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Israeli Law and the Ideal Government in the Thought of Rabbi Shaul Yisraeli

Rabbi Shaul Yisraeli (1909–1995), one of the most prominent Religious-Zionist halakhic authorities, dealt systematically with Jewish political thought to provide guidelines for the desirable structure of the governmental, political, and administrative institutions of the Jewish State. Surprisingly, his position is somewhat unclear vis-à-vis the judiciary. In this article, we attempt to clarify his position, which we believe is unique and important, and consistent with his overall political theology. Generally, halakhic discussions on Israeli law focus on the talmudic prohibition of turning to non-Jewish courts. Any Religious-Zionist authority finds it unappealing to compare Israeli courts to gentile courts, and by implication the State of Israel to non-Jewish states. On the other hand, granting halakhic recognition to the state courts, thereby diminishing the relevance and impact of Jewish law, is also troubling.

Our main argument is that Rabbi Yisraeli ruled that the prohibition of utilizing gentile courts is not applicable in the State of Israel. However, he also determined that there is an obligation to refer cases to Rabbinic courts, although within limits derived from the talmudic principle “the law of the land is the law,” which grants validity to state courts in certain instances. His innovation is that “the law of the land is the law” is not a tenet that is designed to facilitate relationships with non-Jewish governments as a last resort but is rather a fundamental principle in the political domain of Jewish law that applies to every government, including even the ancient Israelite monarchy and the modern Jewish state. It defines the authority of governing powers to establish laws and conduct affairs of state. Such state laws are not a deviation from *halakhah* but fall within the parameters designed and granted by the *halakhah* itself. Rabbi Yisraeli analyzed the parameters of this rule innovatively with the State of Israel in mind, and he proposed a rational balance between state law and Jewish law. He established three domains for the application of the principle “the law of the land is the law,” including: anything that is within the purview of security and public safety, including fighting crime; legislation designed to create uniformity in the conduct of every aspect of society; and any ruling of state courts, even if the petition to the court was halakhically prohibited.