

Arye Edrei

## Visions of a Jewish State: Rabbis Herzog and Goren on the Role of Jewish Law in the Israeli Legal System

This article deals with Rabbi Herzog's efforts to implement *mishpat ivri* in the State of Israel and his subsequent controversy with Rabbi Goren on this issue. It proposes a new reading of Rabbi Herzog's position, a topic that has been the subject of considerable research.

The role of Jewish culture in general, and *mishpat ivri* in particular, in the Jewish state was a central topic in the ideological discourses during the *Yishuv* period and the early years of the State of Israel. The rabbis dealt with a fundamentally different question – a question in the opposite direction – namely, the status of Israeli law and jurisdiction in the eyes of the Halakhah. Talmudic law forbade turning to non-Jewish courts, demanding Jewish judicial exclusivity (*issur arkha'ot*); should Israeli courts be viewed as “non-Jewish,” as were the state courts in the Diaspora?

Despite the intense controversy between Rabbis Goren and Herzog on this issue, they both viewed Israeli institutions as Jewish, although in very different ways – a challenging distinction that this article tries to interpret. According to Rabbi Goren, the very fact that the institutions – legislative and judiciary – are associated with the Jewish State precludes their status as non-Jewish. Just as Jewish communities in the Diaspora legislated and enacted ordinances in a variety of areas, so too does the State of Israel. Israel, by its very nature and definition, is a Jewish political entity with all that this implies.

Rabbi Herzog, on the other hand, focuses on the content of the law, and not on its institutions, striving for halakhah to influence Israeli law. At the same time, he did not suggest that *mishpat ivri* be adopted as is. Rather, he proposed significant changes and modifications. For his approach, in order for the Israeli court system to be considered a “Jewish” court in the eyes of the halakhah, it must take the halakhah into consideration in its rulings. Rabbi Herzog suggested appointing one judge who knows *Hoshen Mishpat* in each tribunal. Essentially, in this way, he viewed the secular courts as Jewish courts and granted them the authority to interpret Jewish law.

According to Rabbi Herzog's worldview, the heart of Jewish culture and identity are found in the legal system that embodies Jewish values, spirit

and intellect. If this system is forfeited in the Jewish state, the state loses its essence as a Jewish state.

In practical terms, Rabbi Herzog minimized the divide between Jewish law and Israeli law, and he created a dialogue between the halakhah and Israeli society. He was prepared to legitimize the Israeli legal system from a halakhic perspective if it utilized the content of Jewish law in its rulings, regardless of the identity of the judges or legislators. The very existence of this dialogue would remove the *arkha'ot* prohibition from the Israeli courts.

While Rabbi Goren is satisfied with institutions of Jews, Rabbi Herzog demands Jewish content and values. The status of *mishpat ivri*, according to Rabbi Goren, derives from the very fact that it was agreed upon by the Jewish people or the Jewish community, and it does not necessarily reflect a particular value system. Rabbi Herzog, in contrast, sees halakhah as an expression of particularistic Jewish values and fundamental aspects of Jewish identity and culture. He is thus willing to give up the duty to obey Jewish law but not the duty to 'consult' with it and consider its position.