How Jewish Orthodoxy Became a State: Isaac Breuer and the Invention of the Statist Theocracy

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▉ Abstract

This article traces the incorporation of the modern state and the notion of sovereignty into Jewish Orthodox thought, culminating in the idea that the role of Orthodoxy is to establish a statist theocracy. Unlike narratives that emphasize the continuation of theocratic thought from ancient to modern Judaism on the one hand, and the relationship between religious Zionism and contemporary forms of Jewish theocracy on the other, my research reveals a fundamentally anti-Zionist, ultra-Orthodox layer in the doctrine of statist theocracy, through a novel reading of the early writings of one of the leaders of Agudath Israel, Isaac Breuer (1883–1946). During the 1920s, Breuer coined terms such as *Gottesstaat* and *Torastaat*, which informed broader theocratic discussions into the 1930s. The article examines the intellectual history of this discourse and the grammar of this doctrine, identifying in it ultra-Orthodox reasoning such as an aversion to secularism and modern nationalism, resistance to a redemptive, kookian philosophy of history, and adherence to the "Rule of Torah."

▉ Keywords

theocracy, Jewish State, ultra-Orthodoxy, Isaac Breuer, Agudath Israel

◼ Introduction: What We Talk about When We Talk about Statist Theocracy

The purpose of this article is to identify the moment at which the doctrine of statist theocracy was introduced for the first time in the context of Jewish Orthodox thought.[1] By "statist theocracy" I denote a specific polity that includes three elements. First, it understands itself as a state, i.e., the form of political organization that emerged in modernity and came into its current structure, as the sole legitimate holder of coercive power and main actor in the societal realm, after World War I.[2] Second, it perceives itself as sovereign in the modern sense of the term, which means that legislation is promulgated and centralized by the state (unlike the pre-modern era, when it was promulgated by other institutions, religious and traditional alike).[3] Third, this polity aims at achieving religious goals: its role is not just to perform classic statist functions such as providing justice and freedom and assuring the rule of law—but also to represent and perform religious duties. The term "statist theocracy," then, aims to capture this specific political organization, which combines elements of both the modern sovereign state and religious legitimacy.

To date, the origins of statist theocracy in Jewish Orthodox thought have not been examined as such in scholarly literature, having typically been discussed either as part of the wider discussion about theocracy within Jewish thought or as part of the account of the religious Zionist attitude vis-à-vis the State of Israel.[4] Below I challenge both of these narratives as unsatisfactory: the wider discussion is inattentive to the uniquely modern elements of statist theocracy, namely its shape as a sovereign state, while the discussions that focus on religious Zionism inaccurately portray Zionism and messianism as integral parts of statist theocracy. My argument is, first, that statist theocracy is a uniquely modern institution, which, unlike other forms of Jewish theocracies, accepts modern sovereignty as its fundamental basis; and second, that the origins of statist theocracy are anti-Zionist, and that supporters of statist theocracy can regard this form of regime, theoretically and practically, not as an overcoming of the exilic situatedness of Judaism and as an attempt to reach

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[1] My analysis—and the title—owes a great debt to the path-breaking discussions of Leora Batnitzky, *How Judaism Became a Religion: An Introduction to Modern Jewish Thought* (New Jersey: Princeton University Press, 2011), and Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford: Stanford University Press, 2001).

[2] For a concise genealogy of the state as a modern institution see Quentin Skinner, "A Genealogy of the Modern State," *Proceedings of the British Academy* 162 (2009) 325–70. For its connection to the First World War see Chris Thornhill, *A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective* (Cambridge: Cambridge University Press, 2011) 275–92.

[3] For this historical process see Wolfgang Reinhard, *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (München: C. H. Beck, 1999) 291–301. See also Kaye's excellent account, describing the turn from "legal pluralism" to "legal centrism" in case of Halakha: Alexander Kaye, *The Invention of Jewish Theocracy: The Struggle for Legal Authority in Modern Israel* (Oxford: Oxford University Press, 2020).

[4] See references in the second section below.

redemption, but rather as a continuation of exile. Put otherwise: statist theocracy is not Zionism gone religious, but Orthodoxy gone political.

This article identifies the moment of the birth of statist theocracy. Isaac Breuer, one of the leading intellectuals of the ultra-Orthodox political movement Agudath Israel, was the first Orthodox thinker to legitimize an endeavour to establish a sovereign state based on religious legitimacy. This argument challenges a strand in the scholarly literature (described below in greater detail) that has understood Breuer as a fierce critic of sovereignty and a supporter of utopian positions. While these narratives have largely relied on Breuer's later writings, examination of Breuer's early Weimar writings[5] reveals that Breuer introduced a new type of Jewish political regime, named "State of God" and later "State of the Torah," that had never appeared in Orthodox thought before him, and that he regarded the sovereignty of this polity as not merely allowable but indispensable for the realization of the Jewish mission. The crisis of liberalism in the Weimar Republic, resulting in various attempts to overthrow the "neutral," pluralist state,[6] is apparent in Breuer's early writings and contributed to his adoption of statist theocracy. Breuer introduced the statist theocracy into the political imagination of Jewish Orthodoxy.[7]

Identifying Breuer as the first thinker to introduce statist theocracy into Orthodox Jewish thought helps illuminate the ultra-Orthodox[8] origins of this doctrine and more specifically, the non- and anti-Zionist characteristics of the demand to establish a religious, sovereign state. It runs against the commonly held belief (elaborated below) that associates theocracy with Religious Zionist views and arch-nationalistic positions. I argue that different religious Zionist theocratic positions, which have indeed been prevalent in religious Zionist discourse since the late 1930s (but not earlier), are in fact a later adaptation of an earlier doctrine that is ultra-Orthodox not only by birth but also by essence. Three essential elements in the doctrine of statist theocracy owe a great deal to ultra-Orthodox influence: the critique of secularism and the resulting rejection of nationalism (including Zionism); the importance attached to the "Rule of Torah"; and the possibility of supporting this regime while

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[5] I relied heavily on the fantastic new critical edition of Breuer's early writings, Isaac Breuer, *Frühe religionsphilosophische Schriften: Werkausgabe Band 1* (ed. Matthias Morgenstern and Meir Hildesheimer; Münster & Berlin: Lit Verlag, 2017) (below: *FRS*); Isaac Breuer, *Schriften zum Zionismus und Agudismus: Werkausgabe Band 2* (ed. Matthias Morgenstern and Meir Hildesheimer; Münster & Berlin: Lit Verlag, 2018) (below: *SZA*).

[6] For an excellent introduction to these discussions see Michael Stolleis, *A History of Public Law in Germany 1914-1945* (trans. Thomas Dunlap; Oxford: Oxford University Press, 2004) 139–78. For a connection to Breuer see Christoph Schmidt, *Die theopolitische Stunde* (Paderborn: Wilhelm Fink Verlag, 2009).

[7] See the third section below for a short genealogy.

[8] A note on terminology: throughout this article I use "Ultra-Orthodoxy" to identify Breuer's position, which might sound incorrect given his association with German Orthodoxy, often termed "neo-Orthodoxy." Nonetheless, for the sake of clarity all non-Zionist positions here are termed "Ultra-Orthodoxy" and distinguished from the Zionist "national-religious" Orthodoxy. See Michael Silber, "The Emergence of Ultra-Orthodoxy: The Invention of a Tradition," in *The Uses of Tradition: Jewish Continuity since Emancipation* (ed. Jack Wertheimer; New York and Jerusalem: JTS, 1992) 26.

rejecting Jewish messianism. These elements, which I analyse in the conclusion, give statist Orthodoxy a uniquely ultra-Orthodox orientation.

Positing Breuer as the originator of statist Orthodoxy and thereby excavating the ultra-Orthodox origins of this doctrine is essential for a clearer analytical evaluation of this form of political Judaism. In what follows, I begin by describing the limitations of the common scholarly narratives regarding both the origins of statist theocracy and Breuer's political philosophy. I then examine Breuer's early political philosophy. The main challenge Breuer's statism faced, I argue, was not just the lack of statist theocracy as a recognized doctrine within Orthodoxy, but more specifically the apparent antagonism between statism and ultra-Orthodoxy, with which Breuer was associated. My discussion follows the steps that Breuer took in his quest to legitimize statist theocracy. First, I discuss Breuer's novel rendition of German neo-Orthodoxy through a small but significant conceptual transformation: instead of identifying Orthodox Judaism with *Gesetzesreligion* (religion of laws), Breuer presents Judaism as *Recht*. This deliberate transformation enables Breuer to present Judaism as a political organisation that claims the legitimacy to coerce Jews to observe the Jewish law. Second, I discuss Breuer's deliberate attempts to "politicize Orthodoxy" and the significance of this move for his project. Third, I determine the moment when "the State of God" was invented by Breuer—1921, relatively late in terms of his ideological development.

◼ Two Narratives Regarding Statist Theocracy, and Their Limitations

To demonstrate my claims regarding the contribution of ultra-Orthodox thought to the formulation of the doctrine of statist theocracy, I begin with a short (and by no means exhaustive) excursion into the academic narratives about the origins of Jewish theocracy in modern Jewish politics. This discussion will challenge these prevailing explanations.

In general, there are two narratives about the origins of theocracy in Jewish thought. The first assumes that the question "When did Jewish theology become a theocracy?" requires no answer, since Judaism has always been a theocracy. After all, it was Flavius Josephus who invented the term "theocracy" to capture the Bible's desired political regime, in which no human ruler but rather God himself rules his people.[9] It seems, therefore, that any religious regime fulfilling the *Theou kratos* is an eternally desired Jewish regime.[10]

The problem, however, is that this narrative remains highly ambiguous regarding the actual form of this theocracy, and therefore overlooks the fact that the term

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[9] There is a lack of clarity regarding Josephus' usage of the term "theocracy." For references see the informative footnotes in Josephus Flavius, *Against Apion: Translations and Commentary* (ed. Steve Mason; trans. John M. G. Barclay; Flavius Josephus: Translation and Commentary 10; Leiden Brill, 2007) 262–63.

[10] See for example Gershon Weiler, *Jewish Theocracy* (Leiden: Brill, 1988) 20–25.

"theocracy" itself could describe many possible regimes. Several readers have noted, for example, that Josephus himself did not understand theocracy as a political regime but rather as an anti-imperial principle, which specifically negates sovereignty.[11] Modern thinkers also used theocracy to reject the principle of sovereignty.[12] It follows that even if Judaism is somehow eternally identified with theocracy, it still does not necessarily demand *statist* theocracy. The adoption of this specific form of government within Jewish Orthodoxy, as Breuer demanded, is a further substantive choice, whose genealogy is explored in this article.

As a matter of fact, identifying the Bible with a sovereign polity is a modern idea, originating in Protestant thought. This discourse sought to legitimize the institution of the modern state through the biblical example.[13] But this novel polity—the sovereign state—is a modern institution foreign to antiquity. The notion of the state as a distinct apparatus separate from those who rule is a modern phenomenon.[14] More importantly, the state's demand for unrestricted sovereignty was foreign to the medieval and ancient world, in which societal life was structured by religious and cosmological notions of order, and law was not concentrated in the hand of rulers. Centralization of Jewish legislation in the untrusted hands of the state negated the more plural and indeed anti-sovereign orientation of Halakha.[15] It should be added that the state, in addition to being a modern construction and hence neither biblical nor "Jewish," also appeared mainly as a problem for the Jews. The state's demand for sovereignty meant the end of the autonomous arrangements that had enabled and facilitated Jewish life before modernity.[16] While it is beyond the scope of this paper to argue these points in detail, these preliminary remarks are sufficient to emphasize the shortcomings of an essentialist, ahistorical identification between "Jewish political thought" and theocracy. What needs to be studied is the path that Orthodoxy took in joining a uniquely modern endeavour—the sovereign state—and offering it a religious legitimation; and this choice cannot be sufficiently understood through an ahistorical reading of the Jewish tradition.

[11] See David Flatto, "Theocracy and the Rule of Law: A Novel Josephan Doctrine and Its Modern Misconceptions," *Dine Israe*l 28 (2011) 5–30; Aaron Kirschenbaum, "A Footnote to Halakhic Political Theory; Theocracy vs. Religious Monarchy," *Shenaton HaMishpat ha'Ivri* 26 (2009) 395–415 (Hebrew).

[12] Several readers have pointed out the incompatibility between exilic Judaism and the modern idea of sovereignty. See for example Julie E. Cooper, "Reevaluating Spinoza's Legacy for Jewish Political Thought," *The Journal of Politics* 79.2 (2017) 473–84.

[13] Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010).

[14] This point could not be elaborated in this framework fully, as it goes to the heart of the philosophy of the state as an institution of modernity; regarding the "abstraction" of the state see Peter J. Steinberger, *The Idea of the State* (Cambridge: Cambridge University Press, 2005).

[15] Apart from Kaye's book cited above, see also the summary of theocratic positions in Assaf Yedidia, *Halakha and the Challenge of Israeli Sovereignty* (Lanham: Lexington Books, 2019).

[16] For the problem that the State has created for the Jews since modernity, see Gil Graff, *Separation of Church and State: Dina de-Malkhuta Dina in Jewish Law, 1750-1848* (Alabama: The University of Alabama Press, 1985) 30–53.

The second narrative associates statist theocracy with religious Zionism. Numerous academic accounts have emphasized the political-messianic elements of religious Zionism, and especially their application to a particular state, i.e., the State of Israel. The latter is viewed as the "beginning of redemption" and as being replete with religious meaning; accordingly, it has religious legitimacy and a (contested) religious goal.[17] According to this narrative, what is termed statist theocracy is principally the religious acceptance (as opposed to the ultra-Orthodox rejection) of Zionism, and an attempt to integrate a religious view within the (Zionist) nationalist framework. More nuanced accounts, which have distinguished between messianic and more realistic versions of religious Zionism, have largely identified statist theocracy with messianic versions of religious Zionism.[18] This framework studies the political positions of religious Jews during the twentieth century as being fundamentally derived from their attitude towards the Zionist movement. Statist theocracy, in other words, is invented when Zionism becomes religious.

A close historical examination, however, complicates this picture. The spiritual leader of religious Zionism, Rabbi Abraham Isaac Kook, never devoted systematic thought to the question of theocracy, and his philosophy was used mainly to legitimize Israel's secular regime.[19] As a matter of fact, no treatises dealing systematically with a theocratic formation of the Zionist state were written before 1936, with the publication of *BeSha'arey Zion* by Rav Tzair and the 1938 *Va'Ashiva Shoftaiykh* by Rabbi Tzvi Makovsky. Several other theocratic religious Zionist formulations were presented during the 1940s, most notably the "pluralist" theocratical writings of Rabbi Yitzhak HaLevi Herzog. Their relatively belated publication undermines the essentialist identification between religious Zionism and statist theocracy. Religious Zionism is a phenomenon that began in different forms in the last third of the nineteenth century; if it inclined towards theocracy, there should have been discussions of the issue much earlier than the late 1930s. Indeed, this late date is no accident: around the time of the Peel Commission (1937) the Zionist movement itself adopted the model of a nation-state, formerly debated among different Zionist strands.[20] Religious Zionist discourse tended to react to the political forms offered by the Zionist movement, rather than independently formulating political models itself.[21] Consequently, the incorporation of the state

[17] See Aviezer Ravitzky, *Messianism, Zionism, and Jewish Religious Radicalism* (trans. Michael Swirsky and Jonathan Chipman; Chicago: University of Chicago Press, 1993) 79–144.

[18] Itzchak Geiger, *Leaving The Shtetl: Religious Zionists Rabbis and the Challenge of Jewish Sovereignty* (Alon Shvut: Tvunot - Herzog College, 2016) (Hebrew).

[19] As Mirsky noted regarding rabbi Kook, "The state, as such, fundamentally did not interest him"; "we could not institutionalize the holy" (Yehudah Mirsky, *Rav Kook: Mystic in a Time of Revolution* [New Haven: Yale University Press, 2014] 232, 235).

[20] For the importance of 1937 for political models, see Dimitry Shumsky, *Beyond the Nation-State: The Zionist Political Imagination from Pinsker to Ben-Gurion* (New Haven: Yale University Press, 2018); Michael Brenner, *In Search of Israel: The History of an Idea* (New Jersey: Princeton University Press, 2018) 117–25.

[21] Asher Cohen, *The Prayer Shawl and the Flag: Religious Zionism and the Vision of a Torah*

into religious Zionist thought should be seen as an attempt to accommodate to the situation of a state claiming to be Jewish rather than an expression of a Jewish desire for a religious state (i.e., the statist theocracy). Again, the purpose of this article is not to present the genealogy of religious Zionist theocratical discourse; I merely foreground the fact that before 1936 there was scarcely any discussion of theocracy amongst religious Zionists. This should raise the suspicion that the religious Zionist discourse was not the first originator of that polity.

It should be noted that another earlier formulation of statist theocracy has been largely neglected. "The State of Torah" (*Torastaat*, Medinat HaTorah) was vigorously discussed in the early 1930s not in the messianic branches of religious Zionism but rather in the Religious Kibbutz Movement (HaKibbutz HaDati). The theocratic discussion first began around concepts such as the Rule of the Torah (*Herrschaft der Thora*), but from around 1934 focused, at least partially, on the concept of "the State of Torah."[22] Aryei Fishman emphasized the German origins of these theocratic positions, which had grown out of the culture of "crisis" in the Weimar Republic. The religious pioneers rejected the bourgeois life in favour of spiritual revitalisation—an attitude they shared with other young Jewish movements in Weimar.[23] Fishman's findings challenge the prevalent reading of religious Zionism's quest as following the path "from realism to messianism,"[24] a reading in which "realism" is ascribed to the Religious Kibbutz Movement and "messianism" to kookian groups. In actuality, the earliest theocratic discussions within religious Zionism originated in the Religious Kibbutz Movement. The messianic flank joined the theocratic discussion only later.

However, the theocratic discussions of the Religious Kibbutz Movement during the early 1930s were not the earliest version of statist theocracy. They were an adaptation of an earlier discourse that took place in the Weimar Republic and was deeply influenced by the peculiar crisis of liberalism that prevailed there.[25] I argue that the earliest discourse of statist theocracy is to be found in the writings of the non-Zionist thinker Breuer from the early 1920s. Breuer was the first thinker to

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State in Israel's Formative Years (Jerusalem: Yad Yitzhak Ben-Zvi, 1998) 29–31 (Hebrew).

[22] It seems that Shlomo Zalman Shragai introduced the concept to the discussion in Religious Kibbutzim. See Aryei Fishman, *Judaism and Modernization on the Religious Kibbutz* (Cambridge: Cambridge University Press, 1992) 55, 61.

[23] See the important contextualization offered in ibid., 69–80; Michael Brenner, *The Renaissance of Jewish Culture in Weimar Germany* (New Haven: Yale University Press, 1996).

[24] This term informs the analysis—and the title—of Avi Sagi and Dov Schwartz, *Religious Zionism and the Six Day War: From Realism to Messianism* (Milton: Routledge, 2018). There is no doubt that since the 1940s the religious Kibbutzim underwent a process of liberalization; yet their radical and theocratic origins cannot be ignored.

[25] The literature about Weimar presupposes the notion of "crisis" as a central concept of that period. See Detlev Peukert, *The Weimar Republic: The Crisis of Classical Modernity* (trans. Richard Deveson; New York: Hill & Wang, 1992); Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism* (Durham and London: Duke University Press, 1997).

systematically analyse the possibility of a statist theocracy, and the first to promote it within Jewish Orthodoxy (non-Zionist and Zionist alike). Moreover, Breuer himself had popularized the concepts that later informed the Zionist discourse of statist theocracy, such as "the state of God" (*Gottesstaat*) and "the state of Torah" (*Torastaat*). These concepts originally had an essentially ultra-Orthodox reasoning. More accurately, I argue that Breuer invented the statist theocracy in 1921—more than a decade earlier than any equivalent religious Zionist discussion—in his programmatic essay *Die Idee des Agudismus*.

The positioning of Breuer as the inventor of statist theocracy goes against several scholarly assessments of his political philosophy.[26] Breuer has been widely recognised as one of the main ideologues of the ultra-Orthodox movement Agudath Israel;[27] yet whereas the scholarship about Agudath Israel emphasizes Breuer's radical positions, which supported maximalist political policies,[28] a strand of scholarship about Breuer himself attributes to him utopian positions, advocating the establishment of a community free of violence, especially the sort associated with sovereignty.[29] Two recent accounts even claimed that Breuer was a supporter of bi-nationalism, and thereby associated Breuer with other pacifist endeavours of Jewish-Arab cooperation in Palestine.[30] Yet almost all these accounts have

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[26] My argument is indebted to Alan Mittleman's excellent analysis of Breuer's philosophy, *Between Kant and Kabbalah: An Introduction to Isaac Breuer's Philosophy of Judaism* (Albany, NY: SUNY, 1990), and especially his emphasis of the idea of totality. Two important accounts contextualized Breuer's Weimar surroundings and their notion of crisis: Denis Maier, *Isaac Breuer: Philosophie des Judentums angesichts der Krise der Moderne* (Berlin: de Gruyter, 2015); David N. Myers, *Resisting History: Historicism and Its Discontents in German-Jewish Thought* (New Jersey: Princeton University Press, 2003) 130–65.

[27] See especially Matthias Morgenstern, *From Frankfurt to Jerusalem: Isaac Breuer and the History of the Secession Dispute in Modern Jewish Orthodoxy* (Leiden: Brill, 2002); Alan Mittleman, *The Politics of Tora: The Jewish Political Tradition and the Founding of Agudat Israel* (Albany, NY: SUNY, 1996).

[28] Yosef Fund, *Separation or Participation: Agudat Yisrael Confronting Zionism and the State of lsrael* (Jerusalem: Magnes, 1999) 29–48 (Hebrew); Jacob Tzur, *Between Orthodoxy and Zionism: Religious Zionism and its Opposition (Germany 1896-1914)* (Ramat-Gan: Bar-Ilan University Press, 2001) 166–73 (Hebrew).

[29] The first to analyse Breuer as a critic of sovereignty was Ehud Luz, *Wrestling with an Angel: Power, Morality, Jewish Identity* (trans. Michael Swirsky; New Haven: Yale University Press, 2003) 118–26. Amos Israel-Vleeschhouwer elaborated this direction in two important articles: Amos Israel-Vleeschhouwer, "Ultra Orthodox Critique of Sovereignty, Individualism and the Concept of Human Rights: The Legal Thought of Rabbi Dr. Isaac Breuer," *Hamishpat: College of Management Law Journal* 15 (2011) 607–46 (Hebrew); Amos Israel-Vleeschhouwer, "The Mandate System as a Messianic Alternative in the Ultra-Religious Jurisprudence of Rabbi Dr. Isaac Breuer," *Israel Law Review* 49.3 (2016) 339–63. Shoval Shafat, with his emphasis on the sovereignty of God, seems to go in the same direction in "The Political Theology of Isaac Breuer," in *God Will Not Stand Still: Jewish Modernity and Political Theology* (ed. Christoph Schmidt and Eli Schonfeld; Jerusalem and Tel-Aviv: Van Leer Jerusalem Institute and Hakibbutz Hameuchad, 2009) 122–40 (Hebrew).

[30] Ada Gebel, "Isaac Breuer and the Question of Sovereignty in Eretz Israel," *Iyunim: Multidisciplinary Studies in Israeli and Modern Jewish Society* 31 (2019) 215–43 (Hebrew); Yosef Kaminer, "Sovereignty," *Maftea'akh: Lexical Review of Political Thought* 14 (2019) 119–46

relied on Breuer's late writings (mostly written in Hebrew) while ignoring his earlier theocratic position. An examination of Breuer's early German writings clearly reveals that his (mostly late) fierce criticism of secular sovereignty did not prevent him from formulating an utterly sovereign polity, and indeed from positing sovereignty as a religious goal.

Breuer's statist theocracy is connected to his involvement in Agudath Israel. Agudah, as Alan Mittleman has shown, was divided between a more conservative side—which, in light of the secular and the Zionist challenge, simply sought to defend Orthodox interests—and a more radical flank, German in orientation, that saw Agudism as a comprehensive ideology aiming to restore the "sacred community" that had lost its autonomy in modernity.[31] Breuer's theocracy should be read as part of the radical flank's interest in Palestine.[32] Breuer, however, was more revolutionary than his fellows in the Agudah's radical flank. Agudists who called for the building of religious communities in Palestine, such as Moses Auerbach, still refrained from positing Orthodox statist goals.[33] In 1918, Jacob Rosenheim, the president of Agudath Israel who later also considered the idea of Orthodox autonomy in Palestine, expressed his dislike of theocracy: "this Greek term, whose smell is bad and taste is faulty."[34] In other words, Breuer's novelty lay not in emphasizing Orthodox autonomy in Palestine (an idea shared by other radical Agudists), but precisely in his call to establish a statist theocracy. Indeed, contemporaries of Breuer such as Leo Strauss,[35] Franz Rosenzweig,[36] Walter

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(Hebrew). Better accounts have been attentive to changes in Breuer's position. See Arie Edrei, "Multi-Culturalism in Early Ultra-Orthodox Doctrine: Yitshak Breuer – From the Torah State to the Torah Community," *Dine Israel* 32 (2018) 187–222 (Hebrew); Matthias Morgenstern, "Isaac Breuer und die 'agudistische' Staatstheorie," in *Zionismus: Theorien des jüdischen Staates* (ed. Samuel Salzborn; Baden-Baden: Nomos, 2015) 187–208.

[31] On the two flanks, see Alan Mittleman, *The Politics of Torah: The Jewish Political Tradition and the Founding of Agudat Israel* (Albany, NY: SUNY, 1996) 6–11. On the restoration of the sacred community, see ibid., 49–92.

[32] I thank the anonymous reviewer for illuminating this point.

[33] See the program presented in Moses Auerbach, *Agudas Jisroel in Eretz Jisroel* (Frankfurt a.M.: Sänger, 1920) 25–26. This should be compared to Breuer's theocratic vision for Agudah, published a year later, which will be discussed below.

[34] Jacob Rosenheim, "Basic Conditions for Jewish Autonomy [1918]," in *Ketavim: Mivhar Ma'amarim VeNe'umim* (trans. Reuven Biatos and Moshe Shenfeld; 2 vols.; Jerusalem: Histadrut Agudath israel Ha'Olamit, 1970) 1:238.

[35] Strauss dedicated three articles to Breuer that can not be discussed here. See his longest review in Leo Strauss, "Biblische Geschichte und Wissenschaft [1925]," in *Leo Strauss: Gesammelte Schriften - Band 2: Philosophie und Gesetz – Frühe Schriften* (ed. Heinrich Meier; Stuttgart & Weimar: Verlag J. B. Metzler, 2013) 357–62.

[36] See all of Rosenzweig's refrences to Breuer in Josef R. Lawitschka's Dissertation, "Metageschichte: Jüdische Geschichtskonzeptionen im frühen 20. Jahrhundert; Franz Rosenzweig, Isaac Breuer und das Echo" (PhD diss., Freie Universtät Berlin, 1996) chap. 2.

Benjamin,[37] and Gershom Scholem[38] identified Breuer's innovation precisely in his suggestion of forming a theocratic polity with sovereign aspirations. Breuer's statist theocracy is therefore far from being pacifist and bi-nationalist, but rather exercises—to quote Leo Strauss's words on Breuer —a "very aggressive politics."[39] Therefore, in contrast to these prevalent readings of Breuer, I claim that Breuer's critique of secular sovereignty cannot be understood without acknowledging the importance of sovereignty to his envisioned theocracy. Sovereignty is not considered atheist (in terms of its independence from religion) but rather theologically desired, lending Orthodoxy a theocratic orientation.

It should be emphasized that Breuer was not the first Jewish thinker who utilized the term "theocracy" to conceptualize Jewish politics. Ever since Spinoza's analysis of the ancient "Jewish republic" and of Mosaic law as a statist constitution, discussions of Jewish emancipation focused on the alleged inability of Jews to become full citizens in non-Jewish states, due to their allegedly *political* commitment to the Jewish law. Yet Spinoza understood Mosaic Law as statist precisely because he refused to accord it a sacral position. In contra-distinction, Orthodoxy insisted on the sacral and non-political status of the Jewish law, which allowed Orthodox thinkers to claim the right to live in non-Jewish states, either as a recognised minority (in Poland) or as part of the liberal emancipatory framework (in Germany). Yet Orthodoxy's position came with a price: it had to assign Judaism the place of a "religion" separated from the public sphere. Breuer identified this shortcoming and insisted that Orthodoxy, unlike Reform Judaism, did not fully cohere with the logic of "religion" (as we will discuss in the next section). Therefore, Breuer's attempts to restore the "sacred community" applied the spinozist political conclusions that Judaism is a form of statism, while insisting, against Spinoza, that Jewish law is not statist in a secular way, but rather in a sacral way. This constellation creates the "state of God" (as discussed below). Breuer's novelty, therefore, stems from his insistence, first, that Orthodox politics should be statist, and second, that statist theocracy is an ideal polity, indeed a "Gottesstaat." Below I establish my reading of Breuer as the first Orthodox thinker to envision statist theocracy as the essence of Judaism. This polity did not appear in Orthodox thought before Breuer, but after him became a crucial part of the Orthodox discourse. I will examine three moves that Breuer makes in inventing and legitimizing this polity.

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[37] See Benjamin's letter in *The Correspondence of Walter Benjamin and Gershom Scholem, 1932-1940* (ed. Gershom Scholem; trans. Gary Smith and Andre Lefevere; New York: Schoken Books, 1989) 131–32. Benjamin asserted that Breuer's "theocracy" is inferior compared with his own theocracy.

[38] Gershom Scholem, "The Politics of Mysticism: Isaac Breuer's New Kuzari [1934]," in *The Messianic Idea in Judaism and Other Essays on Jewish Spirituality* (trans. Michael A. Mayer; New York: Schoken Books, 1971) 325–34.

[39] Leo Strauss, "Ecclesia militans [1925]," in *Leo Strauss* (ed. Heinrich), 351.

■ From *Gesetzesreligion* to *Recht*

The first interpretive move that Breuer makes is casting the essence of Judaism as *Recht*. This formulation took place in Breuer's writings relatively late—in 1918, in the aftermath of World War I—but before the appearance of the *Gottesstaat* in his writings. This depiction was crucial given Breuer's understanding of the term *Recht* as representing the possibility of moral social life under coercive laws—as he formulates it in his doctoral dissertation published in the respected journal *Kant-Studien*. The casting of Judaism as *Recht* enables Breuer to present Judaism as a political phenomenon, that is, as a form of social life controlled by laws of Halakha that are not observed voluntarily but rather through coercion.

My argument regarding Breuer's turn to *Recht* is both historical and theoretical. Historically, the German neo-Orthodoxy (in which Breuer was reared)[40] was identified with a presentation of Judaism as *Gesetzesreligion*, literally translated as "religion of laws." Yet Breuer felt that this notion, despite its apparent commitment to strict observance of the Halakha, fails to capture the *political* essence of Judaism. The term *Recht* is notoriously untranslatable into English. *Recht* could be translated as "law," but is also the cognate of the English "right" (as in the right to do something) and "correct" (as a determination that something is "right") and, most importantly, has been identified since modernity with the legal order of the state itself.[41] Through the transformation and identification of Judaism with *Recht*, Breuer revolutionized the tradition of neo-Orthodoxy founded by his grandfather Samson Raphael Hirsch.

But in what way can Breuer's thought be described as departing from Hirsch's perception of Judaism? From a theoretical perspective, the notion of *Gesetzesreligion* emphasized the subjective and voluntarily association of individuals under Jewish law. Breuer's identification of Judaism with *Recht*, however, presents Judaism as a social order ruled by coercive laws. Breuer suspects that Hirsch remained within Moses Mendelssohn's formulation of Judaism as a moral obligation stemming from the religious inclination of the subject (what Hirsch called *Persönlichkeit*). Breuer, on the other hand, emphasized Judaism's objective demands for obedience (*Gehorsam*), even without personal conviction. Breuer understood *Gesetzesreligion*, first, as worryingly limiting Judaism to a mere component of one's personal identity, instead of constituting its essence; and second, as treating Judaism in an apolitical manner that deprives Halakha of its coercive potentiality. The turn from *Gesetzesreligion* to *Recht* aims at presenting Judaism as a more politically-oriented phenomenon, in which adherence to Halakha is not based on subjective "religious" commitment. Halakha is rather a platform for a state constitution that employs coercive force. I will now corroborate these claims.

[40] On late German Neo-Orthodoxy since the late 19th cent. see Ofer Chen, *Continuity and Turn: Neo-Orthodoxy Facing the Zionist Revolution* (Bnei-Brak: HaKibbutz HaMe'uhad, 2015) (Hebrew).

[41] See the discussion in Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010) 314–24.

The notion of *Gesetzesreligion* was essential for the self-understanding of German neo-Orthodoxy. The origins of the term are associated with Christian polemics against Judaism: Judaism was perceived by Christians as standing on a lower stage than Christianity due to its commitment to a heteronomous law, which negates the model of the self-regulative subject of modernity. In a famous formulation of this accusation, Kant argued that Judaism should not be termed *Religion* at all, since its obedience to the revealed law negates the idea of autonomy.[42] Whereas Reform Judaism struggled to deny this accusation and consequently abandoned its commitment to Halakha, German neo-Orthodoxy adopted the Christian reproach and constituted itself negatively, as a proud *Gesetzesreligion* that pledges allegiance to the Jewish law. At the same time, however, figures like Hirsch tried to defend Halakha as morally desired, which means that even neo-Orthodoxy accepted some modern premises of the discourse, positing the individual and its morality and not the community at their fore.[43]

This more inner and subjective—indeed "religious"—commitment notwithstanding, Gershom Scholem points out that neo-Orthodoxy's concept of *Gesetzesreligion* potentially leads in the opposite direction, which he terms a "seed of theocracy."[44] Given the neo-Orthodox separatist agenda, the belief in the essential compatibility of strict observation of Halakha with modern life could lead to an attempt to create an independent religious state (a tendency that Scholem criticizes in fierce language).[45] I argue that Hirsch's grandson, Breuer, clearly understood the potentially theocratic direction of Hirsch's philosophy and accordingly aimed to liberate German neo-Orthodoxy from what he regarded as its subjective elements in favour of a statist theocracy. Breuer did so through a change in the understanding of Halakha from *Gesetzesreligion* to *Recht*.

Breuer indeed started out as an heir to the tradition of *Gesetzesreligion*, but his latent discontent was evident from an early stage. Until 1917, the main concept Breuer used (although not often) to denote Judaism was not *Gesetzesreligion* but simply "*Gesetz*" (law, statute).[46] As Breuer explains:

> One is used to speaking about Judaism as "*Gesetzesreligion*." The emphasis
> of this term lies usually on Religion, and it thereby implies the critical ac-

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[42] Immanuel Kant, "Religion within the Boundaries of Mere Reason" in *Religion within the Boundaries of Mere Reason and Other Writings* (ed. and trans. Allen Wood and George Di Giovanni; Cambridge: Cambridge University Press, 1998) 130.

[43] See important observations in Leora Batnitzky, "From Politics to Law: Modern Jewish Thought and the Invention of Jewish Law," *Dine Israel* 26–27 (2010) 7–44. My analysis follows Batnitzky's sharp formulation of the fundamental agreement between Orthodoxy and Reform Judaism regarding the voluntary form of their respective communities.

[44] Scholem, "The Politics of Mysticism: Isaac Breuer's New Kuzari [1934]," 326.

[45] Zwi Werblowsky, "Politika VeChasidut: Ben Ratsionalism LeMistika," in *Isaac Breuer: Iyunim BeMishnato* (ed. Rivka Horwitz; Ramat-Gan: Bar-Ilan University Press, 1988) 61–66 (Hebrew), claimed that it is one of the harshest critiques Scholem ever wrote.

[46] See especially Breuer's first important essay, Isaac Breuer, "Lehre, Gesetz und Nation: Eine Historisch-kritische Untersuchung über das Wesen des Judentums [1910]," in *FRS*, 1–54.

cusation, that Judaism—as opposed to Christianity—is an inferior religion; instead of focusing on the inner mindset, it remains in the realm of external holiness of the world. It is a pharisee religion. However, Judaism is not a *Gesetzesreligion*, but simply *Gesetz*.[47]

The adoption of *Gesetz* represents Breuer's discontent with *Gesetzesreligion*, and I suggest reading it as part of his general aversion to the concept of *Religion*. Religion, in Breuer's own understanding, belongs to the realm of the individual[48] and lacks the orientation towards public and political life (see below). Breuer's rejection of *Religion* constitutes an essential component of his early writings; and the provisional solution he found lies in the term *Gesetz,* which emphasizes obedience to the law as the essence of Judaism.[49] *Gesetz* is indeed the main concept Breuer used between his first long essay, *Lehre, Gesetz, und Nation* (1910), and his first monograph *Judenproblem* (1918).

Moreover, the very argument of Breuer's first essay attacks the apologetic attempts to reconcile Judaism with modern ideas such as universal reason or universal morality: these attempts are for Breuer merely *Lehre*, doctrine: philosophical apologies toward which Judaism should remain largely indifferent. The *Lehre* focuses merely on the religious character (*Persönlichkeit*) and on the individual, who is nothing more than "a fiction."[50] Breuer even indirectly criticizes his grandfather Hirsch for emphasizing the subjective elements of *Lehre*. *Gesetz*, however, focuses on the realm of actions, and aims to shape not the individual but the public life; it demands unrestricted "obedience" (*Gehorsam*), which is the highest Jewish value (a view that rejects the kantian critique by emphasizing obedience as the essence of freedom). Failing to be obedient to the law creates for Breuer "treason" (*Verrat*),[51] a concept with clear political connotations.[52] In short,

[47] All Translations, unless noted otherwise, are mine. See: Isaac Breuer, *Judenproblem* [1918] in *FRS*, 313.

[48] The rejection of individualism in Breuer's writing appears already in his doctoral dissertation: Isaac Breuer, "Der Rechtsbegriff auf Grundlage der Stammlerschen Sozialphilosophie," *Kant-Studien: Philosophische Zeitschrift der Kant-Gesellschaft* 27 (1912) 64.

[49] It might be added that Breuer's emphasis on *Gesetz* at the expense of *Religion* is connected to a general tendency (also among non-Orthodox) around the First World War in Germany to view Halakha positively as an alternative project to "theology." See: Yonatan Y. Brafman, "New Developments in Modern Jewish Thought: From Theology to Law and Back Again," in *The Cambridge Companion to Judaism and Law* (ed. Christine Hayes; Cambridge: Cambridge University Press, 2017) 287–314.

[50] This idea that the individual is merely a "fiction" appears several times in Breuer's philosophy. See for example: Isaac Breuer, *Messiasspuren* [1918], in *FRS*, 382, 385. On the idea of *Persönlichkeit* in Breuer's writing, see Yeshaya P. Balog, *Die kämpfende Persönlichkeit: Isaac Breuers Konzept der jüdischen Erziehung* (Münster & Berlin: Lit Verlag, 2018). Balog argues that in his educational philosophy, Breuer did value this concept.

[51] Breuer, "Lehre, Gesetz und Nation," 28–29.

[52] In 1917, Breuer used the term *Gottesgesetzes*, in "Die Neuorientierung des deutschen Judentums [1917]," in *SZA*, 16. In another essay Breuer contends that the Jewish *Gesetz* is not simply another version of the phenomenon known as *Gesetz* in other cultures, since it has been given by God and represents justice as such. See "Frauenrecht, Sklavenrecht und Fremdenrecht [1910]," in *FRS*, 131–84.

between the years 1910 and 1917 Breuer remained to a large extent faithful to the German neo-Orthodox tradition, understanding Judaism as *Gesetzesreligion*, albeit with growing hesitation due to Breuer's aversion to this concept's overly subjective elements. Breuer struggled to find appropriate language to emphasize the public and coercive nature of Judaism.

Breuer's *Kehre* (turn) occurs in his second monograph, *Messiasspuren* (1918), published in the immediate aftermath of World War I. In this book Breuer coins a new term to describe Judaism—*Recht*. The term *Recht* is presented as a direct replacement for *Gesetzesreligion*: "Only the *Recht* of Judaism—which one likes to name, in a miserable malapropism, '*Religionsgesetz*'—makes the Jewish nation into a messianic nation."[53] Through a deliberate rejection of *Gesetzesreligion*, Breuer introduces the concept of *Recht* as the essence of Judaism. While it posits for Breuer the same unrestricted demands that *Gesetz* had formerly presented, it stresses the element of obedience better.[54] Subsequently, *Recht* represents the political orientation of Judaism.

The clearest formulation of Judaism as *Recht* appears in Breuer's programmatic essay *Die Idee des Agudismus* (where, as presented below, he also introduced the idea of statist theocracy for the first time) from 1921. Breuer reflects in this article on neo-Orthodoxy's most cherished tradition—the secession from the reformed communities[55]—and its possible lesson for the present. Breuer argues that the act of separation has emphasized that Judaism is not a matter of personal conviction and an individualistic choice; it is not enough to observe the Jewish *Gesetz* privately. Referring to the concept *Mensch-Jisroel* of his grandfather, Hirsch, Breuer connects *Recht* with sovereignty:

> *Mensch-Jisroel* signifies that being Jewish [is] more being in a community than being a human of a unique kind, [and signifies] that the Jewish community was no longer to be based on a mere individualistic conviction, but directs individuals and their subjective conviction much more towards pure objective, pure godly, eternal organisation . . . not anymore "*Religionsgesetz*," but rather the *Recht* of the community of God in its fullest sovereignty.[56]

Breuer emphasizes two elements in his adoption of *Recht*: first, the rejection of Judaism as *Religion*, i.e., a mere individualistic quality of the believer; and second, the necessity of achieving a political horizon for Judaism. The first idea could also

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[53] Breuer, *Messiasspuren* [1918], in *FRS*, 381–82. Though Breuer's notion of the "messianic nation" will not be analysed here, messianism in Breuer's *Messiasspuren,* generally speaking, does not denote a utopian hope but a concrete political program. For Breuer's nationalism see the discussion in Benjamin Brown, "Breuer, Hirsch and Jewish Nationalism: Change and Continuity—Principle versus Supra-Principle," *Journal of Jewish Studies* 64.2 (2013) 383–402.

[54] Breuer, *Messiasspuren* [1918], in *FRS*, 384, 401.

[55] The most elaborated account on the separation of communities is Jacob Katz, *A House Divided: Orthodoxy and Schism in Nineteenth-Century Central European Jewry* (Hanover, NH: University Press, 1998).

[56] Isaac Breuer, "Die Idee des Agudismus [1921]," in *SZA*, 119–20.

have been theoretically fulfilled with the definition of Judaism as *Gesetz*, but the second, more political orientation can be realised only through *Recht,* as *Gesetz* is still dangerously subjective:

> The Torah is not the "Religionsgesetz" of the Jewish nation, in such a manner that within this nation a party which rejects the *Religionsgesetz* or religion in general is perceivable [alongside] another party which turns out to be loyal to the Torah. The Torah is the *Recht* of the Jewish nation, its only constitutive factor.[57]

The definition of Judaism as *Recht* obliges Judaism to achieve a political form. In his later philosophical monograph, *Die Welt als Schöpfung und Natur* (1926), Breuer emphasizes the statist element of the *Recht* by claiming that "the Torah as the Recht of the soul committed to the Ought, is at the same time the Recht of the state committed to the Ought."[58] Breuer follows Kant in defining the state as being constituted through *Recht*.[59] Accordingly, Breuer's attempt to invent Judaism as *Recht* is at the same time an attempt to facilitate Judaism in the form of a state.

It is noteworthy that Breuer's novel rendition of neo-Orthodoxy did not go unnoticed by his Orthodox contemporaries. At least one of them rejected it harshly: an anonymous writer—signed, "Studienrat Dr. Schüler"—argued that the old notion of *Gesetzesreligion* was far better than *Recht*:

> It is unclear why "*Recht*" should be preferred to the old "*Gesetz*" or "*Gottes-gesetz*." The words "*Gesetz*" and "statute" are located much more in the fixed, unchangeable, necessary . . . than "*Recht*" in the usual sense, [which is] changeable and agreed by human.[60]

But what exactly does *Recht* mean for Breuer? In what way does it imply a political or even statist form? In order to understand this we need to turn our inquiry away from Breuer's Jewish writings to his dissertation, published in the respected journal *Kant-Studien*.[61] The dissertation is dedicated to the concept of *Recht*, in what Breuer perceived as an attempt to rescue the moral usage of this term from the growing

[57] Ibid., 124.

[58] Isaac Breuer, *Die Welt als Schöpfung und Natur* [1926], in *FRS*, 540; see also 517.

[59] Breuer uses the kantian notion of *Recht* almost literally. Kant wrote: "a state (*civitas*) is a union of a multitude of human beings under laws of right"; and Breuer argues that "without God's Recht precepts, the messianic nation is a lawless pile of human beings." See Immanuel Kant, *The Metaphysics of Morals* (ed. and trans. Mary Gregor; Cambridge: Cambridge University Press, 1996), paragraph 45, and Breuer, *Messiasspuren*, 385.

[60] Studienrat Dr. Schüler "Zum Frankfurter Agudoh-Program," *Blätter – Herausgegeben von dem Gruppenverband der Agudas Jisroel und der Agudas Jisroel Jugend-Organisation* 5.3 (Mar 1919) 37. I warmly thank Rabbi Dr. Yeshaya Balog for this useful reference. See also his discussion in Balog, *Die Kämpfende Persönlichkeit: Isaac Breuers Konzept der jüdischen Erziehung*, 200.

[61] Breuer's dissertation had not been accepted by Marburg's authorities, which Breuer ascribed later (in his autobiography) to antisemitism. However, it is clear that Breuer's radical positions in this dissertation, especially with regard to the reduction of politics to science, were overly avant-gardist. Breuer had to write another dissertation in the area of patent laws. See Breuer, *Mein Weg* (Jerusalem & Zürich: Morascha Verlag, 1988) 85.

tendency to understand law in a positivist or realist manner. Breuer's argument cannot be analysed here at length, but its conclusion is essential. Breuer demands that *Recht* would mirror the content of morality and become, accordingly, a fully social and political ethic.[62] The content of this social ethic should be derived from Kant's categorical imperative, namely from the ideal of autonomy.[63] The problem, however, is that *Recht* demands external coercion and thus seems to contradict the ideal of autonomy posited by Kant. Breuer's solution is rousseauvian;[64] social coercion is justified in light of its success in forcing humans to become free.[65] The law givers, as long as they are properly autonomous, should enforce social ethics on the arbitrary will of the citizens. Breuer's attempt to realize the ideal of autonomy (conceptualized as *Recht*) in politics inevitably bears a hegelian influence (for whom morality as *Sittlichkeit* is realized in the state). However, it owes just as much to the influence of Hermann Cohen and his politicization of kantian moral philosophy.[66]

In the dissertation Breuer does not apply this argument to Judaism, and indeed Judaism is not mentioned in the book, not even in a footnote. However, following my argument that Breuer's Jewish writings undertake the effort to establish Judaism as *Recht*—and as the only legitimate *Recht*—one could easily draw the conclusion. If Judaism is *Recht*, then it should be the only content of the social ethic; it demands obedience; it should be enforced regardless of the actual will of the individuals; and this coercion is defined as the essence of freedom. This argument enables Breuer not only to defend Halakhic coercion as the highest possible realization of autonomy, but also to invent Judaism as a statist theocracy. If Judaism is *Recht*, it should not be left to the consent of the individuals but must find a coercive and objective political form. The Orthodox commitment to Halakha is not the subjective association of a community tolerated by the state, but is the order of the state itself.

Breuer indeed thought that Halakha should be written in the format of a state constitution.[67] He mentioned several times that the codification of Halakha in the sixteenth century by Rabbi Joseph Karo should serve as a possible model for the Jewish state's constitution.[68] Breuer himself wrote throughout his career at least

[62] Breuer, "Der Rechtsbegriff auf Grundlage der Stammlerschen Sozialphilosophie," 46.

[63] Ibid., 71.

[64] Ibid., 39. See also 19, 42.

[65] See especially ibid., 61–64.

[66] I intend to elaborate on these elements in a separate article. For the politicization of kantian moral philosophy by Cohen see Manfred Pascher, *Einführung in den Neukantianismus: Kontext - Grundpositionen - praktische Philosophie* (München: Fink, 1997) 104.

[67] Breuer's attempts to describe Judaism as *Recht* could be read as part of larger attempts throughout the 1920s to invent Jewish Halakha as a proper modern law. See Assaf Likhovski, "The Invention of 'Hebrew Law' in Mandatory Palestine," *American Journal of Comparative Law* 49.2 (1998) 339–73; Amihai Radzyner, "Judaism and Jewish Law in Pre-State Palestine," in *The Cambridge Companion to Judaism and Law* (ed. Christine Hayes) 317–36.

[68] Isaac Breuer, "Die zwei Hirtenstäbe [1926]," in *SZA,* 63, 70. For the importance of Shulchan Aruch for Jewish modernity, see Amnon Raz-Krakotzkin, "Law and Censure: The Printing of the Shulkhan Arukh as the Commencement of Jewish Modernity," in *Tov Elem: Memory, Community and Gender in Medieval and Early Modern Jewish Societies: Essays in Honor of Robert Bonfil*

five versions of state constitutions, all of which are based on the notion of Halakha as the *Recht* of an imaginary religious, sovereign state. "The Jews of Palestine," Breuer wrote for example in his constitutional draft attached to the monograph *Das jüdische Nationalheim* (1925), "are united by the will . . . to recognise the laws of the Torah, handed down to the Jewish people by God, and exemplified for the time of dispersion in *Shulchan Aruch*, as the inviolable basis of their communal life, and to realize them within the framework of the general state laws."[69]

This statement could not be clearer: Halakha is perceived, for the first time by an Orthodox Jew, as an order for a state. It deviates not only from liberal-religious positions that resist anchoring the Halakha in state law,[70] but also from the prevalent Orthodox model, which Breuer condemned to propagate a subjective commitment to the Halakha. Instead, Breuer argues that the essence of Orthodox Judaism is coercive *Recht*.

▉ *Politisierung des Judentums*: Breuer's Notion of Politics

The second step in Breuer's invention of statist theocracy is his deliberate attempt to present the essence of Judaism as a political phenomenon. As shown below, Breuer refers to his whole project as an attempt "to politicize Judaism" or "to politicize Orthodoxy." Politicization of Jewish theology stands at the core of Breuer's thought. I identify this endeavour as a deliberate attempt, first, to reject the understanding of Judaism as Religion—a perception that Breuer associates mainly with Reform Judaism, whose negation of a political interpretation of Judaism is rejected by Breuer. But more radically, Breuer's critique aims to delegitimise both Zionism (which pretends to be political) and Breuer's own identity—Orthodoxy (in its current form). He achieves this by changing the notion of "politics" and providing it with an existential meaning. Zionism, though it overcomes the depraved status of *Religion* adopted by Reform Judaism, fails to be "political" and remains, according to Breuer, rather "neutral"; and Orthodoxy, despite its allegiance to a strict observation of Jewish law, remains nonetheless non-political, due to its excessive preoccupation with the mundane tasks of Halakha at the expense of its political potentiality. Breuer's surprising critique of Orthodoxy is connected to his novel reading of Judaism as a form of politics in the shape of statist theocracy. In what follows I develop this argument.

Overall, Breuer understands the tragedy of Judaism in terms of its confinement to the realm of *Religion*. As early as his first long essay, he condemns the Reform Movement for making Judaism nothing more than "religion . . . a private matter," which amounts to nothing less than "derogating Israel's state law, opposing the

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(ed. Elisheva Baumgarten, Amnon Raz-Krakotzkin, and Roni Weinstein; Jerusalem: Mosad Bialik, 2011) 306–35 (Hebrew).

[69] Isaac Breuer, *Das jüdische Nationalheim* [1925], in *SZA*, 219.

[70] This position is depicted most clearly in Izhak Englard, *Religious Law in the Israel Legal System* (Jerusalem: Harry Sacher Institute for Legislative Research and Comparative Law, 1975).

nation with anarchy, annihilating [*vernichten*] Israel."[71] Breuer expresses his rejection of *Religion* especially in the monographs *Judenproblem* (1918) and *Das jüdische Nationalheim* (1925). In the former he rejects the view that Judaism is a religion—similar to Christianity. "Religion" confines Judaism to a subjective faith exercised by the individual and lacks public manifestation. Instead, he strives to determine the uniqueness of Judaism by positing politics as the Jewish core. But even those forms of Judaism that have apparently overcome *Religion* remain dangerously close to it; Breuer emphasizes that "politicizing Judaism" demands a new configuration of politics. This emphasis is crucial, since Zionism might indeed be seen as politics and not simply Religion—and is nonetheless rejected by Breuer. In order to undermine Zionism, Breuer presents in the *Judenproblem* a novel perspective on politics, which aims to posit Judaism as a unique kind of politics. Whereas Zionism remains merely "neutral politics," what anchors Jewish politics is its aversion to "neutrality."[72] The introduction of neutrality marks another development in Breuer's quest to invent Judaism as statist theocracy.

The distinction between neutrality and a proper perception of politics is connected to the existential atmosphere in the aftermath of the world war, which led to a renewed interest in the concept of the political.[73] "Neutrality" is an adjective that in Breuer's immediate intellectual surroundings, namely the Weimar Republic, was used to denote depraved forms of politics.[74] In his famous critique of liberal politics, Carl Schmitt castigated liberalism for being "neutral" and therefore an apolitical form of politics.[75] Breuer rejected neutrality even earlier in his critique of liberal Judaism and Zionism. Indeed, we find that the term "neutrality" is used rather lavishly in Breuer's writings around the years 1917–1918 (though it appears later too);[76] it is contrasted with a proper *political* understanding of Judaism. Neutrality is recognised by its indecision and contrasts with a proper understanding of "the political," which is more existential. For Breuer, the preference of Reform Judaism to confine Judaism to *Religion* shows its real indifference to politics, and therefore

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[71] Breuer, "Lehre, Gesetz und Nation [1910]" 41–42.

[72] Breuer, *Judenproblem* [1918], 228, 242.

[73] For the discussions around the concept of the "political" at that time see Stefan Breuer, *Carl Schmitt im Kontext: Intellektuellenpolitik in der Weimarer Republik* (Berlin: Akademie Verlag, 2012) 81–110. See also John J. Gunnell, *The Descent of Political Theory: The Genealogy of American Vocation* (Chicago and London: University of Chicago Press, 1993) 126–74, in his discussions regarding Weimar.

[74] See an important introduction in the most representative dictionary of German conceptual history: Michael Schweitzer and Heinhard Steiger, "Neutralität," in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland* (ed. Otto Brunner, Werner Conze, and Reinhart Koselleck; 8 vols.; Hamburg: Klett-Cotta, 1978) 4:315–70. The general argument is that religious politics rejects neutrality, a position that seems to suit Breuer.

[75] See Carl Schmitt, "The Age of Neutralizations and Depoliticizations (1929)," *Telos* 96 (1993) 130–42.

[76] As apparent, for example, from the first two articles written in 1917–1918, which would later constitute Breuer's edited volume *Programm Oder Testament - vier Jüdisch-politische Aufsätze* [1929], printed in *SZA*, 1–100.

also its "neutral" face. Also the Zionist movement, which pretends to be political, is in fact entirely neutral, as it supports the distinction between church and state and remains indifferent to the question of Jewish law in the spirit of religious freedom.[77] Breuer seems to derive much satisfaction from the discovery of this concept—which does not appear in his earlier writings—and henceforth does not hesitate to call all of his long-standing enemies "neutral."

Orthodoxy does not escape Breuer's critique as well: the non-separated Orthodox community is reproached now for being nothing more than *neutralisierten Gemeindeverband* (a neutralized communal association).[78] In *Das jüdische Nationalheim* (1925), Breuer directs this critique even against the "proper" form of separatist Orthodoxy. He complains that the non-Zionist Orthodox reaction to the Religious Communities Order in Palestine (a policy offered at that time by the British Mandate),[79] is worryingly limited to "religious" interests, especially those concerning kosher food: "as though the Jewish nation was not the people of the Bible, but the people of the oxen; as if the 'national home' was not the home of God and the Torah, but a slaughterhouse."[80] Breuer continues: "The Jewish God is neither a God of the slaughterhouse nor a God of the Easter bread, no more than He is a God of the study hall or a God of the house of prayer." Even the very established Jewish value of studying the Torah is now perceived by Breuer as being excessively "religious." What, then, is Judaism about? Breuer answers: "The God enthroned in Zion wanted to be the God of the living life of Jerusalem. . . . The God of the Torah is also the political [*politische*] God."[81] The *political* hence appears as a concept that deviates not only from Reform Judaism and Zionist politics—which are in any case too heretical for Breuer—but also from traditional Orthodoxy. And henceforth Breuer sought to renew Orthodoxy with a new concept: politics, and more specifically, non-neutral politics.

Indeed, at least twice in his early writings Breuer defines the principal goal of his whole project as an attempt to "politicize Judaism" (*Politisierung des Judentums*).[82] In retrospect, he writes that he has always tried "to politicize the world's orthodoxy—I do not shy away from this word."[83] Breuer determines in *Judenproblem* (1918) that "Judaism is not religious but a *political-national* foundation,"[84] and asserts accordingly that the Jewish nation is simply "political"

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[77] Breuer, *Judenproblem* [1918], 289.

[78] Breuer, "Die Neuorientierung des deutschen Judentums [1917]," 12.

[79] For the importance of Religious Communities Order for Orthodoxy in Palestine see Menachem Friedman, *Society and Religion: The Non-Zionist Orthodoxy in Eretz-Israel, 1918-193*6 (Jerusalem: Yad Yitzhak Ben-Zvi, 1978) 185–213 (Hebrew).

[80] Breuer, *Das jüdische Nationalheim* [1925], 199; see also 205.

[81] Ibid., 201.

[82] Isaac Breuer, "Die Mobilmachung des Judentums [1918]," in *SZA*, 43.

[83] Isaac Breuer, "Fazit [1928]," in *SZA*, 84.

[84] Breuer, *Judenproblem* [1918], 314.

(*politisch*).[85] He emphasizes that for his notion of Judaism, "God became not only father, but also king to me, not in the traditional sense, but in the very original and historical sense."[86] In the same article Breuer defines his own project three times as an attempt to bring about the "Kingdom of God" (*Königtum Gottes*).[87] Breuer's conceptual choice also testifies to the extent to which he tried to understand Judaism as a political phenomenon: the essence of Judaism is depicted in concrete political terms, such as sovereignty, state, *Recht*, constitution, authority, and indeed politics— concepts that appear often in Breuer's writings during the 1920s.

Breuer's notion of the political cannot be discussed here fully; broadly, Breuer frames his understanding of Jewish politics against politics as it is exercised in the modern state, and demands that the sovereignty of the *Gottesstaat* be in service of the *Recht* and not at its expense, as he believes is the case in the secular state.[88] However, it should be emphasized that the critique against secular sovereignty does not lead Breuer to reject sovereignty, as several accounts claim.[89] On the contrary, in his early writings Breuer consistently insists that the Jewish polity will be sovereign, and confines his critique against sovereignty only to the secular state. Indeed, when he refers to his divine polity, sovereignty appears as predominantly positive.[90] The unique position of Judaism as the only legitimate *Recht* legitimises its sovereignty, whereas secular states, failing to achieve *Recht* due to the focus on their own interest, are prohibited from having sovereignty.

To sum up, Breuer aspires to "politicize Judaism" but acknowledges that the realm of politics is prone to corruption. Breuer expects Judaism to rescue politics by avoiding neutrality and realizing the adequate *Recht*. The political institution which will fulfil Judaism as *Recht* is statist theocracy, to whose appearance in Breuer's writings I now direct my attention.

▧ The Statist Theocracy

Breuer invented the need for a political, non-neutral organization by transposing the meaning of Halakha into *Recht*, thereby framing the realm of politics as the setting in which revelation attains its full meaning and significance. However, Breuer's most early writings include no indication that the state is the desired goal of

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[85] Ibid., 317.

[86] Breuer, "Fazit [1928]," 81.

[87] Ibid., 83, 86, 87. Unlike Martin Buber, who shared the desire to establish the kingdom of God, Breuer aims to build a real state and not an anarchy. For Buber's position see Samuel H. Brody, *Martin Buber's Theopolitics* (Indiana: Indiana University Press, 2018) 61–80. See also the excellent discussion in Dan Avnon, *Martin Buber: The Hidden Dialogue* (Lanham: Rowman & Littlefield, 1996) 179–86.

[88] For an analysis of Breuer's political theory see Itamar Ben-Ami, "Isaac Breuer's Critique of Sovereignty" (MA thesis, Hebrew University of Jerusalem, 2017).

[89] See nn. 41–42 above.

[90] See Breuer, *Messiasspuren* [1918], 351; Isaac Breuer, *Elijahu* (Frankfurt a. M.: Kauffmann, 1924) 112.

Judaism. The differences in this regard between the early and late articles published in the volume *Programm oder Testament* (1929) are striking. In the earliest essays included in this book, *Die Neuorientierung des deutschen Judentums* (1917) and *Die Mobilmachung des Judentums* (1918), one finds platitudinous critiques of the modern state, but not a "Jewish" version of this institution. However, in the later essays *Die zwei Hirtenstäbe* (1926) and *Fazit* (1928), the ideal state is the direct object of Breuer's discussion. It seems therefore necessary to inquire when this ideal state, described in this research as the statist theocracy, was introduced into Breuer's corpus, and, following my claim that before Breuer this idea had not existed, also into Orthodox Jewish thought.

Admittedly, even in his earliest writings Breuer refers sporadically to the ancient Jewish polity before the destruction of the temple as a "state."[91] In this he follows the Protestant trend mentioned above, to regard the ancient biblical polity as a "state" (Hirsch also did so often). But Breuer neither defines this state as the essence of Judaism nor demands action to bring about the creation of this state. On the contrary, when in 1918 Breuer discusses the political goals of his program, he clarifies that, although he demands that Jews settle in "God's land" in Palestine, Judaism has "no political goals," and "the legal form, in which this possibility would be achieved, is to be discussed with the rulers of the world."[92] In Breuer's earlier book, *Judenproblem* (1918), a polity described as "God's state of the future" (*Gottesstaat der Zukunft*) indeed appears,[93] but is not formulated as a concrete goal of Judaism; it is simply a polity that shall appear in the unseen messianic future. Moreover, this messianic state is not formulated as the highest goal of Judaism; when discussing the hierarchy of ideals in this book, Breuer places the Jewish nation above the state[94]—a formulation that would be radically changed later.[95]

I argue that Breuer presents the state as the polity whose realization is the most urgent task of Jewish Orthodoxy for the first time relatively late—in the 1921 programmatic essay *Die Idee des Agudismus*. In this essay, which discusses the goals of the ultra-Orthodox organization Agudath Israel, Breuer writes for the first time that the concrete political goal of Orthodoxy should be "re-establishing the state of God (*Gottesstaat*)."[96] Apart from integrating the *Gottesstaat* into Jewish Orthodoxy, Breuer clarifies that realization of this polity should stand at the forefront of Jewish activities: "Agudath Israel strives to the preparation of God's nation and God's land for their re-unification under the authority of God's *Recht* in the direction of

[91] See: Breuer, "Lehre, Gesetz und Nation" [1910], 26; Breuer, "Frauenrecht, Sklavenrecht und Fremdenrecht" [1910], 171.

[92] Breuer, *Messiasspuren* [1918], 440–41. See also 432.

[93] Breuer, *Judenproblem* [1918], 318.

[94] Ibid., 257.

[95] In the late book *Moriyah*, for example, Breuer posits the state at the highest place in his hierarchy. See Isaac Breuer, *Moriyah: Yesodot HaKhinuch HaLeumi HaTorati* (Jerusalem: Netzach, 1944), 46 (Hebrew).

[96] Breuer, "Die Idee des Agudismus [1921]," 103.

Gottesstaat."[97] After this formulation, Breuer never ceased to describe this ideal state as the goal of Judaism, and its full realization as the essence of Judaism. In his next book, for example, the obligation to create this state becomes very clear: "So long as the apparatus of the state is not Jewish . . . the measure of the Torah cannot be imposed. Only in the Jewish State . . . God and Torah are able to be the sole bearers of sovereignty, are able to be really autocrats."[98] It should be emphasized that this state is utterly sovereign; Breuer rejects, especially in *Das Jüdische Nationalheim* (1925), any compromise regarding the full-fledged sovereignty demanded in the *Gottesstaat*, and explicitly rejects a bi-national state.

The nature of statist theocracy and the ways in which it deviates from the secular state demand separate attention. For the purpose of the present discussion, it is sufficient to point to the year 1921 as the year in which Breuer introduced the *Gottesstaat* for the first time. Arguably, the appearance of the *Gottesstaat* in 1921 is connected to the vivid discussion about the state that took place in Germany following the crisis of World War I and the subsequent reorientation of the German philosophy of the state (*Staatslehre*). Be that as it may, a short note about terminology is nonetheless in order here. In general, during the 1920s Breuer referred to his desired polity as *Gottesstaat*. This term had been used in the German-speaking world to translate Augustine's *De Civitate Dei* (*Vom Gottesstaat*). In the German-Jewish world, it seems that Solomon Ludwig Steinheim used the term for the first time, by calling the ancient biblical polity *Theokratie* and *Gottesstaat* interchangeably.[99] Unlike Breuer, however, Steinheim saw this polity as largely anarchic and non-sovereign, and in any case, despite his critique against Reform Judaism, Steinheim stood outside of Orthodoxy.[100] Breuer should be regarded as the first Orthodox thinker who legitimized the *Gottesstaat*, originally a Christian concept, in Jewish Orthodox circles.

During the 1930s, from the book *Der Neue Kuzari* (whose gradual publication began in 1930) onward, Breuer named his polity *Torastaat*—the state of Torah. This term informs Breuer's writings until his death; when he began to write in Hebrew, he translated this term literally to "*Medinat HaTorah.*" The prominence of *Gottesstaat* and *Torastaat* notwithstanding, Breuer sporadically used other terms to denote the religious, sovereign state. In 1925 he named it "monarchy of God" (*Gottesmonarchie*) and contrasted it with a "free republic."[101] Around the year 1937

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[97] Ibid., 125.

[98] Breuer, *Das jüdische Nationalheim* [1925], 187.

[99] See, for example, Solomon Ludwig Steinheim, "Die Theokratie oder der Gottesstaat [1845]," in *Salomon Ludwig Steinheim zum Gedenken: ein Sammelband* (ed. Hans-Joachim Schoeps; Leiden: Brill, 1966) 122–39.

[100] See Eliezer Schweid, "The Attitude Toward the State in Modern Jewish Thought Before Zionism," in *Kinship and Consent: The Jewish Political Tradition and Its Contemporary Use*s (ed. Daniel J. Elazar; Boston: University Press of America, 1983) 127–47.

[101] Breuer, *Das jüdische Nationalheim* [1925], 204.

(in which Breuer changed several of his principle positions),[102] Breuer named it on two different occasions "theocracy."[103] In Breuer's last book the term theocracy appears once again.[104]

After Breuer's invention, the concept *Gottesstaat* became part of the general non-Zionist Orthodox discussion, for example in the book *Der Gottesstaat* (1926), published by Breuer's same publisher.[105] The term *Medinat HaTorah* infiltrated Zionist Orthodoxy only from around the second half of the 1930s. The transition to Hebrew in the context of the emerging Hebrew-speaking Jewish community in Palestine, where concepts were imported by immigrants and translated into Hebrew, is probably one reason that Breuer's conceptual invention has been overlooked. My suggestion is that Breuer's *Torastaat* first influenced supporters of the German Religious Kibbutz Movement (who reviewed Breuer's books in the 1920s), and later, through their discussions, became part of the general religious Zionist discourse. In these discourses, the concept *Medinat HaTorah* was applied—against Breuer's own anti-Zionist emphasis—to describe a potential religious-Zionist state. Breuer was allowed to claim authorship of this concept, which he already used in German in the context of Weimar political discourse.

To sum up, Breuer invented a polity able to achieve his vision of redeeming world politics in 1921. The *Gottesstaat*—a polity whose realization is now formulated as the most urgent mission of Jewish Orthodoxy—is a revolutionary doctrine within Jewish Orthodoxy, which posits the modern state not as a problem but as the essence of Judaism. This state has nothing to do with religious Zionism and is formulated against the problem of secular politics as Breuer perceived it. The apologia of the religious, sovereign state, I claim, appears in Orthodoxy for the first time in Breuer's writings.

◼ Summary: The Ultra-Orthodox Theocracy

This article unveils the relevance of Isaac Breuer to any discussion about theocracy in Judaism. Breuer was the first thinker to posit the essence of Judaism as an obligation to establish a sovereign state based on religious legitimacy—in other words, he derived both the justifications for the existence of such a state and its goals from a unique reading of Judaism. I use the term "invention" throughout the article to expose the contingent nature of theocracy in Orthodox discussions.

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[102] See above mentioned articles: Edrei, "Multi-Culturalism in Early Ultra-Orthodox Doctrine: Yitshak Breuer – From the Torah State to the Torah Community"; Morgenstern, "Issac Breuer und die 'agudistische' Staatstheorie."

[103] Isaac Breuer, "Memorandum über die Gründung eines Judenstaats in Palästina [1937]," in *SZA*, 379; Isaac Breuer, "Judenstaat und Thorafront [1937]," *Nahalat Zewi: Monatsschrift für Judentum in Lehre und Tat* 8.4/5/6 (1937) 88–99.

[104] Isaac Breuer, *Nachaliel: Yesodot HaKhinuch LeMitzvot HaTorah* [1946] (2nd ed; Jerusalem: Mosad Harav Kook, 2016) 301 (Hebrew).

[105] Adolf Jacobus, *Der Gottesstaat: Die Prinzipien d. mosaischen Gesetzes* (Frankfurt a. M.: Kauffmann, 1926).

Statist theocracy is based primarily on the acceptance of an essentially modern institution—the sovereign state—and has three elements: statist form, claim of sovereignty, and religious legitimacy. These are not an inevitable conclusion of Orthodox reasoning but demand creative interpretations regarding both the nature of politics (society as a moral essence; politics as negating neutrality) and Orthodox Judaism (Halakha as *Recht*; politicization of Judaism). Only the combination of these elements creates the peculiar polity "statist theocracy."

The *Gottesstaat*, therefore, does not represent the established convention of Jewish thought, but rather an option that was deliberately chosen by a specific thinker under specific circumstances relating both to their external context (such as the form of *Staatslehre* in the Weimar Republic) and internal context (such as the disputes within the Jewish world). My effort to identify the first appearance of statist theocracy within Jewish Orthodoxy facilitates a broader genealogical inquiry into the vicissitudes of this idea in modern Jewish thought. In this regard, the excavation of the ultra-Orthodox, non-Zionist position of statist theocracy as it appears in Breuer's writings enables a novel assessment of the conventional wisdom regarding this polity. Ultra-Orthodoxy has been widely regarded by the scholarly literature as representing an aversion to political independence, religious and non-religious alike, and opting instead for diasporic forms of politics as part of their being in "exile among Jews."[106] My argument suggests not only that statist theocracy first appeared in Haredi and not in Religious Zionist discourse, but more radically, that this doctrine entails a deep ultra-Orthodox reasoning.

First, statist theocracy is connected with the rejection of secularism in its various forms. Breuer perceives secularism not only as a heretical rebellion against God, but also as a deeply flawed form of politics. The lack of agreed moral content in public life—which for secularism represents autonomy and freedom but for Breuer is simply dangerous "neutrality" —opens the space for the state and its power interests to undermine any demands for justice. Accordingly, the statist theocracy is distinctively anti-secular, and fits more with the ultra-Orthodox rejection of any cooperation with secularism. Second, what legitimizes the statist theocracy is the Torah. That distinguishes it from the theocracies prevalent in the messianic flank of religious Zionism, which legitimizes the statist theocracy through either speculative readings in the philosophy of history or through a nationalistic narrative. Thus, the role of ultra-Orthodoxy in the development of the political theology of the state should be re-assessed based on Breuer's contribution to Jewish theocratical thought.

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[106] For "exile in the Holy Land," see Ravitzky, *Messianism, Zionism, and Jewish Religious Radicalism*, 146–80. For an excellent, detailed description of the Ultra-Orthodox attitude towards the State of Israel, see Benjamin Brown, "The Haredim and the Jewish State," in *When Judaism Meets the State* (ed. Yedidia Stern et al.; Jerusalem and Tel-Aviv: The Israel Democracy Institute and Yediot Sfarim, 2015) 79–268 (Hebrew).