

# 68 Rabbi Ovadia Yosef: *He shall Opine* (1980/1981)

Translated by Avi Aronsky; introduced by Daniel Zohar

## Introduction

Also known as *maran* (our teacher), Rabbi Ovadia Yosef (1920–2013) was a Talmudic scholar and *posek* (Halakhic adjudicator) who immigrated with his family from Baghdad to Jerusalem as a child. The preeminent Sephardic rabbi of the mid- to late-twentieth century, he composed his first book at the tender age of twelve.<sup>I</sup> By 1940, Yosef was ordained a rabbi and *dayyan* (religious judge). Eight years later, he moved to Cairo for the purpose of serving as the local Jewish community's *av bet din* (chief judge).<sup>II</sup> In 1954, Yosef published the opening instalment of *Yabia Omer* (Uttereth Speech) – his ten-volume *magnum opus* of *shut* (responsa).<sup>III</sup> During his tenure as chief rabbi of Israel from 1972 to 1983,<sup>IV</sup> Yosef stood out in affairs of national interest. For example, he introduced marital permits for Karaites<sup>V</sup> and backed the immigration of Ethiopian Jews to Israel.<sup>VI</sup> His second-most important work, *Yehaveh Da'at* (He shall Opine), came out between 1977 and 1985. Encompassing seven volumes, this composition revolves around direct answers to questions that the personage fielded during his weekly radio show. As opposed to the scholarly *Yabia Omer*,<sup>VII</sup> it is considered a popular Halakhic text.

Towards the end of his term as chief rabbi, Yosef was acknowledged as the spiritual leader of *Shas* – a party-cum-movement representing Orthodox Sephardim. Likewise, his stature and political clout steadily grew among other traditional-leaning sectors of the Israeli populace.<sup>VIII</sup> In parallel, Yosef frequently made controversial statements regarding non-Jews, the country's secular leadership, and judicial system. Perceived as

---

I Benny Lau, *From R. Yosef Karo to R. Ovadiah Yosef: The Halachic Teaching of Rabbi Ovadia Yosef* (Tel Aviv: Yediot Achronot, 2005), 25–26 [Hebrew].

II *Ibid.*, 48–50.

III *Ibid.*, 63–71.

IV *Ibid.*, 101–14.

V The Karaites are a small Jewish denomination that interprets the Bible in a more literal fashion than Rabbinic Judaism.

VI *Ibid.*, 104–6.

VII *Ibid.*, 111–12.

VIII *Ibid.*, 114–15.

---

**Avi Aronsky**, Translator and Development Editor

**Daniel Zohar**, London School of Economics and Political Science, Department of Anthropology

offensive by secular Israelis, a handful of these remarks ignited public brouhahas.<sup>IX</sup> The showcased text is a responsa on inheritance from the above-mentioned *Yehave Da'at*. One of the main principles that Yosef explored in this piece is the Talmudic notion of *dina d'malkhuta dina* (the law of the realm is the law), according to which the polity's ordinances are binding on Jews.<sup>X</sup> Adopting a conservative position, he equated Israel's government with a gentile dominion. In this respect, the adjudicator was in line with the Halakhic mainstream.<sup>XI</sup> More broadly, this piece reflects Yosef's dual approach toward Israeli jurisprudence: adherence to state law, on the one hand; and a strict prohibition against seeking justice before its courts, on the other.<sup>XII</sup>

Yosef's citing of Talmudic rulings in the context of the modern Israeli state was part and parcel of a larger trend in which he leaned heavily on venerable Jewish sources that were formulated in more-or-less autonomous diasporas (or their modern-day counterparts). It bears noting that the piece under review is by and large a-historical, as some of the *posek's* arguments do not directly correspond with modern-day life in Israel.<sup>XIII</sup> Such rhetoric polarized between the country's ultra-Orthodox and secular jurisprudence systems as well as their respective 'consumers.' As betrayed by its polemic tone, this responsa manifests a confrontation bearing religious, theological, political, and ideological elements.<sup>XIV</sup>

## Bibliographical Information

Ovadia Yosef, *Yehaveh Da'at* [He Shall Opine], 7 vols. (Jerusalem: Hazon Ovadia, 1980/1981), IV:308–14.

---

<sup>IX</sup> Zion Zohar, "Oriental Jewry Confronts Modernity – the Case of Rabbi Ovadiah Yosef," *Modern Judaism* 24, no. 2 (2004): 120–21.

<sup>X</sup> Ariel Pikar, *The Doctrine of Rabbi Ovadia Yosef in an Era of Change: The Study of Halakhah and Cultural Criticism* (Ramat Gan: Bar-Ilan University Press, 2007), 167 [Hebrew].

<sup>XI</sup> *Ibid.*, 172.

<sup>XII</sup> *Ibid.*, 161.

<sup>XIII</sup> *Ibid.*, 176.

<sup>XIV</sup> *Ibid.*, 175.

## Translation by Avi Aronsky

Question: Since it is known that as per Toranic law daughters do not inherit their fathers when there are sons, as opposed to the State [of Israel]’s code whereby the secular courts rule that daughters equally inherit along with the sons, are daughters permitted according to Halakha to sue for their portion of the legacy in a secular court and receive a probate order in accordance to the [Israeli] law by relying on the expression of *HaZaL* [Hebrew acronym for our sages of blessed memory] “*dina d’malkhuta dina*” [the law of the realm is the law]<sup>I</sup>?

Response: Herewith is the essence of what *HaZaL* said [ . . . ] [:] *Dina d’malkhuta dina*, the majority opinion among the great *poskim* [halakhic authorities] is that this [principle] only [applies] to matters which are utile to the realm, such as [ . . . p. 308/309] taxes, levies and the like [ . . . ] However, in matters between man and his fellow it is rather straightforward that one must not say yes, for if so you have abrogated all the laws of the Torah, heaven forbid. [ . . . p. 309/310]

All the more so regarding inheritance law, as it is stated in Bava Batra<sup>II</sup> [ . . . ] Whoever rules that the house will be inherited by a daughter [of the deceased along with] the son, even if he [i.e., the former] is a prince among the Jewish people, we do not listen to him,<sup>III</sup> for these are nothing but an act [sic] of the [wicked] Sadducees. Go forth and learn from what he wrote [sic] in the [responsa] letter of the RaShBA [acronym for Shlomo ben Avraham]<sup>IV</sup> [ . . . ] concerning [ . . . ] one whose married daughter perished, and he sued his son-in-law in the [public] legal system to return [ . . . ] his daughter’s dowry, [ . . . ] and he [i.e., the RaShBA] replied that it is anathema to comport oneself according to the gentiles’ laws, even if both sides agree to this, [ . . . ] and anyone who takes the liberty of saying that this is allowed because *dina d’malkhuta dina* pertains here, alas he is mistaken and a rogue, and heaven forbid that this holy

---

**Note:** Translated with permission from Maor Israel. Statement from the publisher of the Hebrew original: The permission granted the University of Leipzig to publish this responsa in no way constitutes an agreement with or an expression of opinions regarding the conclusions or summations that might be drawn from the publication as well as the views of the attendant introduction’s authors and the various figures cited therein.

---

I AA: In other words, Jews must abide by the law of the land.

II DZ: Bava Batra is a tractate in the Babylonian Talmud’s order of Nezikin (Damages).

III DZ: Apparently, Yosef misquoted from the Babylonian Talmud, Bava Batra 115b. In the Davidson edition thereof, Adin Steinsaltz renders the Hebrew original thus: “[A]nyone who says [that] a daughter [of the deceased] should inherit [the estate of her father along] with the daughter of the son [of the deceased], even [if he is] a prince of the Jewish people, [one] should not listen to him, as this is nothing other than an act of the Sadducees”. In Hebrew, one letter (yud) separates between bat (daughter) and bayit (house).

IV AA: Also known as Solomon ibn Aderet, the RaShBA was a 13th century posek (rabbinical authority), banker and leader of the Spanish-Jewish community.

nation shall go in the way of the gentiles and their rules, and a person who does so knocks down the walls of the Torah and the [Jewish] faith, and [ . . . ] if they continue to sin by extirpating our holy Torah's probate rules and lean on this flimsy argument, then it is as though they have uprooted all the flawless Torah's rules, that is to say what are the sacred books that were composed on our behalf by our holy rabbi [i.e., Judah ha-Nasi<sup>V</sup>] and thereafter our rabbis the *amoraim*<sup>VI</sup> Ravina and Rav Ashi to us, if they [i.e., Jews] teach their children the laws of the pagans and construct altars for themselves in the idolaters' houses of learning, God forbid that this shall come to pass amongst the Jewish people, otherwise the Torah will gird a sack [in mourning] on their account. To this point [the stance of the RaShBA]. [ . . . p. 310–312 . . . ]

Furthermore, it is known what Maimonides wrote [ . . . ]: “Anyone seeking justice from the idolaters' judges in their legal system, even if their rules were the same as the Jewish rules, this is no less than evil, and it is as though he has maliciously maligned and raised a hand against the Teaching of Moses our Rabbi, for it is stated These are the rules that you shall set before *them* [i.e., the Israelites, Exod. 21:1,<sup>VII</sup> emphasis added], and not before the pagans”.<sup>VIII</sup>

[A footnote starting at p. 312] Let it be known that despite the fact that nowadays the legal authority on the [Israeli] government's behalf for adjudicating on monetary and estate law is the secular courts and the fact that the judges thereon are Jewish, nevertheless [sic] it is clear that according to the law of our sacred Torah one who sues his fellow man in their [i.e., secular] courts his sin is unbearable, and this falls under the parameters of what was ruled by Maimonides [ . . . ], the Tur<sup>IX</sup> and the *Shulḥan Arukh Ḥoshen Mishpat*<sup>X</sup> [ . . . ]. For [sic] not only are the [gentile] judges clueless regarding the Torah's laws on arbitration between a man and his fellow as per the Ḥoshen Mishpat and the *poskim* [halakhic authorities], and as ḤaZaL already stated [ . . . ]: “Before them, and not before the idolaters, and not before the laymen”, but it is widely known that they render verdicts pursuant to the idolaters' laws, and also *makhshir* [“kosherize”, namely accept] the testimony of a single witness, a relative, a woman and an invalid,<sup>XI</sup> and many of them [i.e., the secular judges] are disqualified

V AA: Judah ha-Nasi (the Prince) was the chief redactor of the Mishnah in the second century CE.

VI AA: The term *amoraim* refers to Jewish scholars who were active from roughly 200 to 500 CE.

VII AA: This entire responsa is brimming with citations-cum-allusions to the Hebrew Bible and other Judaic sources. Given the magnitude thereof, the source will only be identified if it is essential to understanding the passage at hand or to distinguishing the quotation from Yosef's own writing.

VIII AA and DZ: In the Hebrew original, the upcoming section constitutes a footnote. Given their pertinence to the volume at hand, these paragraphs have been situated in the main text.

IX AA: R. Jacob ben Asher (c. 1269–c.1343) was referred to, *inter alia*, as the Tur owing to his acclaimed halakhic work *Ba'al ha-Turim* (Master of the Columns).

X AA: The *Ḥoshen Mishpat* is one of four volumes in R. Yosef Karo's *Code of Jewish Law* – the *Shulḥan Arukh* [*The Set Table*].

XI AA: All the categories of people listed in this clause are barred from giving testimony in a rabbinical court.

in their own right from judging according to Halakha. And I will not deny that I heard the whisperings [that] many who have strayed off the path of logic and are underhandedly saying that because the judges are now Jewish and the government granted them the authority to adjudicate and reach verdicts concerning estate and monetary law, *dina d'malkhuta dina*, and they think that the rein has been loosened [thereby enabling Jews] to seek justice before them [Israel's public courts]. However, drivel is spewing forth from their mouths. If only they were wise and would understand this [Deut. 32:29], as to the contrary it attests to the seriousness of this matter, for given the fact that the judges are Jews [footnote: p. 312/313] and sworn from Mount Sinai to pass judgement according to the Torah (in the event that they are even worthy of adjudication and rendering a verdict), but they have left the source of the nourishing water, the Talmud and the *poskim*, in order to dig for themselves broken pits that will not hold water,<sup>XII</sup> and they adjudicate pursuant to the rules of the gentiles, their judges and their codices, hence the obstacle is greater sevenfold than seeking judgement before gentile judges who were never commanded to adjudicate as per our Teaching, although the sons of Noah were commanded to uphold the [eponymous seven] laws, [ . . . ], nevertheless there is an exceedingly grave prohibition against the Jewish people trying cases by them [the gentile courts], *argumentum a fortiori* for these Jewish judges, as they are forewarned and under oath since Mount Sinai to exclusively adjudicate pursuant to the Teaching, and they turned their backs on it, and instead of judging in accordance with the Torah's laws, by the pursuit of which man shall live [Lev. 18:5], they adjudicate as per the Ottoman and [British] Mandatory codes, which is analogous to a handmaid who supplants her mistress [Prov. 30:23], and [those who] went after delusion and were deluded, and in so doing commend and place importance on the court trials of idolatrous gentiles, and bestow honour and ascendance upon their idols, [ . . . ] all the more so that this [i.e., bringing cases before secular Jewish judges] is absolutely prohibited, and those seeking justice before them also violate [the commandment] Place not a stumbling block before the blind [Lev. 19:14]. Therefore, a God-fearing lawyer who is asked to represent a person suing his fellow man for monetary damages in [a secular] court [ . . . ] must refrain according to the Halakha from doing so, for he is lending a hand to transgressors, and he cannot profess that he is merely an agent of the plaintiff and that the collar [i.e., responsibility] hangs on his neck, this is not the case, the words of whom do we listen to [–] the words of the rabbi or [ . . . ] the disciple?<sup>XIII</sup> [Indeed], there is no agency for transgression [Babylonian Talmud, Kidushin 42b]. [ . . . ] However, representing a defendant who is forced to appear before the court under duress because the plaintiff refuses to litigate in a Toranic court, thereby compelling the defendant to stand trial before a [public] court [ . . . ], [under the circumstances] the lawyer is permitted to represent him and save the abused from

---

XII DZ: See Jer. 2:13.

XIII AA: This is evidently a rhetorical question.

the abuser. And if he is called upon to appear before the gentile [i.e., Israeli state] courts for the purpose of receiving an inheritance order, he must desist and [ . . . ] refer them to the rabbinical court [ . . . ].

And I shall behold it [sic] in the sanctuary<sup>XIV</sup> the *gaon* [rabbinic honorary title] lord of the shepherds our Rabbi T[zvi] P[esach] Frank[,] a righteous person of blessed memory, in a response that he gave to an “observant” lawyer, who was astonished to hear that the rabbi of Jerusalem [i.e., Frank] deemed the State of Israel’s secular courts to be *arkaot* [gentile courts], writing [ . . . ]: “Upon looking into the reason behind the prohibition against arbitrating before the legal system of the gentiles, which is because seeking justice before them lauds the name of their deities, thereby ascribing importance to them, for it is said And our foes concede [Deut. 32:31], as our foes concede testifies, as per Rashi’s interpretation, to their deity’s ascendance [ . . . ]. In consequence, he who seeks justice before them is indeed evil, and it is as though he maliciously maligned and raised a hand against the Teaching of Moses our Rabbi, as in the words of Maimonides and the *Shulḥan Arukh*, and [ . . . ] for this very reason, [ . . . ] a Jew who adjudicates pursuant to their rules is certainly worse than a gentile, for the gentile was not specifically commanded to pass judgement according to Jewish law, but a Jew who is commanded to adjudicate according to the Torah alienates himself from it and judges as per the *Mecelle* [civil code] of the Ottomans and the rest of the laws of the world’s nations, on them [sic] it is said He that frames mischief by statute, they band together to do away with the soul of the righteous, they condemn the innocent to death [Ps. 94: 20–21], he is indeed a wicked person and raises a hand against the Torah of Moses, and as per the RaShBA’s words, he destroys the walls of the faith and extirpates a root and a branch from it, and the Torah shall exact its retribution, and this is the law for anyone who goes to seek justice before him [i.e., the secular judge]. Additionally, it is most regrettable to us that these laws were adopted by the government [footnote: p. 313/314] and the Knesset [ . . . ], and there is no greater affront than this to the Teaching and its standard bearers, woe onto them, humanity, for this affront to the Torah. May the Lord quickly cometh to his abode and restore our judges [ . . . ] and our counsellors as in days bygone”. [ . . . ] And ḤaZaL already stated [ . . . ] [:] [To grasp] all the calamities that have befallen the Jews, go and check [the standing] of the Jewish people’s judges [Babylonian Talmud, Shabbat 139a] and the like. [ . . . ] To our regret, we see how difficult the security and economic situation is nowadays [in Israel], for you do not have a day whose curse is not greater than its counterpart.<sup>XV</sup> Until a spirit from on high is poured onto us [Isa. 32:15], and The land shall be filled with devotion to the LORD [Isa. 11:9; end of footnote].

XIV AA: This is a paraphrase of Ps. 63:3.

XV AA: At the time, Israel was grappling with, among other threats, missile strikes from *Palestinian Liberation Organization* units that had entrenched themselves in southern Lebanon.

[p. 312/313] In summation, pursuant to the Halakha and our sacred Teaching, which is our life and [fills] the duration of our days, and its words are a candle for our feet and a light upon our paths, it is absolutely forbidden to seek redress on matters of inheritance and estate law as well as monetary law except in accordance with the Torah, which is eternal and will never change at any time, heaven forbid, for it is stated But [ . . . ] it is for us and our children to apply all the provisions of this Teaching [p. 313/314] in perpetuity [Deut. 29:28]. [ . . . ] Hence, there is a strict injunction against litigating all these matters of jurisprudence before legal systems that adjudicate pursuant to the laws of the gentiles, upon whom it is said of such [i.e., Halakhic] rules they know nothing [Ps. 147:20]. In this respect, there is no difference between whether the judges are gentiles or [ . . . ] Jews who pass judgement according to the gentiles' rules, in violation of Toranic law. Consequently, if the sons wish to forgo some of their portion for the daughters' benefit so that they might also partake in the inheritance, they should proceed to the rabbinical court near the city gate and obtain from their hand a fully-authorized deed of transaction, or [execute] an *agav* [incidental transaction] (such as a coin that was not acquired by means of a quid-pro-quo), in an efficacious way as per Toranic law. In so doing, All these people can return home in peace [Exod. 18:23]<sup>XVI</sup>

---

XVI AA: This verse caps Jethro's advice to Moses urging the latter to ease the burden of personally settling all the Israelites' legal disputes and questions on his own by appointing judges. As a result, the long line of petitioners waiting to have their cases heard by "the lawgiver" himself would be able to return to the comforts of their tent.





# Global Secularity. A Sourcebook

**Volume 1:** 978-3-11-121716-1, E-BOOK 978-3-11-125400-5, EPUB 978-3-11-125433-4, Title: Mapping the Academic Debate, Editors: Johannes Duschka, Christoph Kleine, Monika Wohlrab-Sahr, Florian Zemmin (*in planning*)

**Volume 2:** 978-3-11-121717-8, E-BOOK 978-3-11-125406-7, EPUB 978-3-11-125434-0, Title: The Middle East and North Africa, Editors: Florian Zemmin, Nequín Yavari, Markus Dressler, Nurit Stadler

**Volume 3:** 978-3-11-121734-5, E-BOOK 978-3-11-125408-1, EPUB 978-3-11-125435-7, Title: Buddhist Asia, Editors: Christoph Kleine, Karenina Kollmar-Paulenz, Hubert Seiwert (*in planning*)

**Volume 4:** 978-3-11-121737-6, E-BOOK 978-3-11-125409-8, EPUB 978-3-11-125426-5, Title: Eastern Europe, Editors: Wolfgang Höpken, Sebastian Rimestad (*in planning*)

**Volume 5:** 978-3-11-121741-3, E-BOOK 978-3-11-125403-6, EPUB 978-3-11-12444-9, Title: Africa, Editors: Magnus Echtler, Marian Burchardt (*in planning*)

**Volume 6:** 978-3-11-122002-4, E-BOOK 978-3-11-125401-2, EPUB 978-3-11-125432-6, Title: South Asia and Maritime Southeast Asia, Editors: Anindita Chakrabarti, Sushmita Nath, Farhat Hasan (*in planning*)

**Volume 7:** 978-3-11-122006-2, E-BOOK 978-3-11-125405-0, EPUB 978-3-11-125428-9, Title: Western Europe and the Americas, Editors: Nur Yasemin Ural, Sita Steckel, Roberto Blancarte, Todd Weir (*in planning*)

