

BOOK REVIEWS

*Mi-Maran ad Maran:
Mishnato ha-Hilkhatit shel ha-Rav Ovadia Yosef*
by BINYAMIN LAU
(Jerusalem: Yediot Aharanot/Hemed, 2005)

Reviewed by
Jeffrey Saks

On the question of what makes one a *gadol*, my favorite answer was once provided by a teacher of mine, who commented, “He must first take responsibility for the Jewish people.” If so, Binyamin Lau has done a fine job in helping us understand Rav Ovadia Yosef’s preeminent position as halakhic decisor.

Born in Baghdad in 1920, the young Ovadia arrived in Jerusalem as a small child. It is told that R. Ezra Attia, *Rosh Yeshiva* of Porat Yosef, begged Ovadia’s father to allow the fourteen year-old prodigy to return to his yeshiva studies (he had been pulled from the *beit midrash* to help run the family grocery). “Better I should come to work in the store than the boy,” cajoled the *Rosh Yeshiva*. “My *bittul Torah* matters less than his.” Back at Porat Yosef, R. Attia became a surrogate father for the young *illuy*, in a yeshiva environment that sought to supplant the homes of its students. Lau points out (13) that the yeshiva culture helped suppress R. Ovadia’s identification with his Iraqi heritage of the so-called “Bavli Jews,” in favor of the more dominant Halabi-Syrian Jewish traditions of Porat Yosef.¹

It may have been this “conversion” from home-tradition to yeshiva-tradition that led to R. Ovadia’s later attempt—his great halakhic-cultural project—to unite all Sefardic Jews under one pan-Sefardic tradition. That is, Lau suggests as his central thesis, R. Ovadia has been working, and succeeding to a large degree, to recover the Sefardic ur-tradition—which in his eyes has been corrupted from without, by the stricter halakhic rulings of Ashkenazi *posekim*; from within, by the influence of kabbala on Sefardic practice and *pesak*; and overall, by deviating from the rulings of R. Yosef Karo. Objectively, we may ask if he has been attempting to recover something, or construct it in the first place? Insofar as there was never only one, united tradition of *pesak* amongst Sefardim (or Ashkenazim, for that matter), R. Ovadia’s campaign may be more innovative than restorative.

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Remarkably, R. Ovadia began this battle at the age of seventeen, when R. Attia sent him to teach a daily halakha class in a Persian-Jewish Jerusalem synagogue based on the popular *Ben Ish Hai* of the revered R. Yosef Hayyim (1835-1909), rabbi of Baghdad, among the greatest modern *posekim* of the Sephardic community, acknowledged in the same way the *Mishna Brura* is in the Ashkenazic community. However, “Yosef could no longer control himself” (Gen. 45:1). The *Ben Ish Hai*, because he occasionally rules against R. Yosef Karo’s *Shulhan Arukh*, was guilty of being one of those corrupters of the pure Sefardic tradition (29-31). The laypeople and senior rabbis revolted against young Ovadia’s critique of the *Ben Ish Hai*, but R. Attia supported the young teacher, whose iconoclasm has grown ever since.

His goal is nothing short of a Sefardic renaissance, reuniting Jews of disparate communities—Syrians, Iraqis, Morrocans, Tunisians, etc.—in a shared *Mizrahi* culture, embodied by the sixteenth century’s R. Yosef Karo. Thus, Lau’s title, “From *Maran* [R. Yosef Karo] to *Maran* [R. Ovadia Yosef].” This is the true meaning and aspiration of R. Ovadia’s motto and Shas’s perennial campaign slogan: “*le-habzir ha-atara le-yoshna*” (to return the crown to the glory of old). On the simplest level, this is the restoration of the authentic, unified Sefardic tradition mentioned above. On a deeper level, it is an attempt to counter the historical Ashkenazi hegemony in all realms—halakhic, cultural, and with the establishment of Shas, political. There is a paradox here: In his attempt to battle the Ashkenazi establishment, he is a pluralist, arguing for the integrity of each group and legitimating everyone following his own traditions of practice and *pesak* (perhaps because in this he is coming from the weaker bargaining position).² However, when faced with the myriad divergent traditions and local customs within the larger Sefardic community, he argues for unity over ethnicity. In this regard, R. Ovadia’s edition of the prayerbook may be his most influential work. Today, there is hardly a Sefardi synagogue in the world that doesn’t use his *siddur* and by default follow his rulings on prayer (85, 119-20).³ Nevertheless, the attempt to create a pan-Sefardic “melting pot” has sometimes met with resistance from Sefardic rabbis interested in preserving local traditions (373-75).

R. Ovadia’s boldness, already evident in his youth, has generally served him well (except when it has not and controversy ensues). Lau analyzes the most famous examples, especially from R. Ovadia’s tenure as *Rishon le-Tsiyyon* (1973-83), such as “freeing” the over 900 *agunot* of missing and presumed dead soldiers following the Yom Kippur War; recognizing the Jewishness of *Beta Yisrael* (Ethiopian Jews), thus

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paving the way for the State to begin its mass *aliya* operations; and his general inclination against stringency for its own sake (129-30). Yet, iconoclasm comes with a price. For much of his time as Chief Rabbi, R. Ovadia was not on speaking terms with his Ashkenazi counterpart, R. Shlomo Goren (102-03) and Lau isn't shy about mentioning other rabbis—Ashkenazim and Sefardim—with whom R. Ovadia locks horns.

R. Ovadia is also unique amongst Sefardic *posekim* in rejecting the influence or rulings of *kabbalat ha-Ari* whenever in conflict with R. Yosef Karo. His counterparts—going back to the eighteenth century and *Hida*—usually saw Ari as the greater authority (see the interesting chapters in Part 4, ch.1 on the *Zohar* and ch. 2 on Lurianic kabbala). Although well-versed in kabbala, often utilizing mystical thought in his public sermons, he rejects the infusion of kabbala into *pesak halakha* as a form of *kil'ayim* (forbidden mixture), in this aligning himself with the general Ashkenazi orientation—indeed, citing *Hatam Sofer* as his source (292). R. Ovadia's successor as *Rishon le-Tsiyyon*, R. Mordekhai Elyahu, famously opposes him for this position, among other disagreements between them.⁴

While meticulously researched and generally well written, the book occasionally lacks a global meta-analysis that would show the reader how this outstandingly bold and brilliant *posek* is lead by the same underlying principles in his other role—as a crafty political player. Since the entry of Shas, a frequent coalition partner, onto the political scene in 1984, R. Ovadia's influence has come to mean other things for most of the Israeli public. Lau states at the beginning (13) that since the masses already know (and misunderstand) him only through his public role, the book largely ignores that and focuses on R. Ovadia as an *Isb ha-Halakha*. While a prudent research method (it was obviously necessary in establishing parameters for the doctoral dissertation on which the book is based), there are instances where these roles cannot be so neatly bifurcated. The most obvious example, and the most noticeable by its virtual absence, is R. Ovadia's lenient position on surrendering land for peace—or more accurately, land for lives—ruling that, in principle, territorial compromise is allowed should it lead to the saving of Jewish life (see 106-07 for the scant treatment).⁵ Although often portrayed in the public as a fanatic, this ruling is radical in its leniency and opposed by the majority of R. Ovadia's rabbinic colleagues. It is unfortunate that an analysis of the larger social meaning and impact of this ruling is missing, precisely because it resides at the intersection of *pesak*, public policy, and politics. A rabbinic ruling, whether lenient or strin-

gent, has different meaning when backed up by a party in the Knesset to help translate it into law.⁶

That R. Ovadia himself sees Shas and politics as being part and parcel of his larger halakhic project to “return the crown to the glory of old” is reflected in the following anecdote. When he decided to enter the political fray as the spiritual head of Shas, his late wife Margalit begged him to reconsider. “Until now you’ve been a beloved and admired rabbi. No one can say a bad word against you [*sic*]. Now you’ll go into politics, you’ll get dirty—they’ll throw mud at you, aggravate you and the family.” “Margalit,” he responded, “when I’ll come to the *Olam ha-Emet* and stand before God, He’ll ask me, ‘Ovadia, what did you do for *Am Yisrael*?’—what shall I tell Him? That I preferred to stay clean?”⁷

An exception to my aforementioned critique, and among the more interesting sections of the book, is Part 2, which deals topically with a small number of issues and shows how R. Ovadia’s *pesak* has had social meaning and impact. Especially interesting are the chapters on the place of the State and its institutions in his halakhic thought and on Sefardic women in halakha.

Also missing from the book, for obvious reasons, is any treatment or mention of R. Ovadia’s sometimes outrageous comments, usually delivered in his Saturday evening sermons (attended by hundreds and broadcast over the radio and Internet to thousands). Calling for the annihilation of Arabs, determining tsunamis and hurricanes to be Divine punishments, implying that Holocaust victims had it coming, and that Shas supporters go the *Gan Eden* while all others go to Hell, are among the well-known gaffes I was able to conjure from memory (before Googling “Ovadia Yosef” and “controversy” and finding a few dozen more in just 0.3 seconds).⁸

The book is not a biography, but what Lau calls a “biblio-biography.”⁹ He examines R. Ovadia through his writings and halakhic rulings, some unpublished, analyzing his body of work for the unifying principles in his halakhic thought. Lau received R. Ovadia’s assistance with his research (the volume opens with a warm *haskama* from Maran himself), which makes any of his mild critiques even more remarkable. The book should serve as a model for other studies—not the cold analysis of the academy, nor the worshipful “idolatry” of hagiography. (Here is a research agenda for using Lau’s work as a template for analyzing other *posekim*: R. Moshe Feinstein, R. Shlomo Zalman Auerbach, and R. Eliezer Waldenburg.)

By helping us understand *posek* and *pesak*, Lau helps us—practition-

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ers of the halakha—understand ourselves. Should Lau publish an English translation of the book, let him title it *The Making of an Iconoclast*.

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1. See, e.g., the comment in *Yabi'a Omer* 9, *Orah Hayyim* 108:20, p. 232.
2. But even this “open mindedness” may be merely tactical. See *Yabi'a Omer* 5, *Yoreh De'ah* 3, p. 158, where he argues (basing himself on R. Yosef Karo's *Avkat Rakbel*) that since Sefardim were historically the majority presence in *Erets Yisrael*, when the Ashkenazim arrived in spurts, they ought to have been subsumed under the dominant Sefardic halakhic traditions (*ve-kim'a kim'a batel*).
3. See Joel B. Wolowelsky's comments in his review of *Siddur Or va-Derekh le-Bat Yisrael* (a prayer-book for women following R. Ovadia's rulings) in *Tradition* 25:2 (1990), 96-99.
4. R. Yoel Bin-Nun has pointed out a notable exception to this general rule, regarding the proper time for the recitation of *selihot*, in which R. Ovadia follows *kabbalat ha-Ari* over R. Yosef Karo. See the recent collection of R. Bin-Nun's writings, *Me-Hevryon Oz* (Ein Tzurim: Yeshivat Kibbutz ha-Dati, 5756), 56-60. This exceptional case may likely be due to the universal Sefardic custom following the Ari. (My thanks to R. Yitzhak Blau for bringing this to my attention.)
5. See R. Ovadia Yosef, “Surrendering Land in *Erets Yisrael* for *Piku'ah Nefesh*” [in Hebrew], *Tehumin* 10 (5749/1989), 34-47. His *pesak* is further notable for explicitly placing so much authority in the hands of military experts to interpret the security situation upon which any halakhic ruling would rely. Compare this to the remarkably similar position of R. Joseph B. Soloveitchik, *Community, Covenant and Commitment*, ed. N. Helfgot (Jersey City: Ktav, 2005), 235-36.
6. It was on this basis that R. Ovadia instructed Shas to oppose Ariel Sharon's disengagement plan from Gaza (Summer 2005)—not in principle, but precisely because he felt it would *not* lead to saving lives.
7. Zvi Aloush and Yossi Elituv, *Ben Porat Yosef: Hayyav, Mishnato u-Mahalakhav ha-Politiyyim shel ha-Rav Ovadia Yosef* (Or Yehuda: Kinneret, 2004), 123.
8. However, see Zion Zohar, “Oriental Jewry Confronts Modernity: The Case of Rabbi Ovadia Yosef,” *Modern Judaism* 24:2 (2004), 120-49, who points out that many of R. Ovadia's “rhetorical flourishes” are misunderstood and misrepresented by the press. Zohar argues that there is a striking dichotomy between Rav Ovadia's outlandish public pronouncements (especially regarding “modern values”) and his published writings. For example, after citing what appear to be misogynistic statements made in public addresses, for which the press excoriated him, Zohar points out Rav Ovadia's “progressive” and “unexpectedly flexible” rulings on matters such as allowing cosmetic surgery, or *bat mitsva* celebrations. Zohar concludes with a number of possible reasons for the discrepancy between Rav Ovadia's public persona and “who he really is”—not all of which are entirely convincing.

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9. Those looking for a biography would do better with the less flattering, somewhat gossipy, but still balanced account by the journalists Nitzan Chen and Anshel Pfeffer, *Maran: Ovadia Yosef—Ha-Bi'ografiya* (Jerusalem: Keter, 2004), as well as Aloush and Elituv, *Ben Porat Yosef* (above n. 7).

Maran is the better written of the two, with the broader scope, even though its division into two sections—“*Ish ha-Halakha*” (life until Shas) and “Politics” (everything since)—belies Lau’s main point: R. Ovadia’s whole life, before and after, has been one grand effort to “return the crown to the glory of old.” *Ben Porat Yosef*, which is also written by journalists and is more anecdotal, focuses almost exclusively on R. Ovadia’s political biography since the establishment of Shas. The Israeli press, in trying to understand the release of two biographies within weeks of each other, has suggested that each is aligned with competing factions within R. Ovadia’s family and within Shas (Chen and Pfeffer with current party head Eli Yishai; Aloush and Elituv with the ousted and convicted Aryeh Deri).

Overcoming Infertility

by RICHARD V. GRAZI, M.D.

(New Milford, CT: Toby Press, 2005)

Reviewed by
Deena Zimmerman

There is no doubt as to the prominent place that infertility occupies in Jewish tradition. The very inception of the Jewish nation hinges on Abraham and Sara’s difficulties of beginning a family; this theme continues with the rest of the matriarchs¹ and resurfaces with the mother of Samuel. It is similarly a distinct theme within our liturgy, particularly on Rosh ha-Shana. In practice, infertility affects 20% of the Jewish population at some point in their lives. A book that describes the modern treatment of infertility and its impact on Jewish couples who observe halakha clearly fills an important need.

Overcoming Infertility is a markedly expanded revision of Dr. Grazi’s original, *Be Fruitful and Multiply* (New York: Feldheim, 1994). The book was updated to address the tremendous advances that have occurred in this area of medicine over the last decade. The author set out to address a three-fold audience: couples being treated, physicians they turn to for medical treatment, and rabbis they turn to for halakhic rulings. As stated by the author:

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This work is intended foremost for traditional Jewish couples who are struggling with infertility. For them, I have taken care to update the chapters on medical treatment, to make them comprehensive, and also to align their content with the current technology. A new chapter specifically dealing with assisted reproduction has also been added. But like its predecessor, this book is also intended as a resource for the physicians and rabbis who care for these couples. To help bridge what is sometimes a wide gap in understanding between these two groups, other chapters have also been added (p. xxx).

The book is particularly strong in clarifying the often confusing area of the latest infertility technology to those without a medical background. The book clearly and thoroughly outlines the anatomy, physiology, and therapeutic modalities needed for understanding diagnosis, treatment, and difficulty in conception. Each section is accompanied by tasteful and informative illustrations that aid in understanding the procedures described in the text.

The chapter “Evaluation and Treatment of Male Infertility” by Dr. Katlowitz and the chapters “General Aspects of Female Infertility” and “Assisted Reproduction” by Dr. Grazi are particularly useful. All of these chapters manage to explain the cutting edge of reproductive medicine in a manner clearly accessible to a lay audience. This medical information can be of great help to couples experiencing infertility and to clarify to rabbis the treatments and procedures about which their congregants ask halakhic questions.

Readers should be aware of one point, however. While the book does not claim to be a halakhic source or a source of medical advice (p. xxi), there is a clear difference in the treatment of the medical and halakhic information. The former is presented in a clear, consecutive fashion that allows the medically untrained reader to emerge with a basic understanding of the medical sphere and its terminology. Halakhically untrained readers, however, need to be sure to continue to ask individual halakhic questions, as not all halakhic issues have been covered in adequate depth.

The biggest shortcoming, in my opinion, is an organized introduction to *hilkhot nidda* that would allow medical and lay readers to adequately understand a number of statements made in passing in various articles. As the book is presently organized, the only comprehensive discussion of *hilkhot nidda*—an area of halakha critically intertwined with all the gynecologic issues addressed in the book—appears in the third

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article of the third section (p. 189). Dr. Weiss discusses *hilkhot nidda* as an introduction to his review of the halakhic implications of gynecological examinations. Understandably, the focus of his discussion is on the issues of *petihat ha-kever* (the amount of opening of the uterus that would render a woman *nidda* even in the absence of bleeding) and *dam makka* (blood that can be attributed to a wound and thus does not render a woman *nidda*). These two topics are discussed in depth and include mention of a number of differing halakhic opinions.

However, other important details in *hilkhot nidda* are mentioned only in passing and not developed fully. There is no mention of possible leniencies in the number of *bedikot* or factors that can be taken into consideration in their evaluation. There is no discussion of those caveats that apply when a woman is only spotting. Quite the opposite – one who reads the text but does not look up the references in the footnotes will be left with the understanding that “any amount of bleeding or spotting during the seven clean days cancels this sequence retroactively, thus requiring a new seven day series” (p. 191).

Due to this minimal discussion, both the uninitiated medical reader and many less educated couples will finish the book knowing how to treat all forms of spotting by reading pages 297-301. However, they will never have learned that not every spot needs treatment at all. Advice, such as wearing colored underwear, or according to some opinions, panty liners, at appropriate times can, in some cases, halakhically prevent a woman from becoming *nidda*. As medical interventions have side effects and halakhic treatments do not, halakhic treatment should certainly be considered first. It is not the role of the health care provider, nor of the lay public, to decide when to apply such halakhic interventions without rabbinic involvement. However, if they are unaware of the existence of such options, they will not even know to ask the question.

Not knowing enough to ask a question is potentially dangerous, as I have seen from my own professional practice. As a practicing *yo'etset halakha*, I am asked related questions on a daily basis.² In one case, a woman was about to undergo endometrial ablation (destruction of the uterine lining) because she was always spotting. She had never asked a rabbinic question about such spots because she was certain that all spotting renders one *nidda*. Yet, almost none of her staining met the criteria necessary to render her *nidda*. Other women have begun invasive infertility treatment for ovulation before the prescribed time for going to the *mikve*, but had never asked about spotting to assure that there was no potential halakhic intervention that could have been tried first.

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Another point that physicians should be aware of is that they have a potential advocacy role for their patients. The physician's medical knowledge has definite weight in halakhic decision making and there is no reason for him or her to hesitate to be clear and forthcoming in offering relevant information. Few discussions within the book mention this idea. In others, halakhic opinions are presented with the implication that a *posek* has an opinion and that is that; the rabbi's *pesak* must be honored by both the couple and the physician. However, there is nothing illegitimate in advocating for a more lenient ruling during the decision process.

While the book mentions a spectrum of views in traditional Judaism concerning abortion, the topic is not addressed with the depth given to other questions (e.g., whether instrumentation makes one a *nidda*). Abortion is not a trivial topic and has important ramifications for the discussion of genetic diseases. Also missing and clearly required is discussion of the permissibility of genetic testing even if an abortion will not be performed. While full discussion of pre-implantation diagnosis may not have been included as the technology is quite new, its halakhic implications should have been mentioned.

Aside from the halakhic issues mentioned, two suggestions are made for inclusion in the next edition. The emotional toll of infertility in general, and to Orthodox couples in particular, is eloquently addressed in two chapters. Little mention is made however, of the emotional side effects of fertility medications. Awareness of the possibility of such effects can help couples prepare for the roller-coaster ride of treatment. Knowing the reported frequencies of all side effects would also allow *rabbanim* to make an informed *pesak* as to when to allow a couple to take such risks and when perhaps not to. R. Schwartz mentions in passing that one may put oneself in harm's way to fulfill a mitsva (p. 97), but this dispensation is not without limits. Another suggested addition would be a fuller discussion of cases of secondary infertility, particularly the issue of how much medical intervention would be halakhically permitted for a couple that has already fulfilled its commandment of *peru u-revu*.

In summary, the book will be of much benefit in enabling couples and rabbis to understand the current state of infertility diagnosis and treatment. As such, it will provide a valuable service to those involved in these situations. Readers need to be aware however, that some important issues have not been discussed fully and thus, continuing education beyond the reading of this book will be needed to be a truly informed consumer. It is to be hoped that the next edition will correct the omissions in order to improve an important work on an important topic.

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1. Even regarding Leah, the Torah mentions that Ha-Shem had to intervene before she could conceive the first of her seven children (Gen. 29:31).
2. Over 4,000 questions have been answered through the website that I supervise (www.yoetzet.org) and over 50,000 questions over the hotline (1-877-YOETZET), for which I provide medical back-up. Halakhic guidelines for the website and hotline respectively are provided by Rabbis Yehuda Henkin and Yaakov Warhaftig.

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