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Review Essay

The Status of the Halakhic State

Alexander Kaye, *The Invention of Jewish Theocracy: The Struggle for Legal Authority in Modern Israel* (Oxford University Press, 2020), 280 pp.

Asaf Yedidya, *Halakha and the Challenge of Israeli Sovereignty* (Lexington Books, 2019), 220 pp.

Following repeated iterations of its election experiment, it is clear that Israel's consequential political debates are no longer between the dovish left and the hawkish right, but between issues that divide various shades of the right—most prominently, religion and state.

In 2018, the Knesset passed a quasi-constitutional "basic law" titled *Israel—The Nation State of the Jewish People*. The right-wing coalition supporting the law was unified in declaring Israel an unambiguously Jewish state and in giving Judaism preferential status in the nation's law and culture. Beyond these broad principles, however, there is little consensus regarding *how* Jewishness ought to be expressed in the life of the state. Opinions range from Avigdor Lieberman's avowedly secular concept of a Jewish state to efforts by Hardal and Haredi parties to dramatically increase the relevance of halakha in state law and policy. While early drafts of the nation-state law included an explicit reference to *Mishpat Ivri*, a deliberately ambiguous stand-in for halakha that translates as "Hebrew Law," this section was removed by members of the secular-right prior to the law's final passage. By contrast, in 2019, M.K. Betzalel Smotrich campaigned to be appointed the Justice Minister by promising to restore the Torah law to its rightful place. Shortly afterwards, Netanyahu appointed Amir Ohana, an openly gay member of the Likud party, to the post.

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As a slogan, "halakhic state" typically succeeds in galvanizing its supporters and terrifying its critics. To the religious public, the phrase evokes the end-goal of the political aspiration, while secular Israelis are more likely to concur with a popular song that parodies religious pieties and notes: "*Medinat halakha—halkha ha-medina*," loosely translated as: "Get *halakha* and lose a state." But for all the public posturing around the issue, there is little sense about exactly what a halakhic state is and how might it work. Would a Sanhedrin replace the Knesset? Would a king replace the president and prime minister, or could a halakhic state maintain the core features of a representative democracy? Moreover, would the state punish people for failing to adhere to the laws of Shabbat, kashrut, or *tzeniut*, or would it simply nudge citizens towards greater observance? Would Rambam's *Hilkhot Sanhedrin* become the criminal law and *Hoshen Mishpat* the civil code, or would more contemporary/secular frameworks prevail? More broadly, is it clear that a halakhic state should be the ultimate aim of religiously committed Jews? These questions, and the thousands of sub-issues they entail, are rarely hashed out in the political discourse.

Fortunately, two recent books offer important historical, halakhic, and conceptual background. Alexander Kaye's *The Invention of Jewish Theocracy* claims that the halakhic state is not a restoration of some ancient halakhic/Jewish concept, but an idea invented in the 1940s, primarily by R. Isaac Herzog, the grandfather and namesake of Israel's current president and Israel's first Ashkenazic Chief Rabbi. Asaf Yedidya's *Halakha and the Challenge of Israeli Sovereignty* takes a different approach, surveying nearly a century of religious Zionist thought on how halakha should interact with the modern Jewish state.

Kaye's claim of Herzog's invention relies on two primary insights. First, comparing Herzog to other religious Zionists of his era, Kaye finds that Herzog adhered to a different theoretical account of the nature of halakha and its relationship to the state. According to Kaye, traditional halakhic theory assumed a "pluralist" model developed in Diaspora, wherein halakha was one—but only one—of several legal orders governing Jewish life. Translated into the legal regime of the nascent state, the pluralist model assumes halakha would be one of many sources of law (alongside laws of the Knesset, English common law, indigenous Israeli common law, and international law) that collectively regulate life in the Jewish state. To be sure, Israel, as a majority Jewish state, would be more impacted by halakha than the polities of *galut*, but halakha would not be synonymous with state law nor understood to emerge from it.

Herzog, by contrast, advocated for what Kaye identifies as legal centralism, an arrangement in which all lawmaking power in a given social sphere is centralized in the state and its institutions exclusively. Per Herzog, halakha was to become the law of the Jewish state and serve as the sole source of its legal norms. This is notable because according to Kaye, pluralism, not centralism, is the default halakhic position and natural source of precedent for any religious theorist. This insight sets up the second mode of Kaye's analysis, which is to locate the non- or extra-rabbinic sources of influence on Herzog's concept of halakhic legal centralism. Kaye accounts for the "shift from legal pluralism to legal centralism" in the 1940s "by the fact that religious Zionists… were embedded in a European legal and political culture that similarly repudiated legal pluralism in favor of the undivided sovereignty of the centralized state." "This tendency," per Kaye, "was not unique to Zionism but was typical of post-colonial nationalist movements" (14).

Kaye supports this part of the argument by illuminating the fascinating friendship between Herzog, then Chief Rabbi of Ireland, and Éamon de Valera, the leader of the Irish national movement who later served as both prime minister and president of Ireland. The two men shared several affinities, most notably, working to replace British Imperial control of their homelands with a national state bearing a distinctive religious character. Herzog's centralist vision for a halakhic constitution was influenced by Irish Republicanism and, in particular, de Valera's efforts to entwine Catholic and democratic values into the constitution of the Irish Republic. Kaye also points to Herzog's facility with continental and post-colonial legal theory of his era, through which emerging nation states leaned on centralist legal theory to emphasize natural sovereignty over their homelands and independence from colonial rule. Kaye deftly explores how Herzog's erudition and exposure to western legal theory made him an effective ambassador to both secular Israeli Jews and the wider international community. In Kaye's rendering, republican thought and western legal theory were not merely the tools employed by Herzog, but played an important role in leading Herzog to assume that Israel should be a "theocracy" (Herzog's word) under Torah law.

In evaluating Kaye's thesis, much turns on what is intended by the claim that Herzog *invented* the idea of Jewish theocracy. To the extent that Kaye means that such a polity likely never existed, or that halakha must be retrofitted and adapted before it can become the law of a modern state, I concur and have affirmed as much in my own writing.[1] It is

[1] See Chaim Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton University Press, 2018), 4–5.

also clear that Herzog did more to flesh out the contours of a modern halakhic state than those who preceded him. But Kaye seems to mean at least two additional things. First, that the historical legacy of pluralism makes it novel—indeed unexpected—for a religious Zionist to advocate for a halakhic state. Second, that Herzog's identification with the Irish Free State and his exposure to the legal theory of the era are causally significant in explaining how aspirations for a halakhic state were seeded and propagated in the political theology of religious Zionism. For reasons stated below, I have not been convinced.

Asaf Yedidya's *Halakha and the Challenge of Israeli Sovereignty* broadens the camera lens to consider questions of halakha and state beginning with the earliest *shemitta* controversies in the late nineteenth century up through the eve of the Six Day War. Yedidya ably guides readers through the central personalities, documents, and flashpoints of each era, presenting the relevant halakhic and historiographical material in a convenient and digestible form. Herzog features in Yedidya's book, though as more of a supporting character than as a lead actor. And where Kaye focuses on the conceptual relationship between halakha and state law, Yedidya examines how religious Zionist thinkers reconciled halakhic doctrines with the competing legal and cultural imperatives of pre- and early-state Israel. Primary examples include the relationship between halakha and democracy, gender egalitarianism, equality between Jews and non-Jews, the role of halakha in the functioning of the army, and the halakhic (or non-halakhic) character of the Israeli public square.

The books are not the same. Kaye's writing is elegant and advances a specific thesis, while Yedidya largely adheres to the "just the facts, ma'am," school of historiography. Yedidya's prose can be somewhat plodding (at least in the English translation I read) and lacks some of the deeper contextualization offered by Kaye. For example, on several occasions Yedidya cites Kaye's doctoral dissertation (the precursor to the book under review) but does not make it completely clear whether he agrees with Kaye's assessment or not. Nevertheless, Yedidya situates the "halakhic state" debate for English readers by offering an excellent introduction to the key tensions between classical halakha and statehood. His survey of nearly a century of religious Zionist thought showcases insights ranging from the ultra-conservative view that the problem is not with halakha, but with recalcitrant Jews, to more radical proposals for the re-establishment of the Sanhedrin and other structural reforms designed to bring halakha into the modalities of modern statecraft.

Reading the two works together allows for deeper reflection over the difficulties of merging halakha into a state framework and a more informed assessment of Kaye's claims. Significantly, in Yedidya's narrative, the sharp dichotomy between centralism and pluralism animating Kaye's discussion becomes less significant in light of the difficulties in adapting halakha to the challenges of sovereignty. Seen in this light, Herzog is not so much of an outlier as presented by Kaye, but one of many thinkers who worked to reconcile the rabbinic tradition towards the realities of modern Israel. Per Yedidya, the central division is not centralism versus pluralism, but the degree of halakhic innovation rabbis were willing to countenance in their quest to adapt halakha to the state's law and culture.

Centralism in the Classical Canon

Kaye's thesis depends on the view that halakhic legal centralism is largely an invention of modernity and its absorption into Jewish thought is somewhat unique to Herzog and his fellow travelers. A quick perusal of Deuteronomy, however, reveals repeated emphasis of the idea that sacrificial worship should be centralized in the *place where God shall choose to dwell.*

Hazal understand that such ritual centralism is related to its legal analogue. The Great Sanhedrin only becomes vested with the full measure of its legal authority when sitting in the Temple compound. An elder can only be put to death as a *zaken mamre* if he fails to abide by rulings issued from the Temple Mount.[2] This spatial limitation, derived through *Hazal*'s *derasha* that halakhic answers emerge *from the place that God shall choose*, underscores the interconnectedness of ritual and legal centralism. (By way of contrast, though the pandemic forced the United States Supreme Court to conduct hearings by Zoom and kept the justices out of their chambers, no one suggests that its decisions carry lesser weight because they did not emerge from the Supreme Court building on Capitol Hill.)

Indeed, the Talmud's discussion of *zaken mamre* anchors some of the most canonical images of halakhic centralism. Kaye correctly notes that traditional halakha did not maintain a system of appellate courts as understood today. But the Talmud does sketch out a judicial hierarchy stretching from local courts, to one at the gates of the Temple Mount, to one at the gates of the Temple courtyard, and finally, to the Great

[2] See Mishna *Sanhedrin* 11:2 and at 87a.

Sanhedrin itself. This final court sits "in the [Temple's] chamber of hewn stone, from which Torah emerges to all of Israel, as the verse states: *From the place that God shall choose*."[3]

The Tosefta and Talmudic commentary surrounding this Mishna explain that initially there were no halakhic debates because contested questions traveled up the judicial hierarchy to be conclusively resolved by the Great Sanhedrin.[4] While scholars have called the historical veracity of these accounts into question, they clearly nourish the centralist portrait of halakha presented in rabbinic literature, perhaps foremost in Rambam's *Introduction to the Mishneh Torah*, and in his *Hilkhot Sanhedrin* and *Hilkhot Mamrim*. For Rambam, halakhic authority rests conclusively with the Great Sanhedrin, whose leader "stands in the place of Moshe Rabbenu,"[5] an enduring image of centralist authority.

In addition, it is worth recalling that the Mishna envisions the Great Sanhedrin was responsible not only for narrow halakhic questions but for broadly administering issues of executive governance and national policy such as declaring war against both external foes and internal rebels,[6] appointing inferior tribal Sanhedrins, adjudicating suits against tribes, prophets, the high priests[7]—and per the Talmud, even Davidic monarchs.[8]

No doubt a wide gap exists between these images of centralized authority and the work of the modern administrative state. But at the very least, when read by a nationalist-minded religious Zionist, these texts provide a stable basis to assume that the Talmud idealized a centralist conception of halakhic governance.

Kaye is surely aware of these texts, though I wish he would have given them more consideration in presenting the cornerstones of halakhic thought influencing Herzog. Presumably, Kaye would respond in two ways: First, while there are surely sources in *Tanakh* and *Hazal* that paint a highly centralized account of halakhic authority, these ideas reside in the realm of a romanticized past or an idealized messianic future. In practice, however, the lived experience of exile-era halakha was defined by legal pluralism rather than aggadic aspirations.

[3] Mishna *Sanhedrin*, ibid.
[4] Tosefta *Sanhedrin* Ch. 7; *Sanhedrin* 88b.
[5] Rambam, *Laws of Sanhedrin* 1:3; see also, Rambam, *Laws of Rebels* 1:1.
[6] *Sanhedrin* 1:5.
[7] *Sanhedrin* 1:5.
[8] *Sanhedrin* 19a–b.

Descriptively, this is probably correct. But the driving force of early religious Zionism lies precisely in reaching back to an idealized past in overcoming the bitterness of *galut*. For Kaye's thesis, the question is not historical practice, but how someone in Herzog's position—faced with the tantalizing return of Jewish sovereignty—would come to view the Torah's legal system. And here we should not be surprised that a religious Zionist concluded that *Am Yisrael*, re-installed in *Eretz Yisrael,* would live under a system of *Torat Yisrael*—even (or perhaps, *especially*) if the tradition of the *galut* was different. For centuries, Jews have prayerfully turned to God thrice daily requesting to "return our judges as of at first." Does this longing for "our judges" entail no more than a system where Torah law shares partial and subsidiary authority with secular rulership?

Kaye's second response is that while these texts may present a unified, orderly, and centralized picture of halakha itself, they tell us less about the degree to which other normative systems existed alongside halakha. In fact, there is credible evidence in *Tanakh*, historical materials, and rabbinic sources for the view that a monarchic (latter, lay-driven) political system runs parallel to or even outside of the formal dictates of halakha. Indeed, the late Professor Aaron Kirschenbaum's magisterial tome, *Beit Din Makin ve-Onshin*, presents a comprehensive analysis of the multiple "extra" and "sub" halakhic methods of coercive authority assumed by Jewish courts and communities over the centuries.[9] In Kirschenbaum's account, and the many others that accord with it, governance in the Jewish polity invariably proceeds along the pluralist model where both formal halakha and royal/communal/lay forms of law hold sway.

While such pluralism has deep roots in the history of the *galut*, the theoretical scope of such pluralism is harder to gauge. Was this approach a concession to the unrealized ideals of true halakhic governance or a principled understanding of how halakha is intended to function? Moreover, are these two systems wholly independent, or does one system predominate and dictate the zone of pluralism afforded to the other?

The Medieval Legacy of Halakhic Pluralism

Despite earlier antecedents, the dual-track pluralist model of Jewish law was not expressly articulated until the Middle Ages. The strongest case is found in the eleventh *derasha* of Rabbenu Nissim ben Reuven of Gerona (Ran), which understandably draws Kaye's attention. Ran posits that rather than a concession, the Torah itself envisions parallel modes

[9] Aaron Kirschenbaum, *Beit Din Makin ve-Onshin* (Magnes, 2013).

of governance: the "*din Torah*" reflected by formal halakha, and alongside it the "*din melekh*" or law of the king. The second track enables the monarch (and by extension, the *beit din* and perhaps even an electorally representative Knesset) to establish the social order by crafting additional laws not found in Torah law, and when necessary, even to act in ways that contravene the formal rules of halakha.

Kaye's thesis apparently assumes this view of Ran as the baseline position against which Herzog's invention of a centralized halakhic state should be measured. But I am less certain this is the right way to think about it. Though a fascinating intervention in rabbinic political theology, the Talmudic evidence for Ran's theory is hardly overwhelming. Abravanel certainly disagreed[10] and there is good evidence that Rambam did as well.[11] More significantly, notwithstanding Ran's prominence as one of the primary halakhic authorities, his treatment of the Torah's dual track legal system found in the *Derashot* is largely absent from rabbinic discussions of the subsequent centuries.[12] It was not until the early decades of the twentieth century—when R. Chaim Ozer Grodzinski corresponded on the matter with Herzog—that the eleventh *derasha* re-emerged. Herzog sought to limit the impact of Ran's position, adding his voice to those who casted doubt over whether the *Derashot* were in fact authored by the famed Catalonian halakhist, R. Nissim ben Reuven.[13]

But even if we assume Ran represents the mainstream default view, it is far from clear that it offers the robust version of pluralism Kaye's theory seems to necessitate. Scholars have focused on at least two strands of legal pluralism.[14] So-called "weak pluralism" exists when different normative orders operate in a single sphere, but the relationship between them is hierarchically arranged and articulated. The paradigm in the American setting is the relationship between federal and state law. This can be described as pluralistic, even as there is little debate that federal law establishes the boundaries of when and how state law can operate. Much the

[10] See Abravanel to Deuteronomy 17:14.

[11] See for example, Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford 2001), 70–77, 93.

[12] See Chaim Saiman, "Framing Jewish Law for the Law School Context," *The Jewish Law Annual* 19 (2011), 106, n. 43.

[13] Translated and cited in *The Jewish Political Tradition*, vol. 1 (Yale, 2000), 474. The editor's footnote explains that "attribution [to Ran] is no longer contested."

[14] See, for example, the discussion in Ralf Michaels, "Why We Have No Theory of European Private Law Pluralism" in *Pluralism and European Private Law*, ed. Leone Nigela (Hart, 2013).

same is true as between religious law and state/federal law in the United States. Though religious adherents have been granted increasingly broad religious freedom rights over the past few years, there is little doubt that it is American—rather than religious—law that establishes the boundaries between the competing normative orders.

Weak pluralism can be contrasted with the "strong" variety, sometimes called "sociological pluralism," where multiple systems coexist in the same sphere yet lack an established hierarchy between them or formalized mechanisms of coordinating their interactions. Kaye notes that historians of the Middle Ages describe legal systems in that period as strongly pluralist. Norms emanating from a distant royal sovereign, local lord or baron, scholars of Roman law, religious law, as well as norms specific to a clan, community, or even extended family could compete and complement each other in under-theorized, unsystematic and shifting ways.

With these distinctions in mind, we can return to the nature of legal pluralism envisioned by Ran. While Ran presents the *din melekh* as somewhat separate from *din Torah,* neither the hierarchal relationship between them nor the scope of the king's authority to contravene *din Torah* is ever clarified. Ran offers one—but only one—example: the monarch's power to affect capital punishment even where halakha's cumbersome procedures prohibit it. Beyond this case, scholars debate whether the king's law may initiate policies in tension with formal halakhic dictates.[15]

Herzog, unsurprisingly, took the limited view, noting that when the formal rules of halakha required the Sanhedrin to release the murderer, the king had the authority based on "the needs of the hour" to restore deterrence and execute the murderer. "But this does not mean that the monarchy in Israel had its own distinct constitution not in accordance with the Torah," explained Herzog.[16] Even rejecting Herzog's narrow view, there are likely considerable limits as to which *halakhot* may be abrogated by a king/government in pursuit of the social order. No one suggests the ruling authority can abrogate Shabbat by declaring that the costs of observance are too high in an interconnected global economy. To the degree royal authority is hemmed in by something akin to "halakha," Ran's version of pluralism may be rather weak. Indeed, under some articulations of Ran's theory, the monarch is not so much a competing source of law, but a separate channel that is both authorized—but also controlled—by Torah law itself. Support for this view is underscored

[15] See sources collected in Saiman, *Halakhah*, 265, n. 21.

[16] Translated and cited in *The Jewish Political Tradition*, 476.

by the fact that the king is instructed not only to follow the Torah, but to keep a copy of it on his person at all times[17]—a physical and conceptual reminder that Torah law binds the monarch and circumscribes his power.[18]

Further, to the extent Ran envisions pluralism, it is between two aligned systems each committed to the axioms that God gave the Torah to Israel, and that Israel is bound to create a society that reflects the Torah and lives out God's will. The differences between them lie in the role ascribed to different actors, and the specific mechanisms deployed to accomplish shared overall goals.

By contrast, adapting Ran to modern Israel requires a pluralist arrangement that can bridge interactions between a system founded on western liberal principles, which expressly reject the relevance and divinity of religious law, and a system based on God's revelation that creates inter-generational communal obligations. These differences may explain why Herzog did not think Ran's medieval paradigm could serve as a useful template for modern Israel.

Ran's theory of the king's law aside, there are other sources of evidence for Talmudic or classical halakhic pluralism. These include the concept of *dina de-malkhuta dina*, that state/secular law can function alongside and even compete with Torah law; the Yerushalmi's evocative phrase, "*minhag mevatel halakha*," that in financial dealings a local business custom can take precedence over a formalized halakhic rule;[19] the Bavli's view that in civil law matters, "*tenai she-ba-mammon kayam*, parties may contract around Torah law in favor of market practices";[20] and the view of some *posekim* that parties can even agree to resolve their disputes pursuant to principles of secular law.[21] In a different vein, one may point to the mixtures of lay and rabbinic leadership embodied in enactments instituted by various communal councils, most famously, the *Va'ad Arba Aratzot* of sixteenth to eighteenth century Poland.

Taken together, these ideas present a compelling case for a weak form of pluralism where halakha creates space for other normative systems to

[17] Deuteronomy 17:18–19.

[18] An extraordinarily rich analysis of the relationship between monarchic and legal/halakhic power has recently been explored in David C. Flatto, *The Crown and the Courts: Separation of Powers in the Early Jewish Imagination* (Harvard, 2020). The book came to press too late to be included in this review.

[19] *Yerushalmi, Bava Metzia* 7:1.

[20] *Bava Metzia* 51a.

[21] See Yona Reiss, *Kanfei Yona* (Yeshiva University Press, 2018), 37–42. This is the position of the Beth Din of America.

supply the rules of decision in particular cases. But whether they necessitate the stronger version of pluralism, where halakha competes on a field it does not control, as assumed by Kaye, is both contested and less clear. When seen from the perspective of a religious-Zionist halakhists, the former interpretation is at least possible if not more plausible.

Tradeoffs for Theocracy

Leaving aside the uncertainties over halakha's pluralist legacy, we should also probe what Herzog meant by *theocracy* and the rule of halakha. In the popular imagination (especially per its critics), a halakhic state represents a deeply anti-modern form of governance open to coercing religious law on an unwilling populace. It would also formally discriminate between Jews and gentiles, men and women, and Jews of differing levels of observance.

As both Kaye and Yedidya make clear, however, for all of Herzog's talk about theocracy and Torah law, his plan was for the Israeli state to reflect a "hybrid relationship between theocracy and democracy" (Kaye, 76). Herzog was keenly aware of United Nations Resolution 181 (November 29, 1947) that envisioned the creation of both a Jewish and Arab state, each with constitutions guaranteeing equality between religions and genders. Yedidya explains how Herzog's draft halakhic constitution was consciously designed to square Torah law with the democratic principles mandated by the international community (Yedidya, 121–125).

These liberal norms are an odd fit with traditional halakha that can be quite heavy-handed in prohibiting non-Jewish worship and property ownership within the land of Israel. Yedidya enumerates several of the leniencies that Herzog adopted in this realm, but the most significant innovation touched on the nature of Jewish sovereignty within the Jewish state itself. Herzog saw a distinction between a scenario wherein Jews maintain complete sovereignty over the land—under which all *halakhot* that discriminate against gentiles apply—and the case of partial sovereignty, when "the hand of Israel does not decide." According to Herzog, since the creation of Israel was contingent on international law and approval from the U.N., Israeli sovereignty was only partial and the *halakhot* discriminating against non-Jews could not be applied (Yedidya, 123–127).

A similar theme emerged with respect to inheritance law. Traditional halakha favors sons over daughters and is in tension with the pre-state domestic and international consensus favoring equal distributions. Herzog proposed that the Chief Rabbinate enact a *takana* (halakhic reg-

ulation) to instantiate a halakhic policy in favor of testamentary equality that would be ratified by the Knesset. Herzog held such authority was consistent with the traditional powers of the *beit din* and the *kahal* to legislate on matters concerning monetary rights. Herzog's proposal, however, was never acted upon. It was notably opposed by Hazon Ish, who, along with R. Yitzhak Zev Soloveitchik, urged R. Chaim Ozer Grodzinski to publicly disavow the idea. According to Hazon Ish, the attempt to retcon halakha with secular legal norms was the height of apostasy, borne of a lack of faith in the authenticity and divinity of the Torah. He rejected Herzog's plan, explaining that rabbis in an "orphaned generation" do not possess the necessary halakhic authority to initiate new legislation (Yedidya, 127–129).[22]

Though Kaye is aware of these episodes, he does not consider how they provide another explanation for why religious thinkers hesitated to join Herzog's call for a centralized halakhic state. This alternative is supported through Yedidya's exploration of how religious Zionists managed the gap between the redemptive aspirations of the ingathering of exiles and the reality of Israel's founding generations who actively rejected the halakhic tradition.

One response, suggested by R. Chaim Ozer Grodzinski in his correspondence with Herzog, was to invoke Ran's precedent for separating Torah law from state/king's law, allowing each to rule its separate realm. This exilic paradigm has the advantage of keeping halakha pure from the influences of the state and its culture, though at the cost of ceding the constitutional structure and national policy to the state and its secular law.

Herzog, by contrast, pulled halakha into the political domain where it would have to contend with both international and domestic audiences who rejected its authority and religious foundation. To Herzog, the cost of modifying halakha here and there was well-worth the price for the largely rhetorical move of proclaiming Israel a state governed by Torah law. Traditionalists in the mode of R. Grodzinski, however, understood that attempts to fuse halakha with the state would inevitably require bending halakha towards the state and its culture. As they remained more circumspect of the Zionist project, they preferred to ensure halakha's independence even at the expense of sidelining it from state law.

A similar tradeoff is in play on the more enthusiastically Zionist-nationalist side of the ledger. Herzog's solution to the status of non-Jews forced him to concede that Jews were not fully sovereign in their land

[22] See also Benjamin Brown, *Hazon Ish* (Magnes, 2011), 668–672.

and admit the state's existence was dependent on the grace of the international powers. Arguably a fair reading of the realpolitik, but hardly an attractive position for religious Zionists to internalize. To Herzog, it was worth downplaying Jewish sovereignty in favor of proclaiming halakha as state law. But this rationale similarly explains why those Zionists more invested in indigenous sovereignty and *mamlakhtiyut* rejected Herzog's approach.

Yedidya's discussion of the tension between halakhic and modern governance perceptively illuminates the stakes of entwining religious law with the state. These factors, in my view, offer a more compelling account for why many religious Zionists failed to align with Herzog's program. It is not because, unlike Herzog, they did not identify with Irish Republicanism or were unschooled in post-colonial legal thought. Rather, because given the secular substrate of Israeli society of that era, the price to halakhic integrity on the one hand and Jewish sovereignty on the other was simply too high. Indeed, as Kaye explains, when in the 1950s it was evident that these proposals faced difficulties on both sides of the religious/secular divide, Herzog himself backed away.

The Current Push for Halakhic Centralism

The final chapter of Kaye's book moves from the middle decades of the last century to the present. Here, the focus is on religious Zionism's increased appetite for instituting Torah law in the state and its retreat from the principles of liberal democracy inherent in the founding era. Conventional Israeli historiography ties these shifts to 1967 and the growing demographic and political dominance of religious Zionism that followed. Kaye challenges this orthodoxy and traces these movements back to the legal centralism Herzog invented decades earlier.

Kaye is careful with his words. He does not argue that current halakha-for-state-law advocates are students or intellectual descendants of Herzog. He forthrightly notes that contemporary "religious fanaticism… would have been unheard of in the 1950s and would certainly have been repudiated by Herzog and his followers" (155). Kaye draws the connection using vaguer terms: Herzog's theories "[continue] to have an impact today" (154), and "the new phenomenon has old roots" since "its origins lie [in] the foundation generation, which creates a theocentric orientation that lay dormant for many years until it re-emerged in an unforeseen way." Finally, "the ideology created by the religious elites in the 1940s and 1950s continues to resonate in contemporary Israeli society" (155).

Kaye points to leading rabbis such as Avraham Shapira, Mordechai Eliyahu, Yaakov Ariel, Shlomo Aviner, Haim Druckman, Elyakim Levanon, Shmuel Tal, and Yitzchak Ginsburg as exemplars of religious Zionist or Hardal leaders who are "antagonistic" (161) towards the state and who wish to shift it towards a polity where halakha will be enforced through state organs. To the best of my knowledge, however, none of these rabbis holds himself out as a student of Herzog's, nor does Kaye provide any sources connecting them to Herzog or his worldview.

The unfortunate truth, partially redressed by Kaye's book, is that Herzog is largely a forgotten figure in contemporary religious Zionism. Two decades ago, I spent four years in the sector of religious Zionism most enthralled by Talmudic scholars who synthesized the Lithuanian yeshiva heritage with the best of western thought. Herzog, with *semikha* from R. Meir Simha of Dvisnk and a close relationship with R. Chaim Ozer, as well as advanced degrees from the University of London and the Sorbonne, had deep connections to both worlds. Yet outside of the narrow context of the *tekhelet* debates that were the subject of Herzog's doctorate, I do not recall hearing his name even once, even as the discourse was suffused with references to Netziv, Ohr Same'ah, Rav Kook, Hazon Ish, R. Elyashiv, R. Soloveitchik, and others who passed through Herzog's personal and intellectual orbit.

I also follow the broad contours of the Israeli *Mishpat Ivri* literature. Herzog's writings may garner the pro-forma citation, but I do not sense that they exert influence on the current shape of scholarship. Those interested in a statist re-statement of halakha invariably refer to Menachem Elon's monumental four-volume *Ha-Mishpat ha-Ivri* (Magnes, 1973–1998), while anyone seeking an early twentieth-century Zionist recounting of halakha looks to Asher Gulack's pioneering *Yesodei ha-Mishpat ha-Ivri* (Berlin, 1922). Herzog's English-language and more conceptually-oriented work, *The Main Institutions of Jewish Law* (London, 1936–1939), has, by contrast, not fared as well. And if these trends hold at the junctures of the yeshiva and university most congenial to Herzogian thought, *kal va-homer* in the quadrants of religious Zionism represented by Rabbis Tal, Levanon, and Aviner.

Where Kaye finds contemporary connections to Herzog's "theocratic orientation that lay dormant for many years" (155), I find a simpler explanation for religious Zionism's current admiration of halakhic statism: the growing confidence of religious Zionists that they will chart Israel's future.

In recent decades, derision of the United Nations has become *de rigueur* among many Zionists, first and foremost among the religious

public. While Herzog's (and later R. Shaul Yisraeli's) midcentury articulations of halakha and state sought to reconcile halakha, Israeli law, and international norms, this approach has gone deeply out of favor. As the Israeli public and key global actors shift away from liberal internationalism, the religious Zionist rabbis identified by Kaye are more comfortable advocating that the State of Israel must realize the full political implications of the Torah's grant of *Eretz Yisrael* to the Jewish people. While their predecessors may have been constrained by the demands of the international community, contemporary leaders can afford to conceive of the state in more idealized and perhaps messianic terms. With or without Herzog, Irish Republican or post-colonial thought, these nationalistic and ideologically motivated religious Zionists assume that God intended the sovereign Jewish nation sitting in Zion to be governed by Torah law.

Despite these disagreements, Kaye's book does great service in bringing Herzog's thought to light and forcing us to think about the nature of halakha as a legal system and its less-than-obvious relationship to the workings of a modern state. Yedidya's writing provides the crucial details to explain why it is difficult to adapt a system formed mainly in the context of small and religiously observant communities of the *galut* to encompass the conflicting aspirations of modern Israel's many constituencies. These books remind us that, sloganeering aside, the process of building a Jewish state on the platform of Torah is neither a simple nor foreordained task.