

Transcript of Video Interview with Machon Shilo's Rabbi David Bar-Hayim "Kitniyot-When To Jettison a Minhag"

Q: Amongst Ashkenazi Jews there is a longstanding custom not to consume kitniyot, legumes, on Passover. Is this custom still binding?

A: Your question, the way that you word your question implies that this custom was, originally, at some point binding, and perhaps today is not so. But, I would disagree with that implication. It is my view that the custom amongst the Ashkenazim of not consuming kitniyot during Pesach was never binding. And the reason for this is very simple. We can divide the explanation as to why it was never binding into two, basically. First of all, we have the fact that the earliest mentions of this minhag are to be found in medieval France, Southern France and Northern France. And amongst those Rishonim who mention it, such as the Ba'al Sefer HaMinhagot, Rabbeinu Asher MeLunelle, who was the first to mention this practice; amongst these Rishonim who mention this minhag, the majority of them are against the minhag. A majority of them mention that there are people who act in this fashion but they themselves seriously question and in fact very often outright cancel any halakhic validity that such a minhag may have. We find that Rabbeinu Yerucham, also from the South of France, Provence, refers to it as a "minhag shtut". Someone familiar with the literature of the Rishonim, will know, will understand that such a statement is very strong, very powerful language, and very unusual. It is very difficult to find examples of a widespread minhag where a Rishon comes along and says "this is a worthless and baseless minhag" which is in fact downright "shtut", which means stupid and without any rationale whatsoever. But, the fact is we find this statement repeated by other Rishonim as well. We find that Rabbeinu Shmuel MePlaize refers to this minhag...He says that it seems to me this is a mistake, this minhag is a mistake. Also, a very rare and unusual statement to hear from the lips of an Ashkenazi Rishon regarding a minhag which was already somewhat widespread at least in his time. We find that both the Rosh and his son, the Tur come out explicitly against this minhag. They are fully aware of it. They refer to it...the Rosh, on the one hand, says and goes out of his way to say that it is permissible to eat all manner of legumes, kitniyot, including rice on Pesach. His son, Rabbeinu Yaakov Ba'al HaTurim goes out of his way to stress that this is a "humra yethera", an unnecessary stringency; this is a very important point which I will speak about in a moment. He comes down against the minhag. The fact that so many of the major Rishonim, so many of the major Poseqim who were "on the ground", who were familiar with this practice and familiar with the rationale given for this practice, and were aware of the fact that the essential and primary reason for this minhag, as mentioned in a number of sources, such as Maharam Halwa, talmid of the Rashba in his hidushim on Maseheth Pesahim, and such as Rabbeinu Asher in Sefer HaMinhagot-they explicitly state that those who have this minhag claim that kitniyot are a form of hammess, which is clearly impossible and clearly wrong. The fact that they knew these facts, were aware of the arguments for this minhag and came down so clearly against it, the fact that in the

Smak, Sefer Mitzvot HaKatan, we find that in the Mordechai we find written explicitly that Rabbeinu Yechiel MeParis and Rabbeinu Yehudah MeParis, two of the greatest of the Ba'alei HaTosafoth, ate kitniyot on Pesah despite their awareness, their familiarity with this minhag. All this tells us that there is something fundamentally wrong and mistaken with regards to this minhag. And, therefore, this minhag does not comply with the basic conditions...and that is...now we move on to the second point...this minhag does therefore not comply with the basic condition laid down at the end of Perek 14 of Masheheth Soferim where it states that a minhag is binding and meaningful when it has a Tora rationale behind it, when it can be explained in rational terms, but if it can be shown that it is based on a mistake or an error and that the vatikin, that is to say, the great hachamim did not accept this minhag, then such a minhag has no standing whatsoever. So when Rabbeinu Yechiel MeParis, Rabbeinu Yehudah MeParis, Rabbeinu Shmuel MePlaize, when Maharam Halwa, and the Mordechai, and the Rosh, and the Tur, and Rabbeinu Yerucham all tell us that this is either a minhag shtut or a humra yethera, which means that the entire practice is unnecessary, mistaken, and based on some kind of historical error or some form of confusion that crept into Judaism, when we are told this by so many important and outstanding Tora sages, then we are not speaking about a minhag which complies with the basic requirement of all minhagim to be reasonable, that is to say to have some cogent, Tora reasoning, some halakhic reasoning behind it that can be explained, that is beyond reproach. When so many people, so many Tora sages were opposed to a minhag, such a minhag is not binding. Furthermore, there is another consideration which is also very important in my view and that is the statement in the Tashbeitz. The Tashbeitz is a book written by the talmid muvhak and mesharet of Maharam MeRothenberg, the famous Rabbeinu Meir Baruch MeRothenberg, one of the great Ashkenazi Rishonim. And he writes in Siman תקלז of his book Tashbeitz, which is based on things that he heard and saw Maharam MeRothenberg say and teach and do; in other editions it's Siman תקם, but the correct version is תקלז-there it states that ,quoting the Talmud Yerushalmi in Masecheth Terumoth:

"כשם שאסור להתיר את האסור, כך אסור לאסור את המותר."

Just as it is forbidden to say that that which is forbidden is permissible, so it is forbidden, it should never be the case that a poseq, that a halakhic authority, states that something which is permissible is in fact forbidden. Even though we don't have the statement in the Yerushalmi in front of us, this is an important statement, a very important and illuminating statement. It is not a simple matter to come along and tell people..something...such and such a thing is assur-you must not do so. There has to be good reason, there have to be solid sources for something to be assur, and if you can not produce those solid sources, if no convincing argument can be brought to bear regarding such a custom, then such a custom is not to be taken seriously.

And I seriously wonder, I have wondered on many occasions, whether minhagim such as this one, which is clearly against halacha, which is clearly being "osser davar hamutar", which is clearly stating that that

which is entirely permissible is in fact forbidden; if such minhagim do not distance many people from the Tora; does such a practice bring Jews closer to the Tora? Does such a practice bring our children and our friends and family who perhaps are not as observant as ourselves-does this bring them closer to the Tora-or does it simply add to their impression that Judaism is full of inscrutable and unreasonable demands and prohibitions, and if only they were to know that in fact sometimes they are correct;some of the impression that certain things in Judaism are unreasonable is in fact based on reality, on facts, then perhaps they would change their position regarding Judaism. This is a tragedy that Judaism should be presented as something which makes all kinds of things assur, when in fact they are completely mutar. And therefore, seeing that this minhag is so dubious from its very inception-it was regarded as very dubious-seeing that so many great Tora sages throughout history have been against it and we see today to what it has led, to an ever increasing cycle of humra and obsession with everything regarding Pesach and kitniyot, such a minhag must and should be dropped without further ado.