

Ron S. Kleinman and Avishalom Westreich | **Law or Justice? The Halakhic Validity of State Law and Rulings which Run Counter to the Dictates of Justice**

The article discusses whether rabbinical judges adopt state law and rulings, even when, in their opinion, they run counter to the dictates of justice. The article examines the halakhic conceptions that presume the fundamental acceptance of civil law by means of a range of halakhic tools, by which the article will explore the influence of such dictates on halakhic rulings. We will not only examine the individual halakhic considerations employed by the rabbinical judges to determine the weight to be given to the dictates of justice, we will also investigate the interpretive tools that they use. The article will also seek to show how the rhetoric of the dictates of justice might conceal more fundamental positions: the basic rejection of state law, or its substantive internalization.

Opinions differ on this issue. Some rabbinical judges are of the opinion that the adoption of state law is subject to the dictates of justice. Several of them refuse to rule in accordance with state law when its content seems unjust to them, while others maintain that even when the content of state law is just, if its application in the specific case before them will lead to an unjust outcome, then it is not to be validated.

Other rabbinical judges, however, maintain that state law is to be validated by force of "*dina de-malkhuta*" (the law of the land) or "*minhag ha-medinah*" (the local custom), even when the law or its application are opposed to the dictates of justice. One of the arguments given for this is that it is the nature of any law to be liable to cause injustice in a minority of cases; consequently, it should not be invalidated for such a reason.

An analysis of these positions serves for us as the foundation for a discussion of deep aspects pertaining to the meeting between halakhah and state law, especially in the State of Israel. Our research reveals that, at times, rulings are characterized by a certain rhetoric, while concealing a different conception below the surface: adoption, or aversion and opposition.

To generalize: between the lines of the deliberations on the question of the adoption of state law that is opposed to justice, the article seeks to cast light on a complex stratum of mechanisms for filtering and acceptance regarding the relationship between halakhah and state law and rulings. This crucial question has accompanied halakhah for generations and has only intensified in the complex juridical reality in the State of Israel.