

## *Bi'ur, M'khirah, or Bitul?*

### On Getting Rid of *Ḥametz*

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One of the major features of Pesach observance is the prohibition against the possession of *ḥametz*, any foodstuff consisting of or containing one of the five species of grain (wheat, barley, rye, spelt, and oats) that are said to “ferment” (בא לידי חימוץ) when they come into contact with water. These products must not be in our legal possession unless they are baked in the form of *matzah* or *matzah* derivatives. The *mitzvah* is stated in Exodus 12:15:

בַּיּוֹם הָרִאשׁוֹן תִּשְׁבִּיתוּ שְׂאֵר מִפֶּתִיכֶם

On the first day [1] you shall remove leaven from your homes...

The word of interest here is *תשביתו*, *tashbitu*, which we translate as “remove” (see Leviticus 26:6 for another example). The question for our purposes here is: how is this removal to be accomplished? It's well known that the “classic” way to do this is to search out the remaining *ḥametz* in our possession on the night before the seder and then to burn it on the morning of 14 Nisan. [2] This act of destruction is called *bi'ur ḥametz* (ביעור חמץ). If you've visited ultra-Orthodox neighborhoods on the morning before the seder, you know that this ritual of *bi'ur*, physical destruction, is a communal one, with bonfires set for the purpose. (Watch the Lubavitcher rebbe do it [here](#).)

However, it's important to note that the Torah text itself does not *require* that the *ḥametz* be burned or otherwise physically destroyed. Onkelos, the great Aramaic Targum (translation) of the Torah, renders the Hebrew word *tashbitu* as *תבטלון*, “you shall nullify,” from *ב-ט-ל*, meaning “to annul, to repeal, to cancel,” etc. The Talmud, too, recognizes that the *mitzvah* does not require burning but simply *bitul*, an act of nullification. Thus we read in *B. P'sachim* 4b:

כיון דבדיקת חמץ מדרבנן הוא, דמדאורייתא בביטול בעלמא סגי ליה

The search for *ḥametz* is a Rabbinic injunction, because nullification (*bitul*) suffices to fulfill the Toraitic requirement.

רש"י: בביטול בעלמא - דכתיב תשביתו ולא כתיב תבערו, והשבתה דלב היא השבתה.

Rashi, *s.v. b'vitul b'alma*: it is written [Exodus 12:15] *tashbitu*, “you shall remove,” and not *t'va'aru*, “you shall burn,” which indicates that removal (*hashbatah*) by way of mental determination is considered “removal.”

*Bitul ḥametz*, the act of nullifying *ḥametz*, is also a “classic” in Jewish practice. One traditionally performs it twice, once immediately following the search for *ḥametz* on the night of 14 Nisan and then again on the morning of 14 Nisan, following the burning:

כל חמירא וחמיעא דאיכא ברשותי, דחמיתיה ודלא חמיתיה, דבערתיה ודלא בערתיה,  
לבטיל ולהוי כעפרא דעלמא.

“Let any *ḥametz* or leaven in my possession, whether I see it or not, whether I have burned/destroyed it or not, be nullified; let it be as mere dirt.”

That is, one declares that “this *ḥametz* is non-existent for me,” an act that qualifies as “removal” under the terms of Exodus 12:15 (as Rashi to *B. P’sachim* 4b explains the verse (see above).

Rambam agrees, as we read in *Mishneh Torah, Hilkhot Ḥametz Umatzah* 2:2: [4]

ומה היא השבתה זו האמורה בתורה? היא שיבטל החמץ בלבו ויחשוב אותו כעפר וישים בלבו שאין ברשותו חמץ כלל, ושכל חמץ שברשותו הרי הוא כעפר וכדבר שאין בו צורך כלל.

What is meant by the “removal” of which the Torah speaks [in Exodus 12:15]? It is that one should annul the *ḥametz* through an act of mental intention and think of it dirt, placing in one’s mind the thought that there is no *ḥametz* at all in one’s possession and that all the *ḥametz* that one [in fact] possesses is like dirt, a thing for which one has no need at all.

The question naturally arises: if all that the Torah requires is *bitul* or nullification of *ḥametz*, why does the Rabbinic tradition, already in the first *mishnah* of tractate *P’sachim*, insist upon *bi`ur*, that the *ḥametz* be burned or otherwise physically destroyed? One answer is offered by Tosafot, *P’sachim* 2a, s.v. *or*:

דאעייג דסגי בביטול בעלמא החמירו חכמים לבדוק חמץ ולבערו שלא יבא לאכלו... והטעם שהחמירו כאן טפי מבשאר איסורי הנאה שלא הצריכו לבערם משום דחמץ מותר כל השנה ולא נאסר רק בפסח ולא בדילי מיניה...

Even though nullification of *ḥametz* suffices under Torah law, the Sages instituted the stringency of “search and destroy” (*b’dikah* and *bi`ur*) lest one inadvertently eat *ḥametz* (that one finds in the house during the festival)... Why does this stringency exist with *ḥametz* but not with other forbidden foods, for which there is no requirement of *bi`ur*? Because *ḥametz* is permitted throughout the year and forbidden only on Pesach, so that people do not habitually avoid it...

Hence the traditional practice to destroy the *ḥametz* that one can find (the Rabbinic requirement) and then to declare any remaining *ḥametz* non-existent (which satisfies Torah law).

This traditional procedure has its drawbacks. For one thing, the burning or physical destruction of food seems wasteful of precious resources. True, one can give away one’s *ḥametz* to poor non-Jews prior to the festival, but this is not always feasible. And obviously, to destroy a significant amount of *ḥametz* can place a difficult economic burden upon a household. To address this problem, the custom of *m’khirat ḥametz* (מכירת חמץ, the sale of *ḥametz*) has developed over many centuries. [3] By selling or giving their *ḥametz* to non-Jews, Jews escape the terms of the Toraitic prohibition, derived from Exodus 13:7: וְלֹא־יֵרָאָה לְךָ חֲמֵץ וְלֹא־יֵרָאָה לְךָ שְׂאֵר בְּכָל־גְּבוּלְךָ  
“No *ḥametz* shall be seen with you, and no leaven shall be seen with you in all your territory.” The halakhic midrash reads the words “with you” (לך) as “yours” (שלך). Thus (*B. P’sachim* 5b):

אחרים, “you are not permitted to see your own (*hametz*), but you are permitted to see (*hametz*) belonging to others.” That is, one may “look upon” the *hametz* belonging to a non-Jew even if that *hametz* is physically located on one’s own property. The sale or gift effects a full and legally-binding transfer of ownership from the Jew to the non-Jew. Of course, the sale is not intended to be permanent, but this knowledge does not affect the legitimacy of the sale or gift. As we read in *Shulhan Arukh Oraḥ Hayyim* 448:3:

חמץ של ישראל שעבר עליו הפסח, אסור בהנאה... ואם מכרו או נתנו לאינו יהוד שמחוץ לבית קודם הפסח, אף על פי שהישראל מכרו לאינו יהודי ויודע בו שלא יגע בו כלל אלא ישמרנו לו עד לאחר הפסח ויחזור ויתנו לו, מותר, ובלבד שיתנו לו מתנה גמורה בלי שום תנאי, או שימכרנו לו מכירה גמורה בדבר מועט.

*Hametz* belonging to a Jew that was not removed during Pesach is forbidden for consumption after the festival... If the Jew sold or gave it to a non-Jew who does not live in the house before Pesach – even if the Jew knows that the non-Jew will not touch it but will guard it and give it back to him after Pesach – the *hametz* is permitted for consumption, provided that the sale or gift was unconditional and unencumbered.

The obvious objection to the sale of *hametz* is that we are dealing with a legal fiction. The sale is *legal* in that it is accomplished according to all the halakhic rules that define a valid transfer of ownership, but it is a *fiction* because both parties know in advance that the non-Jewish buyer has no intention of coming to take possession of the *hametz* and every intention of selling it back to its original Jewish owner after the holiday. Like legal fictions generally, this one was devised in order to solve a dilemma caused by the existing law: how do we fulfill the Torah’s requirement to rid ourselves of *hametz* without incurring serious financial loss? The question for progressives is whether the path of legal fiction is a satisfying way to observe a *mitzvah*?

We think that *bitul* – nullification – is by itself a sufficient way to get rid of *hametz* before Pesach. Not only does it fulfill the requirement of Exodus 12:15 (*tashbitu*), it also allows us to avoid a fictitious sale. True, there are some problems with *bitul*. In *Shulhan Arukh Oraḥ Hayyim* 448:5, we read that “*hametz* found in a Jew’s home after Pesach is forbidden for consumption, even though the Jew nullified it before Pesach” [emphasis added].” The reason for this, according to *Mishnah B’rurah*, n. 25, is:

חששו חכמים שאם נתירו כשביטלו יש לחוש שיניח כל אדם חמצו אלאחר [אולי צ”ל: עד לאחר] הפסח ויאמר שהפקירו קודם הפסח כדי שנתיר לו.

The Sages were concerned that, should one be permitted to consume this *hametz* after nullification, people would leave their *hametz* in place until the conclusion of the festival and subsequently claim that they nullified it before Pesach, in order that they be permitted to use it.

That is to say, the Rabbis feared that the requirement of *bitul*, precisely because it takes place within the mind of the individual, is too easy to evade. They had a point; how can we know for certain that any person *sincerely* nullifies their *hametz*, declaring it to be *hefker* (ownerless) and removing themselves from any thought of possession? The rabbinic stringency may make sense, but there is no reason to distinguish between sale and *bitul* on grounds of sincerity (or the lack thereof). For after all, what is *m’khirah*, the sale of *hametz*, but an evasion? The sale may be legal, but neither party actually intends for it to be real. Moreover, as with *bitul*, the *hametz*

remains in the Jew's physical possession during the festival. The Jew might eat it inadvertently – see the Tosafot passage, above – and yet the traditional *halakhah* still allows one to “remove” *ḥametz* by means of this legal-fictitious device.

The fact is that *bitul* and *m'khirah* are birds of a feather. Both are *legal* – conceptual, rule-defined, non-physical – methods of removing *ḥametz* from our ownership. Both of them leave the *ḥametz* right where it is, within the Jew's property. Either can be “phony,” meaning that the individual who undertakes it may not sincerely intend to renounce ownership of the *ḥametz* for the duration of the festival. But by that same token, either can reflect the Jew's sincere intention to remove *ḥametz* from his or her ownership during Pesach – which is precisely what the *mitzvah* of *tashbitu* requires. If the *halakhah* allows one method of removing *ḥametz*, there is no good reason why it shouldn't permit the other.

Bottom line: if you're not going to burn or destroy your *ḥametz* before Pesach, you can fulfill the *mitzvah* either by selling the *ḥametz* to a non-Jew or by nullifying it, declaring that it no longer exists for you. Either method fulfills the *mitzvah*. In both cases, it's a good idea to store the *ḥametz* where it isn't readily accessible during the festival, so that no one in the household accidentally eats it.

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[1] The Rabbis understand “the first day” (ביום הראשון) to mean 14 Nisan, the day before the festival begins. See *B. P'sachim* 5a and Rashi to Exodus 12:15.

[2] This year (2021 / 5781), when Pesach begins on Saturday night and the burning should not take place on Shabbat morning, these times are moved up 24 hours: the search for *ḥametz* takes place on Thursday night and its destruction on Friday morning. The widespread *minhag* is to save enough *ḥametz* for the Shabbat meals and then to scatter any remaining crumbs to the wind (or to flush them down the toilet).

[3] The idea stretches back to the ancient Rabbinic period. See *Tosefta P'sachim* 2:12 (Lieberman ed.):  
ישראל וגוי שהיו באין בספינה וחמץ ביד ישראל הרי זה מוכרו לנכרי ונותנו במתנה וחוזר ולוקח ממנו לאחר הפסח ובלבד שיתנו לו  
במתנה גמורה: “A Jew and a non-Jew are sailing together on a boat (as Pesach approaches). If the Jew possesses *ḥametz*, he may sell it to the non-Jew or give it to him as a gift and repurchase it from him after Pesach, provided that the gift be unencumbered.” Clearly, what the Tosefta conceives of as an *ad locum* remedy for a difficult situation developed in the medieval period into a regular, standard practice.

[4] This is according to the printed texts of the *Mishneh Torah*. R. Yosef Caro, in his *Kesef Mishneh* commentary *ad loc.*, cites a manuscript version in which Rambam declares that Exodus 12:15 requires both *bi'ur* and *bitul*. As Caro notes, however, that version is hard to square with the Talmud's assertion that “nullification (*bitul*) suffices to fulfill the Toraitic requirement.”