avoided kitniyot on festivals because of the law which prohibits pounding tisei with a large mortar as a preparation for cooking (Beitzah 14a). As a reaction, Halakhot Ketzuvot ruled that it is permissible to cook kitniyot on festivals because one does not need to pound them in order to cook them

VIII. "A Foolish Custom/A Mistaken Custom/An Unnecessary Stringency/A Stringency without Rhyme or Reason"

However, despite the fact that the above reason is apparently the original historic reason for this custom, there is no doubt that all of the authorities except for Rabbeinu Manoah were unaware of this. That is, in their eyes, this was a custom without any known reason and therefore they invented reasons for this custom such as the twelve different explanations we have seen above. But several authorities took a different approach. They also thought that this was a custom without a reason, but instead of justifying a surprising custom that contradicted the Babylonian Talmud and all Talmudic sources, they admitted

that there is no reason for this custom and they labeled it "a foolish custom", "a mistaken custom", "an unnecessary stringency" or "a stringency without rhyme or reason". This alternative approach is reflected in the writings of five important halakhic authorities:

1. Rabbi Shmuel of Falaise (13th century), who was, as mentioned, the first to mention the custom of halitah [boiling] kitniyot on Pesah, supports the custom, but nevertheless admits: "And even though in my opinion the words [of Halakhot Ketzuvot and the Rambam] are correct [and it is good to avoid prohibiting] (15) and the custom of our forefathers is due to a mistake, and it is not a case [here] (15) of something that is permitted [and others treated it as if it were a prohibition] (15) (Pesahim 50b-51a)..." (Or Zarua, part 2, paragraph 256, fol. 58c, bottom).

2. Rabbeinu Yeruham ben Meshulam (Provence, 14th century) was familiar with this custom, but rejected it outright: "And those who are accustomed not to eat rice and cooked kitniyot on Pesah, this is a foolish custom, unless they are doing it in order to be stringent with themselves, and I do not know why" (Toledot Adam Vehava, Netiv 5, part 3, Venice, 1553, fol. 41a and cited in the mane of R"Y by the Beit Yosef on Orah Hayyim 453, s.v., veyesh osrin).

3. The above-mentioned Rabbi Ya'akov ben Asher was aware of this custom, but rejected it: "... and this is an unnecessary stringency and this was not the custom" (Tur Orah Hayyim 453).

4. Rabbi Tzvi Hirsch Ashkenazi, the Hakham Tzvi (1660-1718) and his son, Rabbi Ya'akov Emden (1697-1776) vehemently opposed this custom and wanted to do away with it. They called it "a stringency without rhyme or reason" (Rabbi Ya'akov Emden, Sefer Mor Uketzia, Jerusalem, 1996, on Tur Orah Hayyim 453).

Undoubtedly these rabbis are correct. From a halakhic perspective (and contrary to the historical explanation we suggested above), this is a "foolish custom" or a "mistaken custom" because it contradicts the Babylonian Talmud and all the Talmudic sources and because nearly all the Jews who observed this custom throughout the generations thought it was connected somehow or other to the prohibition against eating hametz.(16)

IX. Is it permissible to do away with a foolish custom/mistaken custom?

13

If so, we must investigate if it is permissible to do away with an old custom in general and a foolish or mistaken custom in particular (see the Bibliography at the end of this responsum). We must preface our remarks by saying that there is no simple and unequivocal answer to this question. We have emphasized elsewhere(17) that throughout the generations there was a constant tension between the desire to preserve ancient customs and the need to adapt customs and laws to a new reality and changing circumstances. Furthermore, there is ambivalence even in the writings of the same authority! Here are two examples among many.

On one hand, Rabbeinu Tam said "the custom of our forefathers is Torah", "a custom is [equivalent to] halakhah" and "a custom does away with a halakhah", but, on the other hand, he said that the word מנהג [minhag, custom] is גהנום [Gehinom, Hell] spelled backwards" and that "there are customs that should not be relied on even where we learned that 'everything should follow the local custom' " (see E.E. Urbach, Ba'alei Hatosafot, fourth edition, Jerusalem, 1980, pp. 80-81). And the same is true of Rabbi Moshe Isserles, the Rema. On one hand, he wrote "and no custom should be done away

with or mocked because it was not for naught that it was instituted". On the other hand, he also wrote: "However, if the situation changed compared to what it was in the time of the Rishonim, it is permissible to change the custom to suit the times" (Orah Hayyim 690:17 with the Ba'er Heiteiv, subparagraph 15).)17(

Therefore, we will focus on our specific question: is it permissible to do away with an ancient custom when: a) It is contrary to the halakhah as codified by the Talmud, the Geonim, and most of the Rishonim; b) It has no clear or accepted reason so that five major authorities referred to it as a foolish custom/a mistaken custom/an unnecessary stringency/a stringency without rhyme or reason; c) It causes disparagement of the mitzvot because many people know that the custom has no reason; d) It causes hefsek merubeh [substantial monetary loss] for the poor who must purchase more meat, fish and matzot, because rice and kitniyot are "prohibited". The answer is affirmative. Many Talmudic sages and halakhic authorities have already discussed this issue – many permitted doing away with such a custom and some even compelled doing away with such a custom. Here are some of the sources we have found:

1. Mishnah Eruvin 10:10 = BT Eruvin 101b

Rabbi Eliezer said: It happened in the synagogue in Tiberias that they were accustomed to permit it [a certain type of door bolt on Shabbat] until Rabban Gamliel and the Elders came and forbade them. Rabbi Yossi says: They were accustomed to forbid it, but Rabban Gamliel and the Elders came and gave them permission." Tosafot (ibid., s.v. Rabbi Yossi) explain: "But if they are more stringent due to an error, it is allowed to give them permission in their presence".

2. Hullin 6b-7a:

They were accustomed to separate tithes in Bet She'an. "Testified R. Joshua b. Zeroz... before Rabbi [Judah the Prince] concerning R. Meir that he ate a vegetable leaf in Bet She'an [without separating tithes], and Rabbi permitted [people to eat without tithing produce in] the entire region of Bet She'an." Rav Nissim Gaon [North Africa, 11th century] explained in his Megilat Setarim: " 'But if the custom is based on a mistake, where they think it is prohibited and it is permitted, then he may allow it in their presence', and based on this, this episode in Bet She'an is

14

understandable because it was a mistake that they thought that it is part of the Land of Israel" (Piskei Harosh to Pesahim, Chapter 4, paragraph 3, folio 129c). This ruling of Rav Nissim Gaon is based on the following passage:

3. Yerushalmi Pesahim 4:1, ed. Venice, fol. 30d:

"Rabbi Elazar said in the name of Rabbi Avin: everything which one does not know is permitted and mistakenly treats as a prohibition, he asks [the Sages] and they permit it to him. And everything that he knows is permitted and treats as a prohibition, should he ask, they do not permit it to him."

Of course, regarding our issue, this is a double-edged sword because there are some who do not eat kitniyot because they think it is forbidden, and others who do not eat kitniyot who know it is really permissible. However, no doubt most of the people who follow this custom today, "mistakenly treat [it] as [a] prohibition" and therefore they can "ask and they permit it to him." And so ruled Rabbeinu Manoah loc. cit.: "There is no doubt that if he wanted to eat zeronim [seeds] and other types of kitniyot on Pesah, this is permitted and there is no concern of a prohibition, even if that was the custom. For it says in the

Yerushalmi (loc cit): "everything which one does not know is permitted and mistakenly treats as a prohibition, he asks [the Sages] and they permit it to him".

It should be added that the sentence highlighted in the Yerushalmi above was codified by Rabbeinu Nissim (cited above), the Rambam (see below), Ribash (see below), Tur Yoreh Deah 214, and Rabbi Yosef Karo and the Rema in Shulḥan Arukh, Yoreh Deah 214:1.

4. Yerushalmi Pesaḥim, *ibid.*, fol. 30c at bottom:

"Rabbi Yosse said: All of these things, they based on a custom". This is followed by a list of customs, some of which the Sages did away with and others they upheld. Rabbi Moshe Margalioṯ explained (in *Penei Moshe ad loc.*): "'All of these things, they based on a custom': if it is an established custom, then it is as [the Talmud] explains, and this comes to exclude a custom that is practiced by mistake".

5. Yerushalmi Pesaḥim, *ibid.*: "The net fishermen of Tiberias, the barley producers of Tzipori, and the wheat pounders of Acco [were accustomed] not to work on Hol Hamoed [even though this is halakhically permissible – Mishnah Moed Kattan 2:5]. One can understand the practice of the barley producers in Tzipori and the wheat pounders of Acco, [but] the net fishermen of Tiberias – aren't they detracting from the joy of the festival!? [And the Talmud comes up with the explanation that they fished on Hol Hamoed b'shinui, by a different method]. Rabbi Imi meikeil lon (see the explanation below) because they are detracting from the joy of the festival".

In other words, the Tiberias fishermen followed an unnecessary stringency and in so doing detracted from the joy of the festival because people could not buy fresh fish on Hol Hamoed. Indeed, this case is very similar to our case! Refraining from eating rice and kitniyot on Pesah also detracts from the joy of the festival, especially among poor people who cannot afford to purchase meat and the like, and as the Ḥakham Zvi and Rabbi Jacob Emden cited above stressed at length. Indeed, Rabbi Imi forcefully objected to the fishermen's custom. Some explain that meikel lon means that he

15

cursed them (*Penei Moshe*, *Korban Ha'edah*, and the *Rishonim* cited by Baer Ratner, *Ahavat Zion Veyerushalyim Lemassekhet Pesaḥim*, Pietrikov, 1909, p. 60). Some understood that "he permitted them to fish by all methods in order to enhance the joy of the festival" (Rabbi Yitzḥak ibn Giyyat, *Sha'arei Simḥah*, *Hilkhot Ḥol Hamoed*, p. 22 also cited by Ratner). Others understood that he was lenient with them without a formal *hatarat nedarim* [annulment of vows] (*Peri Ḥadash on Orach Hayyim 496*, subparagraph 15). In any case, Rabbi Imi vigorously opposed this custom because of the reduction of joy on the festival. If so, we too can object to this mistaken custom in order to enhance the joy of the festival.

6. *Tosafot* on *Berakhot 48a*, s.v. *veleit hilkheta*:

"Some include a minor in prayer [i.e., in the minyan] as long as he is holding a ḥumash [Pentateuch] in his hands, but Rabbeinu Tam (France, 1100-1171) says: this is a foolish custom". He then provides four reasons for rejecting this custom.

7. *Responsa of the Rambam*, ed. Blau, Nos. 308-310, pp. 566-578:

According to a *beraita* in *Shabbat 19a*, "One does not set sail on a boat less than three days before Shabbat". The *beraita* does not distinguish between a journey on a sea or on a river, but there was an old custom in Babylon and Egypt that one who travels by ship on a river, quickly disembarks on Friday afternoon even if he embarked three days before Shabbat (for details see *Otzar Hage'onim Leshabbat*, paragraph 46, p. 18 and

Ya'akov Katz, *Goy Shel Shabbat*, Jerusalem, 1984, pp. 24-26). In other words, this old custom was in direct contradiction to the Talmudic ruling. The Rambam was asked if there was a way to do away with this custom. He responded that there was no halakhic prohibition regarding this matter, and that it is apparently a custom, "and a well-known custom is something that one should be very careful about". But then the Rambam cites *Yerushalmi Pesaḥim* (above, paragraph 3) and rules that if those who followed this custom believe that it is prohibited, "it is not at all proper to let them think this, but one must protest and one informs them that what they thought was prohibited is permissible and their prohibition is based on a mistake, because it is not at all proper to entrench the mistake..." (No. 308, p. 568 and cf. No. 310, p. 577-578; for a different version of No. 308, see ed. Blau, Vol. 4, Jerusalem, 1986, pp. 10-16, and especially, p. 13).

8. Responsa of the Rosh 55:10 (but cf. *Piskei Harosh to Pesaḥim*, Chapter 4, paragraph 3):

In this responsum, Rabbeinu Asher ben Yehiel (Ashkenaz and Sepharad, 1250-1327) discusses at length the power of a custom and the possibility of changing it.

a. At the end of the responsum, he discusses an ancient custom in Toledo, whereby a woman has the right to bequeath her assets to whomever she wishes and regarding this he says: "Certainly, this was a mistaken custom... and I said this is not a custom which justifies the transfer of money. Therefore, even if they followed this custom for generation after generation according to the Rishonim, the erroneousness of the custom [is clear] and it should be done away with because it entails transgressing the words of the Torah". This case dealt with monetary law, but it is nevertheless apparent that according to the Rosh, a mistaken custom that is contrary to Talmudic law must be done away with.

b. At the beginning of the same responsum, the Rosh discusses customs related to ritual law. At the outset, he says that a custom that entails a transgression must

16

be changed, even if this custom was instituted by great rabbis. "And not only customs that entail a transgression must be changed, but even a custom instituted as a precaution and preventive measure which could lead to a distortion, should be done away with." As an example, he cites the incident at the end of *Pesaḥim* 50b about the sons of Ḥozai who used to separate Hallah from rice bread (in line with Rabbi Yohanan ben Nuri's approach in Source 7 above). They came and related this to Rav Yosef and he ruled: let a stranger [i.e., someone who is not a Kohen] eat it in front of them to show that rice is permitted without separating Hallah from it. The Rosh continues: "because they were afraid lest they separate Hallah from something that is obligated on something which is exempt and vice versa, because, due to the custom, they will think that rice is a type of grain. And so we say in the *Yerushalmi* (apparently *Ma'aser Sheni* 5:3, 56b at top): where the halakhah is uncertain, follow the custom... but where there is no uncertainty in the halakhah, you should not follow a custom that is contrary to the halakhah." The Rosh's remarks are amazingly appropriate for our issue:

1) Even if this is a custom that was instituted as a precaution and preventive measure and in accordance with Rabbeinu Peretz's approach, it should be done away with if it may lead to distortions.

2) Rav Yosef eliminated the custom of the sons of Ḥozai because, as a result of the

custom, people will think that rice is a type of grain. This is exactly what happened regarding kitniyot on Pesah and therefore we should eliminate this custom.

3) Where this is no uncertainty in the halakhah – as in our case – you should not follow a custom that is contrary to halakhah.

9.

Rabbi Menaḥem ben Aharon ibn Zerah (Spain, 1310-1385) discusses customs in the introduction to his book, *Tzeidah Laderekh*: "The fifth section: takkanot and customs instituted by the Sages throughout the generations, and our Sages z"l said: 'a custom does away with a halakhah' (Yerushalmi Bava Metzia 7:1, fol. 11b; Yerushalmi Yevamot 12:1, fol. 12c) and every custom that was followed based on a Sage's advice and practiced to regulate something should not be taken leniently. But if it is a mistaken custom, such as every custom that was practiced because they thought there was a prohibition involved and not for another reason, changing such a custom is permitted".

10. Responsa of the Ribash, No. 256:

Rabbi Yitzhak bar Sheshet (Spain and North Africa, 1336-1408) argues that prohibited things that were treated as permitted "this is a mistaken custom and is nothing, because even if they prohibited things that are permissible because they did not know they were permissible, and later on found out the truth, there is no need for them to treat them as prohibited and they need not ask a Sage, because it is a mistaken custom as it says in the Yerushalmi (paragraph 3, above)..." (also cf. the end of No. 345).

11. Rabbi Eliyahu Mizrahi, *Teshuvot She'eilot*, Constantinople, 1560, No. 16 (quoted by Benayahu, p. 288):

Rabbi Mizrahi (Constantinople, 1450-1526) vehemently opposed bad customs: "With a bad custom that is not according to the essence, it is an annulled custom for all *Tzeidah Laderekh*, Introduction, ed. Warsaw, 1880, p. 2:

17

people and there is no obligation to follow it even if the prohibition spread to the entire city...". He continues: "the power of the custom cannot spread to include someone who does not want that custom against his will". Hence, in our case, we are not obligated to follow this bad custom and it does not have the power to include someone who does not want it.

12. *Shu"t Radbaz Hayeshanot*, Livorno, 1652, No. 94, fol. 32c (quoted by Benayahu, p. 287):

Rabbi David ibn Zimra (Egypt, 1480-1574) writes: "a halakhah is not established until there is a established custom, but the custom does not annul an established halakhah". If so, in our case, the custom does not have the power to uproot an established halakhah of the Talmud, Geonim and Rishonim.

13. *Shulhan Arukh*, *Orah Hayyim* 605:1:

Rabbi Joseph Karo (Turkey and Israel, 1488-1575) strongly objected to the custom of kapparot. In most editions of the *Shulhan Arukh*, this section is entitled: "The Custom of Kapparot on Erev Yom Kippur", but early editions, such as the Cracow edition of 1578, state: "The Custom of Kapparot on Erev Yom Kippur is a Foolish Custom". In the text itself, Rabbi Karo writes: "the custom they practice of doing kapparot on Erev Yom Kippur... this custom should be prevented". In other words, one should do away with a foolish custom, and this despite the fact that the custom of kapparot is already

described in detail by Rabbi Sheshna Gaon in the seventh century (Otzar Hageonim Lemasekhet Yoma, p. 62, paragraph 216), 600 years before the custom under discussion here! Indeed, as a result of Rabbi Yosef Karo's words, many Sephardim did away with this custom.

14. Levush Hatekhelet, Hilkhhot Birkat Hamazon 193:6:

Rabbi Mordechai Yaffe (Poland, 1530-1612) strongly opposed the custom of not doing a zimmun [quorum of three or ten] for Birkat Hamazon in the house of a Gentile: "They have no one to rely on, because there is no basis or proof to be found for this custom." After he cites the Rema's attempt to justify this custom, he adds: "If I were not afraid, I would say that this custom is not a custom of scholars [vatikim (17a)] and a person who changes it has not lost [anything]... perhaps the beginning of the spread of this foolish custom [stems from] their mistake in one passage [Beitzah 21b]... Therefore, one should not protest against those who are accustomed to do the zimmun in the house of a Gentile".

15. Peri Ḥadash, Orah Hayyim 496, Kuntress al Haminhagim, item 9:

Rabbi Ḥizkiya de Silva (Livorno and Jerusalem, 1659-1695) discusses our very topic: "Rabbi Y. Halevy wrote in No. 35 that those who are accustomed not to eat rice on Pesah -- if they do so because they believe that rice becomes leavened, one permits them by asking a rabbi and annulling [their vow], and if they know that rice does not leaven but wanted to be strict about them because of the possibility of a mixture [ta'aroret] or a decree... then it is forbidden to permit them even if they ask a rabbi...". However, Rabbi de Silva disagrees: "Rather, if they followed this custom because they thought that rice leavens, then it is a mistaken custom and one informs them that they are permitted to eat it without an annulment, but if they wanted to be strict with themselves, one permits it to them if they express remorse, and one permits it to their children by any method including annulment". (For other Aḥaronim who maintained this position, see Ḥazon Ovadia, p. 55, note 5.)

18

16. Rabbi Raphael Mordechai Malki, Commentary on Exodus, Ms. Jerusalem 31, fol. 90b (quoted by Benayahu, p. 287):

Rabbi Raphael Mordechai Malki (Jerusalem, 17th century), father-in-law of Rabbi Ḥizkiya de Silva cited above, writes: "Regarding any matter for which there is a known halakhic ruling, one who goes against the halakhic ruling is doing a prohibition, and this does not depend upon a custom". According to this opinion, we are prohibited from avoiding rice and kitniyot on Pesah, because there is a known halakhic ruling that permits it.

One can cite other halakhic authorities, but the bottom line is that it is possible to do away with the custom under discussion for several reasons:

- a) The custom was followed because of a mistake and, in such a case, "he asks [the Sages] and they permit it to him" (Source 3 above) or "they need not ask a Sage, because it is a mistaken custom" (Source 10 above).
- b) It detracts from the joy of the festival and Rabbi Imi already permitted eliminating -- or at least objected to -- such a custom (Source 5 above).
- c) The custom cannot annul an established halakhah (Source 12 above).
- d) There is no obligation to follow a bad custom (Source 11 above).

X. Ashkenazim, Sephardim, and the Unity of the Jewish People

Lastly, we would like to briefly address an important point vis-à-vis this custom: is it desirable to perpetuate the differences between Ashkenazim, Sephardim, Italians, and Yemenites in Israel and the Diaspora? Perhaps it is preferable to eliminate these distinctions and create one united Jewish people? This is a worthy topic, deserving a book of its own. Indeed, an entire book has already been written on the history of the relationship between Ashkenazim and Sephardim (18) and the author, to some extent, addressed this topic.(19) Authorities opposed to changes in Hebrew pronunciation or variations in the prayer service often quote the verse “My son, listen to the instruction of your father and do not forsake the Torah of your mother” (Proverbs 1:8 and Pesahim 50b). Undoubtedly, there is something beautiful in each ethnic community preserving its unique traditions. In so doing, they honor their ancestors and their communities of origin which, in many cases, no longer exist. On the other hand, we have a desire to fulfill the verse “And who is like Your people Israel, one united nation on Earth” (I Chronicles 17:21), which -- according to a beautiful Agaddah (legend) found in the Talmud (Berakhot 6a) -- is the verse inscribed in the Tefillin which God puts on every morning! If we want to become “one united nation on Earth”, we must start the slow process of unifying our laws and customs. In 1950, the Chief Rabbinate of Israel enacted several Takkanot regarding marriage intended to unite the Jewish people.(20) Later on, the Chief Rabbinate of the IDF published a Siddur with a unified prayer service for IDF soldiers(21) and it behooves us to continue these trends.

Unfortunately, today there is constant movement from the Sephardic to the Ashkenazic, from the lenient to the stringent. Sephardic rabbis dress like Ashkenazim, study halakhah like Ashkenazim and issue halakhic rulings like Ashkenazim. Instead of the moderate Sephardic tradition(22) moderating the Ashkenazim, we are witnessing the opposite process. With regard to our case, instead of Ashkenazim starting to eat rice and kitniyot on Pesah, in accordance with the halakhah, there are Sephardim who are adopting this "mistaken custom which has no rhyme or reason" (see above, V, 2). Hence, the issue under discussion has the

19

potential to unite the Jewish people without losing anything. Indeed, the Chief Rabbinate of the IDF ruled many years ago that all IDF soldiers are permitted to eat rice and kitniyot on Pesah,(23), but this was later rescinded. Nonetheless, we should adopt this ruling in Israel and the Diaspora. In so doing, we will differentiate between halakhah and a mistaken custom, enhance the joy of the festival, ease the burden of those with limited means, and move another step closer to uniting the Jewish people throughout the world.

David Golinkin

Jerusalem

The Third Day of Hanukkah 5776

20

Notes

1. This midrash appears with minor changes in Mekhilta Derabi Yishmael, *ibid.*, Parashah 17, p. 64; Sifrei Bamidbar, Parashat Pinhas, Piska 146, ed. Horowitz, p. 193; and Midrash Tannaim on Devarim, ed. Hoffmann, pp. 90-91.

1a. I have purposely not translated a few words in this mishnah because there is considerable disagreement as to what they mean. See, for example, Yehudah Feliks, *Hatzomeah V'hahai Bamishnah*, Jerusalem, 1983, pp. 83, 155, 161, 183, 189, 190.

2. "Karmit" has not been clearly identified. See Otzar Hage'onim Lifsahim, Responsa section, p. 33, paragraph 83: Rabbeinu Hananel to Pesahim 35a; Ha'itur, Hilkhot Matzah U'maror, fol. 127b; I. Low, Die Flora der Juden, Vol. 1, Wien and Leipzig, 1928, pp. 703-707; Rabbi Saul Lieberman, Tosefta Kifshuta to Hallah, p. 791 and to Pisha, p. 500; and Yehuda Feliks, Olam Hatzomeah Hamikra'i, second edition, Ramat Gan, 1968, p. 150, note 19.

3. This translation was not written by Yonatan b. Uziel, Rabbi Akiva's student. This is proven by Megillah 3a and see, for example, Yomtov Lipmann Zunz and Hanoch Albeck, Haderashot Beyisrael Behishtalshelutan Hahistorit, Jerusalem, 1947, p. 36ff.; David Rieder, Sinai 59 (5726), pp. 281-282; Encyclopaedia Judaica, Vol. 4, col. 845.

4. The text of the Yerushalmi is corrupt. I am correcting and interpreting it on the basis of Rabbi Saul Lieberman, Hayerushalmi Kifshuto, Jerusalem, 1935, p. 403 and Z.W. Rabinowitz, Sha'arei Torat Eretz Yisrael, Jerusalem, 1940, p. 122.

5. Halakhot Ketzuvot, ed. Mordechai Margaliyot, Jerusalem, 1942, pp. 90, 93 and the two passages are quoted in Sefer Hapardes, ed. Ehrenreich, Budapest, 1924, pp. 46, 47. The second passage is also quoted by Rabbi Samuel of Falaise in Sefer Or Zarua, part 2, paragraph 256, fol. 58c on the bottom: "and in the She'iltot of Rav Aḥai I found written at the end of the laws of Pesah". I have shown elsewhere (Kiryat Sefer 62 [5748-5749], pp. 433-438), that this was a quote from Halakhot Ketzuvot.

6. This addition appears in the Ms. Vatican 266 of Rabbi Samuel of Falaise's commentary on the liturgical poem "Elohei Haruhot Lekhol Basar" (quoted by E.E. Urbach, Ba'alei Hatosafot, fourth edition, Jerusalem, 1980, p. 464, note 18) and in a manuscript of Sefer Mitzvot Katan which was in the Hungarian National Museum (quoted by Samuel Cohen in Magazin fur die Wissenschaft des Judenthums 4 [1887], p. 98).

Throughout this responsum I have referred to the opinion of Rabbeinu Peretz. However, this may actually be the opinion of Rabbi Yitzhak of Corbeil, the author of the Semak – see Ta-Shema, note 3.

7. This is missing from our version of Hagahot Maimoniyot as well as from Hagahot Rabbeinu Peretz on Sefer Mitzvot Katan quoted above, but the passage does appear in Hagahot Maimoniyot on the Rambam, ed. Constantinople, 1509 (facsimile, Jerusalem, 1973), fol. 126b in the name of ס"ק = Sefer Hamitzvot Hakatan.

8. There is extensive literature about Responsa Besamim Rosh. See for example: Hida, Shem Hagedolim, Ma'arekhet Sefarim, s.v. ש"ר א בשמ"ם; Rabbi Hayyim Mikhal, Or Haḥayyim, Jerusalem, 1965, pp. 262-263; Leopold Zunz, Die Ritus, Berlin, 1859, pp. 226-228; Rabbi David Tzvi Hoffmann, Responsa Melamed Leho'il, Oraḥ Hayyim, No. 60; Rabbi Reuven Margaliyot and Yitzhak Werfel, Areshet (5704), pp. 411-418; Rabbi Ovadia Yosef, Responsa Yabia Omer, part 2, Yoreh Deah, No. 24:4-6; Rabbi Yeruham Fischel Perla, Noam 2 (5719), pp. 317-324; Moshe Samet, Kiryat Sefer 43 (5728), pp. 432-433, 436-440; Meir Wunder, ibid., 44 (5729), pp. 307-308; Encyclopaedia Judaica, vol. 4, cols. 663-664; Rabbi Louis Jacobs, Theology in the Responsa, London and Boston, 1975, pp. 347-352; Rabbi M.M. Kasher, Sarei Ha'elef, second edition, Jerusalem, 1979, pp. 352,

21

637; and Rabbi Reuven Amar, Kuntras Yafeh Labesamim, in Responsa Besamim Rosh, ed. Jerusalem, 1984.

9. For other Aḥaronim who justified the custom of prohibiting kitniyot, see Rabbi Moshe Sofer, *Responsa Ḥatam Sofer, Orah Hayyim*, No. 122 along with the commentary of Katz, pp. 377-378; Rabbi Tzvi Hirsch Chajes (*Hayyot*), *Minḥat Kena'ot, Kol Sifrei Maharitz Hayyot*, vol. 2, Jerusalem, 1958, pp. 1027-1030; Rabbi Avraham Danzig, *Nishmat Adam to Hayyei Adam, Hilkhoh Pesah*, 128:20; the Aḥaronim quoted by Rabbi Zevin, p. 258, note 18 and pp. 261-262 and those cited by Rabbi Felder, pp. 400-401.

10. *Tosefta Peah* 4:8, ed. Lieberman, p. 57; *Yerushalmi Terumot* 8:7, fol. 46a; *Bereishit Rabbah* 38:3, ed. Theodor-Albeck, p. 352; *Kohelet Rabbah*, end of Parashah 1, ed. Vilna, fol. 6d; *Esther Rabbah* 2:4, ed. Tabory-Atzmon, p. 54; *Tanḥuma Aḥarei Mot* 1; *Ketubot* 67b; *Soferim* 21:3, ed. Higger, p. 356. Although according to *Mishnah Beitzah* 1:8; *Tosefta Yom Tov* 1:21-22, ed. Lieberman, p. 285 = *Beitzah* 14b; and the *Bavli* *ibid.*, 12b there were Sages who ate kitniyot and lentils on festivals, it seems that they no longer did so in the Middle Ages. For these sources, see *Jewish Encyclopedia*, s.v., Lentils; Julius Preuss, *Biblical and Talmudic Medicine*, New York, 1978, p. 565; Immanuel Löw (above, note 2), vol. 2, p. 446; Yehuda Feliks (above, note 2), pp. 156-163; Moshe Ber, *Amora'ei Bavel*, second edition, Ramat Gan, 1982, pp. 295-296 and note 21.

11. Hugo Blümner, *The Home Life of the Ancient Greeks*, London, 1893, p. 208; *Oxford Classical Dictionary*, second edition, Oxford, 1970, p. 443; Theodor Gaster, *The Holy and the Profane*, second edition, New York, 1980, p. 177 in note.

12. The Church Father Jerome testified that his Jewish contemporaries ate lentils when in mourning – see *Epistle 22 Ad Paulum*. For Talmudic sources, see *Yerushalmi Berakhot* 3:1, fol. 6a; *Bereishit Rabbah* 63:14, ed. Theodor-Albeck, p. 698 = *Bava Batra* 16b = *Pseudo-Jonathan to Genesis* 25:29 = *Tanḥuma Buber*, *Toledot*, paragraph 3, pp. 125-126; *Pirkei Derabi Eliezer* 35, ed. Warsaw, 1852, fol. 81b; *Semaḥot* 14:13, ed. Higger, p. 209 and ed. Zlotnick, p. 40. Regarding these sources, see N. Brull, *Kobak's Jeschurun* 8 (1871), pp. 30-33; B.Z. Bacher, *Hagoren* 1 (5658), p. 64; A. Buchler, *Am Ha'aretz Hagelili*, Jerusalem, 1964, p. 149, end of note 26; Jakob Horovitz, in *Festschrift... Jakob Guttmans*, Leipzig, 1915, pp. 138-139, in note 2; Louis Ginzberg, *Legends of the Jews*, Vol. 5, Philadelphia, 1925, p. 277, note 41; A. Marmorstein, in: *Moses Gaster Anniversary Volume*, London, 1936, p. 449; Levi Ginzberg, *Perushim Veḥiddushim Bayerushalmi*, part 2, New York, 1941, pp. 57-59; Rabbi Tuvia Friedman, in: *Be'er Tuvia*, Jerusalem, 1991, Hebrew section, pp. 25-26.

For lentils as a symbol of mourning in the Middle Ages, see, for example, Rabbi Yitzḥak ibn Giyyat, *Sha'arei Simḥah*, part II, Furth, 1862, p. 51; Maharil, ed. Spitzer, Jerusalem, 1989, *Likutim*, p. 614 and *Shulḥan Arukh Yoreh Deah* 378:9. For lentils on Tisha B'Av in the Middle Ages, see, for example, *Sefer Hamanhig*, ed. Raphael, Jerusalem, 1978, p. 293 and the literature cited there; *Tzeidah Laderekh*, ed. Warsaw, 1880, fol. 143a; Tur, *Beit Yosef*, *Shulḥan Arukh*, *Levush*, and *Birkei Yosef to Orah Hayyim* 552.

13. See Marmorstein (in previous note) and Gaster (above, note 11), pp. 176-177.

14. See for example, *Shibolei Haleket*, paragraph 205, ed. Buber, p. 160 and Rabbi Shlomo ben Hayatom, *Commentary to Masekhet Mashkin*, Berlin, 1910, p. 15. On “Shabbat Hagadol” prior to the three pilgrim festivals and Rosh Hashanah, see: Eliezer Landshuthe, *Maggid Meireishit*, Berlin, 1855, p. xxi; Zunz, *Die Ritus*, Berlin, 1859, p.

10; H.D. Chajes, *Rivista Israelitica* 7 (1910), p. 153 in middle of note; Yitzhak Moshe Elbogen, *Hatefillah Beyisrael Behitpatḥutah Hahistorit*, Tel Aviv, 1972, p. 163 and p. 22

439, note 29; Rabbi Shem Tov Gaguine, *Keter Shem Tov*, Kaidan, 1934, p. 177; Shimon Bernstein, *Ḥorev* 5/9-10 (Nisan 5699), p. 114; Rabbi M. M. Kasher, *Haggadah Shleimah*, third edition, Jerusalem, 1967, p. 54; Akiva Ben Ezra, *Minhagei Ḥagim*, Jerusalem-Tel Aviv, 1963, p. 209 = *Shanah Beshanah*, 5742, pp. 276-277; Shlomo Ashkenazi, *Dor Dor Uminhagav*, Tel Aviv, 1987, pp. 121-122. Zunz, Elbogen and Ben Ezra claim that the name was transferred from Pesah to the other festivals, but they do not prove this claim. From the above sources, it sounds as if all these Sabbaths were originally referred to as "Shabbat Hagadol"; Rabbi Kasher apparently had the same opinion.

15. I am correcting according to MS Vatican 266 cited above (note 6). The pages there are not numbered.

16. It is interesting to note that Reform rabbis reached the same conclusion at the Breslau conference in 1846: "The custom of not eating kitniyot on Pesah, including rice, has no basis and should not be observed". See *Ve'idot Harabbanim Begermania Bashanim* 1844- 1846, Jerusalem, 1986, p. 63 and *JQR Old Series* 18 (1906), p. 651. It should be stressed, however, that most of the decisions from that conference were not based on halakhic considerations and are contrary to my halakhic worldview.

17. See my book *The Status of Women in Jewish Law: Responsa*, Jerusalem, 2012, pp. 328-330.

17a. See *Massekhet Soferim* 14:16, ed. Higger, p. 271 and David Golinkin, *Sidra* 13 (1997), p. 55.

18. H.J. Zimmels, *Ashkenazim and Sephardim*, London, 1958, 347 pages.

19. *Ibid.*, Part Three.

20. For the text of the regulations, see Bentzion Sharshevsky, *Dinei Mishpaḥah*, third edition, Jerusalem, 1984, p. 570.

21. *Maj. Gen.* Shlomo Goren, *Siddur Tefillot Leḥayal Lekhol Hashanah*, Nusah Aḥid, sixth revised edition, Tel Aviv, 1968. On the need to unite the prayer services of different ethnic Jewish communities, see S.D. Luzzatto, *Mevo Lemahzor Benei Roma*, ed.

Goldschmidt, Tel Aviv, 1966, p. 78 and A.M. Haberman, *Al Hatefillah*, Lod, 1987, pp.

15-16. On the need to unite the Jewish ethnic groups in Israel today, see Rabbi Yosef Kafih (Kaph), *Ketavim*, Vol. 1, Jerusalem, 1989, pp. 100-101 and Avivit Levi, *Holeikh Tamim*, 2003, pp. 163-164; Rabbi Yuval Sherlo, *Reshut Harabbim*, Petah Tikvah, 2002, pp. 87-88; Rabbi Hayyim Sabbato, *Bo'i Haruah*, Tel Aviv, 2007, pp. 26-27.

22. Zvi Zohar, *Halakhah Umodernizatziyah... 1882-1922*, Jerusalem, 1983; Moshe Bar-Yuda, editor, *Halakhah Upetiḥut: Ḥakhmei Morocco Kefoskim Ledoreinu*, 1985.

23. I did not find the original permission in writing, but it is widely known. For partial permission, see Rabbi S. Min-Hahar, *Dinei Tzava Umilḥamah*, Jerusalem, 1971, p. 138, paragraph 303.

23

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