

Rabbi Soloveitchik on the Destruction of Chametz

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The Mishnah (Temurah 33b) divides *issurei hana'ah*, objects from which benefit is prohibited and thus must be disposed of, into two categories: *nikbarin*, those which are to be buried, and *nisrafin*, those which are to be burned. *Nikbarin* includes any such prohibited object that the Torah does not require us to eliminate through burning. The Mishnah then states that the method of disposal of these two kinds of objects may not be reversed: one may neither bury *nisrafin* nor burn *nikbarin*. According to the Rabbis (Mishnah, Pesachim 21a), *bi'ur Chametz*, the elimination of Chametz, may be done in any fashion. Chametz would thus seem to belong to the category of *nikbarin*. How then, asks Magen Avraham (Orach Chayyim 445:1), is it permissible to burn Chametz?

The Gra (Orach Chayyim 445:1) maintains that even the Rabbis are of the view that ideally one should burn the Chametz. In fact, this is implied by the language in the Mishnah, which states that one may even (“*af*”) eliminate the Chametz through other means, implying that it is a secondary option; furthermore, there is frequent mention at the beginning of Pesachim of the rules regarding the burning of the Chametz without any indication that the majority opinion does not specifically require burning at all. Evidently, then, Chametz is different from other *nikbarin* in that it is preferable to burn it, even though secondary options certainly exist. Chametz, therefore, not only may be burned but should be burned.

We can utilize this idea to explain another halakhah as well. The Gemara (Pesachim 21b) states that Chametz that is singed before it becomes prohibited on Erev Pesach is permitted on Pesach. Some of the Rishonim (Tosafot, Pesachim 21b, s.v. *horkho kodem zeman*) are of the view that the statement of the Gemara deals with the case where the Chametz has been rendered inedible; only then is it permitted to eat this Chametz on Pesach; others (Rashi, Pesachim 21b, s.v. *lo tzerikha*) require the Chametz to have been transformed to the point that it no longer appears or

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tastes like Chametz. Rambam, however, does not specify any of these requirements. He might very well believe that since it is preferable for one to fulfill the mitzvah of tashbitu, eliminating the Chametz, by burning the Chametz, as opposed to other methods of destruction, it becomes permitted after it has been burned sufficiently, even if it is still edible and recognizable. This is due to the principle of na'aseit mitzvato: once one performs the specific mitzvah that is applicable to a particular prohibited item (if there is one), the prohibition is no longer in effect. It would be for this reason that Rambam records this halakhah in his discussion of the details of the mitzvah of bi'ur Chametz (Hilkhos Chametz u-Matztzah 3:11) and not while discussing the halakhos of inedible and ruined Chametz (ibid. 4:8–12).

There is, however, one caveat which must be added. It is explicit in the same Gemara that according to the Rabbis, this burning is effective in permitting the Chametz to be eaten only if it is done before the onset of the prohibition of Chametz on Erev Pesach; if it is done afterwards, the Chametz remains prohibited. According to Rabbi Judah, however, it becomes permitted if burned at any time. Now, if the Rabbis indeed apply the principle of na'aseit mitzvato, and allow the burned Chametz to be eaten, because they agree that ideally one must burn the Chametz, then they should allow the Chametz – no matter when it was burned. We must, therefore, conclude that according to Rambam (see Hilkhos Chametz u-Matztzah 2:1), since the mitzvah of tashbitu, destroying one's Chametz, is in effect only before the Chametz becomes prohibited, only then is there a preference to eliminate it specifically through burning. After it becomes prohibited, one is required to dispose of the Chametz simply so as not to violate bal yera'eh (the prohibition of possessing Chametz on Pesach) – but there is no longer a requirement to specifically burn the Chametz, because there is no kiyum aseh of tashbitu, to destroy the Chametz. Since there is no preference to destroy the Chametz by burning, no permissibility to consume the Chametz is created by na'aseit mitzvato. Rabbi Judah, however, derives the obligation to burn Chametz from the mitzvah of burning notar (sacrificial meat that was not eaten during its allotted time), and therefore, the mitzvah applies specifically after the prohibition sets in; he thus maintains that when one burns the Chametz, even at that point it becomes permitted.

Rama (Orach Chayyim 445:1) writes that the custom is specifically to burn the Chametz and not use other means of destruction. The Gra comments that the reason why this is only a custom is that even Rabbi Judah actually requires burning only after the time that Chametz is prohibited (except according to Rashi), and since our practice is to eliminate the Chametz earlier, there is no real obligation to burn it according to any opinion in the Gemara. Yet the Gra himself maintains, as noted above, that before the Chametz becomes prohibited, everyone agrees that at least ideally one must burn it! We must perforce conclude that even though one indeed fulfills a mitzvah by specifically burning the Chametz on Erev Pesach while it is still permitted, and that is why one may derive benefit from the burnt Chametz even on Pesach, it is still not in any sense obligatory to do so. Therefore, it is only a custom to burn the Chametz.

Destroying Chametz on Shabbat

On the fourteenth of Nisan, Erev Pesach, there is a mitzvah to destroy all Chametz found in one's domain. When the fourteenth of Nisan occurs on a Shabbat, Rabbi Meir (Pesachim 49a)

states, all Chametz must be destroyed before Shabbat (on the thirteenth of Nisan), except for Chametz that will be needed for two Shabbat meals. Rambam (Hilkhos Chametz u-Matztzah 3:3) and the Shulhan Arukh (Orach Chayyim 444) follow Rabbi Meir's opinion. With respect to Chametz that is left over on Shabbat, Rambam and Shulhan Arukh state that one must nullify the remaining Chametz and cover it until after the first days of yom tov, at which time one is to destroy any leftover Chametz. Rabbi Akiva Eiger, in his glosses to the Shulhan Arukh, wonders why one must wait until after yom tov to burn the Chametz instead of discarding the remaining Chametz on Shabbat itself, prior to the time that the prohibition against Chametz goes into effect. Rabbi Akiva Eiger suggests that there may be a prohibition of handling Chametz that must be destroyed, and states that the matter requires additional investigation.

The question posed by Rabbi Akiva Eiger can be resolved as follows. According to Rambam, Rabbi Meir, in requiring that Chametz must be destroyed on the thirteenth of Nisan prior to Shabbat, is of the view that one is not permitted to perform the mitzvah of destroying the Chametz on Shabbat. One may set aside the amount of bread that will be needed for the two Shabbat meals. One may not, however, destroy the leftover bread on Shabbat because that would violate a rabbinic prohibition of destroying Chametz on Shabbat.

The concept that destruction of Chametz on Shabbat violates a prohibition is analogous to the destruction of hallah that has become impure. The Mishnah (Beitzah 27b) states that hallah that has become impure may not be moved during a yom tov. Rashi states that although feeding one's animal on a yom tov is permitted, and ordinarily, one may feed impure hallah to his animals, one may not feed impure hallah to his animals on a yom tov, because there is a prohibition against the destruction on a yom tov of kodshim (consecrated items) that have become impure. Rashi explains that the fact that the Torah requires one to destroy impure kodshim indicates that the destruction of such items is considered a mela'khah (work), and performing a mela'khah on a yom tov is not permitted. Rashi's rationale may similarly apply to the destruction of Chametz. The fact that the Torah requires us to destroy Chametz before Pesach indicates that such destruction is rabbinically equivalent to a mela'khah. Consequently, we are not permitted to destroy Chametz on Shabbat.

Is There a Mitzvah of Tashbitu?

The punishment of lashes is not imposed for violation of a prohibition that is nitak la-aseh, that is, associated with and mitigated by fulfilling a positive commandment. The Gemara (Pesachim 95a) states that a person who did not remove his Chametz from his possession before Pesach is not liable for lashes, because the negative prohibitions of bal yera'eh – “lo yera'eh lekha se'or, no leaven shall be found in all your territory” (Ex. 13:7) and bal yimmatze – “se'or lo yimmatze be-bateikhem, no leaven shall be found in your houses” (Ex. 12:19) are each considered nitak to the positive commandment of “tashbitu se'or mi-bateikhem, eliminate leavening from your property” (Ex. 12:15). The ruling of Rambam (Hilkhos Chametz u-Matztzah 1:3), that a person who purchases Chametz on Pesach is punished with lashes, seems to be inconsistent with the Gemara. To resolve this inconsistency, Rav Hayim of Brisk explained that in this case the positive commandment actually acts as an implied prohibition. Although the mitzvah of tashbitu

is phrased in the active form, it does not, according to Rav Hayim, constitute a ma'aseh mitzvah. Rather, the verse implies an injunction against owning Chametz, with the requirement to destroy it being merely a preventive measure (issur aseh). Consequently, the aforementioned prohibitions are not considered nitak la-aseh, because the positive commandment of tashbitu is not an ordinary aseh.

The Mishnah (Pesachim 2:1) records a dispute between Rabbi Judah and the Rabbis as to the correct method of eliminating Chametz from one's possession. Rabbi Judah states that the only acceptable method for destroying Chametz is with fire. The Rabbis are of the opinion that any method may be employed, including grinding the Chametz and casting it to the wind. According to Rabbi Judah, burning Chametz is more than just a means to ensure that one will not violate the prohibitions of bal yera'eh and bal yimmatze, for if that were the case, he should agree that any method of destruction would suffice. Rather, burning Chametz, according to Rabbi Judah, must be considered a kiyum mitzvah, and as such, mitigates the prohibitions of bal yera'eh and bal yimmatze, and lashes would not be administered for their violation. According to the Rabbis, however, the desired result is the elimination of the Chametz. The purpose of destroying the Chametz is to preclude one from being in violation of the negative prohibitions and not to facilitate a kiyum mitzvah; the method of destruction is thus immaterial. As such, according to the Rabbis, there is no positive commandment to offset the negative commandments, and a violator would thus be liable for lashes. The ruling of the Gemara (Pesachim 95a) that one does not receive lashes for either of these prohibitions is based upon the opinion of Rabbi Judah, while Rambam (Hilkhos Chametz u-Matztzah 3:11), who states that one is liable for lashes if he commits these transgressions, accepts the ruling of the Rabbis.

If, however, according to Rav Hayim, tashbitu is only an implied prohibition, one may ask why it is that on Erev Pesach we recite a blessing on bedikat Chametz, the act which is a prelude to destroying the Chametz, as this would appear to violate the principle that one does not recite a blessing on a mitzvah that is designed to avoid a prohibition.

The answer lies in the important distinction between the nature of the mitzvah of tashbitu before midday of the fourteenth of Nisan, when Chametz is still permitted to be in one's possession, and after that time. Ramban (beginning of Pesachim) explains that just as we learn from the word "akh-however" (Ex. 12:15) that we are to split the day in terms of the prohibition of owning Chametz, meaning that it is permissible to own Chametz until midday and only forbidden after that time, so, too, we learn that we are obligated to remove Chametz from our possession before midday. Therefore, until midday, tashbitu is a kiyum aseh, representing a fulfillment of the mitzvah, and hence, it is appropriate to recite a blessing on this kiyum, because the bedikah and bi'ur are done before midday. However, the prohibitions of bal yera'eh and bal yimmatze, and hence the possibility of considering them nitak la-aseh, came into force only on Pesach, and at that point the mitzvah of tashbitu has already been transformed into an issur aseh, a prohibition derived from a positive commandment.

Alternatively, even if we were to assume that the prohibitions of bal yera'eh and bal yimmatze are nitak la-aseh, it is possible to suggest another reason why one would receive lashes for owning Chametz, despite the fact that this prohibited act can be mitigated by a positive commandment.

Rambam (Hilkhos Temurah 1:1) writes that one receives lashes for violating the prohibition of temurah, transferring the kedushah from an animal designated as a korban to another animal. He explains that one gets lashes even though temurah can be rectified by fulfillment of the positive commandment that the sanctity devolves on both animals “ve-hayah hu u-temurato yihyeh kodesh” (Lev. 27:10), because temurah actually constitutes two negative commandments, “lo yah'alifenu, you shall not change it” (Lev. 27:10) and “ve-lo yamir oto, you shall not replace it” (Lev. 27:10). The positive commandment can rectify only one negative commandment; thus one receives lashes for violating the second negative commandment. Owning Chametz also entails two negative commandments, lo yera'eh and lo yimmatze. Since the positive commandment of tashbitu can mitigate only one prohibition, one receives lashes for purchasing Chametz. This approach is still difficult, because the Gemara (Pesachim 95a) clearly states that one is not liable for lashes for either prohibition, as they are associated with a positive commandment. Rabbenu Hananel presents an alternative text for this Gemara. His text reads, “One does not receive lashes for owning Chametz on Pesach, because this violation does not involve an activity.” This undoubtedly was the text that Rambam had as well. This text implies that a person who does take an active role in the violation of the prohibitions of bal yera'eh and bal yimmatze, such as by purchasing Chametz on Pesach, would indeed be liable to receive lashes.