

Bringing the Geulah Through Mekhirat Chametz

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Mekhirat chametz sometimes gets a bad rap. The widespread practice of observant Jews selling their *chametz* to a non-Jew prior to Pesach, and thus avoiding the prohibitions of *bal yeraeh* and *bal yematze* while preserving the *chametz* for repossession after Pesach, is sometimes seen as a way of (not) having one's cake and eating it too; an evasion that perhaps fulfills the technical imperative of the Torah directive (and perhaps not), yet seems to be artificial and contrived in nature. The ambivalence toward this practice (as well as other "sale" approaches, which are subject to varying degrees of controversy) is reflected in the joke that is told about a rabbinic ban on smoking: the orthodox Jews aren't worried, as they will simply sell their lungs to a non-Jew.

This conflicted attitude is played out in the halakhic literature. True, the *Tosefta*² does speak of a situation in which a Jew, finding himself stuck at sea as Pesach approaches, transfers ownership of his *chametz* to a non-Jewish fellow traveler, and reclaims it after the holiday. However, the impression is one of an unplanned, non-ideal, and isolated incident; the current reality, where entire communities plan in advance to preserve their stocks of *chametz* through annually scheduled arrangements with their local rabbi, appears to be a significant expansion of the depicted scenario.

A more commonly heard complaint is that the sale seems like a joke: the *chametz* does not leave the original owner's residence (something some *poskim* insisted should happen³); the purchaser does not appear interested in actually taking possession of the *chametz*;⁴ rarely if ever does the seller have to open his doors and cabinets to the new owner of his food; and the *chametz* invariably reverts to its original ownership immediately after *Pesach*.

¹ Adapted from a post on the RCA Text and Texture blog

² *Pesachim* 2:6-7

³ See *Terumat HaDeshen* 119 and *Bach*, OC 448, s.v. *katav*.

⁴ See *Machatzit HaShekel*, O.C. 448:4; *Responsa Chatam Sofer*, YD 310; *Responsa Li-Horot Natan*, II, 27

Rabbenu Yerucham,⁵ commenting on the *Tosefta's* ruling, asserts that one who utilizes this option should not engage in *ha'aramah* (evasion of the *halakhah*). The *Beit Yosef*⁶ questions this requirement as the entire plan appears to be a *ha'aramah*, and yet, it is permitted!

Persistent Controversy

Controversy over the sale has persisted over the generations, despite its increasing usage, and while some of the objections focused on the more problem-fraught method of a rabbi purchasing his congregants' *chametz* in order to sell it to a non-Jew,⁷ it is clear that some great rabbinic authorities⁸ objected even to the more prevalent current practice, where the rabbi does not purchase the *chametz* but rather acts as an agent to sell it to the purchaser.⁹

The *Bekhor Shor*¹⁰ asserts that *mekhirat chametz* is indeed a *ha'aramah*, and for that reason is ineffective against a biblical prohibition of owning *chametz*. He assumes, however, that the *chametz* at hand is only subject to a rabbinical prohibition, because, as the Talmud¹¹ states in the context of *bedikat chametz*, the *bitul* of *chametz* is effective to negate the Torah prohibition.¹² Thus, while the practice, as a *ha'aramah*, is improper for addressing a biblical prohibition, it is nevertheless appropriate, as the ownership of *chametz*, following *bitul*, is only a rabbinic prohibition.¹³

However, many *achronim*¹⁴ challenged that premise, noting that the *chametz* that is negated is not the same *chametz* as that which is sold, and thus a biblical prohibition would still apply; as such, one who would utilize *mekhirat chametz* must be comfortable that it is effective on a Torah level.¹⁵

R. Moshe Shternbuch, in his responsa¹⁶, suggests an alternate reason to deem the situation a rabbinical prohibition, noting that the area in which the *chametz* is located is leased out to the purchaser (presumably with full intent) and that the view of many *rishonim* is that one is not in violation of *bal yirae* on a Torah level for owning *chametz* that is physically in the possession of another (“*eino b'rshuto*”).¹⁷ Thus, the *Bekhor Shor's* premise can be upheld for other reasons.

⁵ *Netiv V*, part V, 46a

⁶ *Orach Chaim* 448:5

⁷ See, for example, R. Uri Shraga Feivush Toubish, *Reponsa Uri Vi-Yish'i*, 121.

⁸ See, for example, *Responsa Shoel U'Meishiv*, II, 2:77.

⁹ On this distinction, see also R. Ya'akov Ariel, *Resp. Bi-Ohalah Shel Torah*, I, 59.

¹⁰ *Pesachim* 21a

¹¹ *Pesachim* 10a.

¹² Others who accepted this premise include *Ketzot HaChoshen*, 194:4; *R. Meshulam Igra*, *Responsa* 39:1, and R. Natan Note Kahane, *Resp. Divrei Rinanah*, 30 (and see the extensive references in the footnotes, # 11, by R. Yitzchak Hershkowitz). See also R. Yitzchak Shmuel Shechter, *Responsa Yashiv Yitzchak X*, OC 9.

¹³ Further, it would certainly be effective in addressing the question of eating the *chametz* after Pesach, as that is generally understood to involve only a rabbinic prohibition (when owned over the course of Pesach). See *Responsa Shevet HaKehati*. IV, 127.

¹⁴ See for example *Mekor Chaim* 448:9; see the lengthy analysis of *Responsa Minchat Yitzchak*, VIII:41.

¹⁵ The Kogalglorver Rav offers a creative explanation of the *Bekhor Shor's* view in his *Responsa Eretz Tzvi*, I, 84.

¹⁶ *Teshuvot Vi-Hanhagot*, V, 112

¹⁷ As R. Shternbuch notes, this presumption is also found in *Responsa Chatam Sofer* O.C. 119.

However, R. Shternbuch then proceeds to express reservations of the *mekhirah* on other grounds, such as a debate among *poskim* as to whether the area of the *chametz* should be sold or leased, and questions as to whether any of the many forms of “*kinyan*” used are effective between Jews and non-Jews. In a different responsum, R. Shternbuch expresses concern about the methodology of repurchasing the *chametz* after Pesach, and whether or not the process is carried out appropriately. (Among other considerations, it is vitally important that the *chametz* is sold back in a new transaction, rather than in a nullification of the original sale; otherwise, it will be determined retroactively that the *chametz* was never sold, and was in Jewish possession during Pesach.)

Indeed, there are many who have adopted a policy not to sell *chametz gamur*, presumably reflecting a lack of confidence in the sale’s efficacy together with the assumption that the *chametz* in question is not *batel*.¹⁸

Nonetheless, the acceptance of *mekhirat chametz* in all forms is widespread, with Jews purchasing *chametz* knowing in advance it will be sold, and some *poskim* even considering the question of whether it should be an obligation to sell one’s *chametz* as part of the appropriate safeguards for Pesach.¹⁹ There is also a view expressed in some of the halakhic literature that even a sale of questionable validity will at least accomplish permitting the *chametz* after Pesach, because the desire and attempt to sell reflect a mental disconnection from the *chametz* (along the lines of *bitul*) that mitigates the transgression.²⁰

In Defense of *Mekhirat Chametz*

Perhaps an explanation can be offered for the embrace by so much of observant Jewry of the embattled *mekhirat chametz*. It would begin by considering the prohibitions of *bal yeraeh* and *bal yematze* that the sale is meant to address. The Ran²¹ asserts that these prohibitions serve as a kind of “*syag min haTorah*.”²² In essence, the Torah is really primarily concerned that we should not eat *chametz*. However, if *chametz* is kept in one’s possession, there is a great risk that in a distracted moment, or in the course of a semi-awake midnight snack, one might prepare himself a meal of the normally-permitted *chametz*. To avoid this eventuality, all *chametz* must be removed from one’s possession.

By embracing *mekhirat chametz*, *Klal Yisrael* is declaring that there are two things that can prevent them from eating *chametz*: not having any, and the transgression of *gezel*. If the *chametz* is in one’s house, but is off-limits because of the prohibition of stealing, that is enough to keep the Jews away from its consumption. Therefore, it doesn’t matter whether or not the *chametz* will ever be picked up by its purchaser, or whether or not the sale will be reversed after Pesach. All that does matter is that during Pesach, the *chametz* legally belongs to another; that is enough

¹⁸ See R. Asher Weiss, *Haggadat Minchat Asher* p. 280.

¹⁹ See *Responsa Li-Horot Natan* VI, 25

²⁰ See *Responsa Mas’et Binyamin*, 59, and *Responsa Chatam Sofer*, YD, 310.

²¹ *Pesachim* 1a, s.v. *u-mah*. See *Peri Megadim*, *Petichah to Pesach* 1:9.

²² See R. Yosef Engel, *Lekach Tov*, 8:1

to make sure it will be untouched. In other words, *Klal Yisrael* is willing to stake its “*kareit*” on its commitment to avoiding theft.

In this context, it is worth noting the words of the *Semag*²³ who states that the exile has gone on too long because of deficiencies in honesty and integrity in dealing with the nations of the world. When that problem is present, redemption can not take place; it would be a *chilul Hashem* for G-d to redeem a nation that is perceived as immoral. As such, perhaps the practice of *mekhirat chametz* is a conscious decision, at a time when we focus on *geulah*, to enter into a monetary relationship with a non-Jewish person, and to honor the integrity of that relationship with one’s spiritual life. Such an attitude, taken with proper seriousness, might just bring the *geulah*, one step at a time.

²³ *Mitzvot Aseh* #73