

# CENTER FOR MODERN TORAH LEADERSHIP



## WATER EVERYWHERE, BUT NOT A DROP THAT'S MUTTAR TO DRINK?

By Rabbi Aryeh Klapper

Is forbidding a national water supply during Pesach an unlivable result? If so, how should poskim react?

The rule codified by Rav Yosef Caro in Shulchan Arukh (OC 447) without dissent from Rav Moshe Isserles or any subsequent authority is that chametz on Pesach cannot be nullified in a mixture. Thus if one grain of chametz is mixed into an infinite mound of quinoa, one may not eat from the mound without checking each grain individually.

It is generally although not universally held that this principle applies even to the “flavor” of chametz. Thus if an iota of chametz is cooked on Pesach in an infinite pool of water, all the water in the pool is forbidden for the duration of Pesach (“the iota rule”). (It might become permanently forbidden if it was owned by a Jew when cooked.)

The standard mode of cooking requires hot water. However, immersion in any liquid for 24 hours may also be considered cooking. It is broadly but not universally held that if one morsel of chametz is immersed in an infinite pool of water of any temperature for 24 hours, all the water in the pool is forbidden for the duration of Pesach.

Straining the water to remove any actual chametz will not remove the prohibition, because it cannot remove the “flavor”.

Therefore, if a piece of bread is thrown into a reservoir on Pesach and allowed to remain there for 24 hours, the water supply for an entire area or country is *prima facie* forbidden for all of Pesach (and possibly forever).

I recall hearing many years ago that Rav Ovadiah Yosef z”l had responded to this issue in the wake of reports that fishermen were using bread as bait in the Kinneret on Pesach. I also recalled him responding that the question was absurd, as obviously there is a limit even to halakhic rules stated limitlessly. (in the mode of: There must be exceptions

to Rabbi Yochanan’s statement that “All rules have exceptions, and rules formulated as “except for these specific cases” have more exceptions than are stated”). But all the evidence I’ve found indicates that either my memory or my source was faulty (although the story and response are attributed to and may be true of other great poskim).

However, Rav Ovadia deals with a similar case. Yabia Omer 7:44 begins by acknowledging that restaurants and hotels throw chametz leftovers into the Kinneret throughout Pesach. The ensuing analysis characteristically excerpts an array of past poskim, geonic through modern, who addressed versions of the question “Chametz fell into our water supply on Pesach: Can we use the water?”

I can think of at least three models for responding to situations in which ordinary halakhic reasoning yields apparently unlivable results.

One: Deal! G-d can command us to sacrifice our lives, so surely His commands can demand that we endure any lesser privations.

Two: Mitigate! The extent to which G-d’s commands can entail privations is carefully calibrated. If this halakhah makes a disproportionate demand, we have broad halakhic mechanisms for alleviating that. For example, one can rely on minority positions *bish’at hadchak* or where a serious financial loss might otherwise ensue.

Three: Rethink! G-d’s commands are intended to promote human flourishing. Individuals may not always benefit. But if a halakhic decision has broad and deep negative consequences, you probably got it wrong. (That’s what Rav Ovadia’s reply meant in the story told to me.)

Each of these models is well-represented in Yabia Omer’s excerpts. Some prohibit the water, or even retroactively prohibit cooked food and cooking pots; some pull out halakhic emergency response toolkits; and some declare

that the result is impossible and/or explain that an obvious qualifying condition or condition has been overlooked.

I'm always interested in what poskim find impossible, and in how they react to the apparently impossible. However, assigning names to these models based on this Yabia Omer can be misleading.

For example, Rav Ovadia cites Rabbi Yehudah Leibush Landa's *Yad Yehudah* as follows:

גם בספר יד יהודה בהל' שחיטה (בהשמטות דף קנ ע"ב) כתב שבנהר - אין החמץ בפסח אוסר במשהו, משום שלא גזרו לאסור במשהו אלא היכא דאפשר שיבוא לידי נתינת טעם, משא"כ בנהר דקמא קמא אזיל וא"א שיבוא לידי נ"ט לא אסרו במשהו. ושוב מצא סברא זו בשו"ת ספר יהושע בפסקים (סימן תקנו), ואף על פי ששם כתב סברא זו כמסתפק, באמת שהיא סברא אמתית. ועוד י"ל סברא נוספת להתיר ע"פ מ"ש הריטב"א בחידושו לע"ז (מז א) בשם הרמב"ן, דהא דקי"ל מים במים במשהו, היינו דוקא בתלושים, אבל במחוברים אינם נאסרים במשהו, וכן הדין לנ"ד. עכ"ד

Also the book *Yad Yehudah*, Laws of Shechitah (Supplements p. 150b) wrote that in a river – chametz on Pesach does not forbid if an iota falls in, because they only decreed to forbid via iota where there is a possibility of a situation rising to the level of “flavoring”, whereas a river, where each drop is swept away and there is no possibility of “flavoring”, they did not forbid via iota. Afterward I found this reasoning in the book *Sefer Yehoshua* in his rulings (#556), and although he wrote about this reasoning with doubt, the truth is that it is true. Another reasoning for permission is on the basis of what RITVA wrote in his Novellae to Tractate Avodah Zarah (47a), in the name of RAMBAN, that when we say that “(forbidden-because-used-in-idolatrous-worship) water (mixed into permitted) water forbids via iota – that applies only to water that is detached (from the ground), whereas attached-to-the-ground (water) is not forbidden via iota. The rule is the same in our case (of chametz in water)”.

This reasoning requires some background.

Jews are forbidden to derive benefit from an object that has been worshiped idolatrously or used in idolatrous worship. This seems to give idolaters the power to render Jewish cattle valueless by bowing to them, or to expel Jews from their lands by worshiping the ground. Halakhah prevents this via two counter-rules: 1) A person cannot cause the prohibition of someone else's property 2) Land and things-attached-to-land cannot become prohibited.

Ritva realized that a similar problem can arise with regard to water. The rule that “a person cannot cause the prohibition of another's property” relates only to direct

causation. If, for example, someone uses wine for idolatry pours an iota of that wine into my vat, the wine in my vat becomes prohibited as an indirect consequence of idolatrous use. It therefore seems that a malicious idolater could make all water unusable for Jews. Ritva prevents this by limiting the iota rule to “detached” liquids.

Rav Ovadia cites *Yad Yehuda* as realizing that since chametz also has an iota rule that could result in all water becoming prohibited to Jews, that rule must also be limited to “detached” water.

However, it seems to me that this argument cannot be attributed to *Yad Yehudah*. Rabbi Landa actually cites it from an unnamed *chakham* and rejects the extension to chametz specifically because he does not understand RITVA as rooted in the need to prevent an impossible result.

Rav Ovadia later in the teshuvah cites Avnei Nezer OC 474:708 as making the argument from RITVA. (It's not clear to me why Rav Ovadia separates his citations of *Yad Yehuda* and Avnei Nezer.) Avnei Nezer does not frame the argument in terms of necessity. Rather, he argues that the burden of proof is on anyone seeking to make chametz more stringent than idolatry. Nonetheless, it seems possible that Avnei Nezer is *Yad Yehudah's* unnamed *chakham*. (I am not enough of a halakhic historian to know how likely this is.) If that is the case, Rav Ovadia does not provide any authority who accepts the argument on the ground of necessity. But I nonetheless find it highly appealing.

Rav Ovadia also cited the following from Rabbi Yehudah Leib Levitan's *Shu"t Shaarei Deiah* (#21 in the first printing, #43 in the most recent version on Otzar):

נשאל אודות שתיית מי נהר בפסח במקום שיש תעשיית יי"ש, ונשפך שם תמיד חמץ גמור בתוך הנהר, וכתב "שאין הדעת סובלת לאסור את כל מימי הנהר בכל העיירות הסמוכות לנהר ולתעשייה הנ"ל, שאין רוב הצבור יכול לעמוד בגזרה זו. וכמו שאמרו כיו"ב בב"ב (ס:) א"כ מים לא נשתה, אולם אמיתות הדברים היא שלא אסרו חז"ל חמץ בפסח במשהו, אלא במקום שהמשהו הזה יש לו חשיבות קצת לתת טעם במקומו, משא"כ בכה"ג דרדיפי מים ומתחלפים בכל פעם, וכמו שאמרו הראשונים (ע' ע"ז ע"ג. וטו"ש ע' יו"ד סימן קלד ס"א) לעניין יין נסך שאע"פ שאוסר במשהו, מ"מ המערה יין נסך מצרצור (פך) קטן לתוך בור של יין, אפילו עירה כל היום כולו ראשון ראשון בטל, והכא נמי לענין משהו של חמץ בפסח מסתברא ודאי שכל שאין בכחו ליתן שום טעם במקומו לא חשיב אפי' משהו כדי לאסור, וזהו מן המושכלות הראשונות. ע"כ

He was asked about drinking river water on Pesach in a place where there is a whiskey factory, so that absolute chametz is continually pouring into the river, and he wrote that

“The mind cannot tolerate forbidding all the waters of the river in all the cities near the river and the aforementioned factory, ‘because most of the congregation would be unable to endure this decree’, as it says in Bava Batra (60b): ‘If so (that post-Churban we should refrain from all activities that were ritualized in the Temple), shall we not drink water (because of the water libation)!?’”

Rather, the truth of the matter is that Chazal only forbade on Pesach an iota of chametz in a circumstance where that iota has slight significance in that it flavors its place, as opposed to here where the waters run and switch every moment, as the Earlier Ones wrote regarding Idolatrously Libated Wine that even though it forbids even if an iota is present, nonetheless, one who pours such wine from a small jug into a wine vat, even if he poured the entire day, each drop is nullified as it falls in; so too regarding an iota of chametz on Pesach, it is certainly reasonable that anything unable to give any flavor in its place has not even the significance of an iota and cannot prohibit. This is an a priori truth.”

This seems a perfect example of our third model. There is rhetoric about the impossibility of a stringent outcome: “the mind cannot tolerate”, “the community cannot endure”, and the leniency is framed as “a priori truth”.

So I was very surprised to discover that Rabbi Levitan’s permission was not absolute.

ואמנם, להתיר לשאוב ולקחת מים סמוך ונראה ממקום הגוראלי' (ברייהו) במקום שנשתנה מראית המים מחמת הבראה הנ"ל - אין להקל בשום אופן,

However, to permit drawing or taking water from a place that is near and can be viewed from the place of the factory-outflow, or in a place where the water’s appearance is altered because of the outflow – one cannot be lenient in any way.

Rabbi Levitan’s rhetoric demonstrated that unliveability is a driver of his decision. However, the fact that he prohibits some of the water must constrain our sense of how far he would take that. Perhaps another driver of his leniency is what he saw as the unreasonableness of the argument to prohibit beyond the area where chametz is perceptible, rather than the difficulties imposed by the outcome.

Rav Ovadiah’s own conclusion is also less absolute than I had expected.

“One can even ab initio (lekhatilah) permit drinking water on Pesach from the Kinneret, and cook and bake with them,

with no concern, so long as filters strains the water in a fine filter before using them on Pesach for drinking, cooking, or baking. But those who wish to be pious with their Creator, and to be stringent on themselves to draw the water before Pesach and before the time chametz becomes forbidden, and to filter them well, in order to use them throughout Pesach – may blessing come upon them.”

Rav Ovadiah rules that there is no concern for “flavor”. Straining is necessary to ensure that no actual particles of chametz are present in the water. Water is no different than quinoa in this regard. Many municipal water supplies strain their water sufficiently to obviate the need for private filtering. But others, such as New York City, may not. It’s not clear what Rav Ovadiah would rule about their water supplies if it were definitely known that chametz were thrown into their reservoirs, especially if the chametz was thrown by Jews.

My suspicion is that Rav Ovadiah would have found grounds to permit but using the second rather than third approach. A key element of this responsum is an argument for relying in difficult circumstances on the position of the Sheiltot d’Rav Achai Gaon, who denies the iota rule regarding chametz. That position also has a fascinating and complicated history and may not actually be that of the Sheiltot. Please look for that analysis either in another essay or podcast, hopefully in the next few days. Meanwhile, I welcome feedback especially on the argument of the anonymous sage cited by Rav Landa.

However, the Kineret specifically is no longer as essential a water-source. Two thirds of Israel’s water-supply now comes from desalination plants. Moreover, Charedi politicians have arranged for Yerushalayim’s water supply to be disconnected from the Kineret for Pesach since 1995, and in more recent years to do this for all of Israel (see [this Walla article](#) h/t Yossi Klavan), supposedly to avoid inconveniencing descendants/adherents of the Chazon Ish who would otherwise limit themselves to pre-bottled water. How, when, and why this happened, and at what cost, seems a potentially fascinating and instructive historical study, and I’d love to understand it better.

*Chag kasher vesameiach!*

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