Introduction

FRAMING THE DISCUSSION: OVERVIEW OF THE LITERATURE

Rabbi Meir ben Baruch, widely known as R. Meir of Rothenburg, may be said to have been the most influential rabbi in France and Germany in the second half of the thirteenth century. A brilliant jurist of Halakha, a thinker and a poet, R. Meir left a formative imprint on the Jewish communities of those two countries, and his unparalleled reputation radiated as far as the Christian Iberian peninsula. Indeed, his influence endured until the time of the Emancipation. Yet, like other Ashkenazic sages, R. Meir did not write overtly philosophical, let alone political, works. His political thought can be culled only indirectly from his halakhic decisions in areas of life that concerned communal affairs.

The conceptions of politics of the German-Jewish sages of the Middle Ages, and most particularly their thoughts on the sources of political authority, have continually intrigued scholars. Most studies that are concerned with the political tradition of Jewish communities have approached the subject from the historical-legal viewpoint of Jewish Law, and only a small number have investigated the subject from the perspective of Jewish philosophy. Studies that adopt a legal approach to the subject tend to analyze the broad range of solutions offered by medieval Jewish sages to communal problems and to assess the practical and theoretical achievements of the results in the light of Jewish Law. Halakhic texts are examined, mostly Responsa literature emanating from the Jewish communities of Germany, France, the Iberian peninsula, and Egypt,[1]

[1] See, for example, Avraham Grossman, "*Yahasam shel hakhmei ashkenaz ha-rishonim el shilton ha-qahal*" [Attitude of the Early Sages of Germany to Communal Government], *Shenaton Ha-Mishpat Ha-Ivri* [Annual of the Institute for Research in Jewish Law] 2 (1975), pp. 175–99 (henceforth: Grossman, "*Yahasam*"); Menachem Elon, "*Samkhut ve-otzma*

with a view to providing as detailed and encompassing a picture as can possibly be derived from the halakhic rulings governing vast areas of life, including commerce, taxation, social order, disputes between neighbors, and penal law. Although some studies taking this approach compare medieval Jewish and non-Jewish law, often touching upon theories of jurisprudence,[2] the more general rule is that such examinations steer away from intra-Jewish debate over general issues of philosophy of law and political philosophy.

Another approach to the subject attempts to retrace the historical development of the Jewish political tradition on the basis of philosophical sources.[3] The often apologetic nature of Jewish discursive texts, which are at least partially intended to provide a response to Christian counter-claims, requires the modern scholar to labor to uncover authentic Jewish ideas that are often concealed in the text, scattered in between the lines.[4] This approach, which is informed by history of philosophy methods, has contributed to our understanding of the theoretical foundations of Jewish communities in the Diaspora by elucidating the interconnectedness of Jewish political thought, theology, and conceptions of social order. The methodology has also helped to distinguish between aspects of Jewish thought that are immanent Jewish and external influences that originated in the surrounding intellectual milieu. The scholarship of the Jewish political tradition, however, is focused almost exclusively on Spanish Jewry, to the neglect of the Ashkenazic tradition. The medieval Ashkenazic tradition of political philosophy was not expounded in independent, free-standing philosophic works and, as a result, must be gathered from the larger body of halakhic literature. This difficulty is exacerbated, furthermore, by a scarcity of sources.

The legal approach tends to identify the roots of communal authority with Talmudic halakhic models that were adapted by medieval rabbis to meet

ba-qehilla ha-yehudit: pereq ba-mishpat ha-tziburi ha-ibri" [Authority and Power in the Jewish Community: A Case Study in Jewish Political Law], *Shenaton Ha-Mishpat Ha-Ivri* [Annual of the Institute for Research in Jewish Law] 3–4 (1976–1977), pp. 7–34 (henceforth: Elon, "*Samkhut* ve-otzma"); L. Finkelstein, *Self-Government in the Middle Ages*, New York, 1924; S. D. Goitein, *A Mediterranean Society*, Berkeley, 1988; Haym Soloveitchik, *Shut ke-maqor histori* [The Use of Responsa as an Historical Source], Jerusalem, 1990.

[2] Yehiel Kaplan, "*Toelet ha-tzibur*" [The Public Good], *Diné Israel* [Laws of Israel] 17 (1992–1994), pp. 27–47; "*Rob u-miut be-hakhraot ba-qehilla ha-yehudit bi-yemei ha-beinayyim*" [Majority and Minority in the Decisions of the Medieval Jewish Community], *Shenaton Ha-Mishpat Ha-Ivri* [Annual of the Institute for Research in Jewish Law] 20 (1995–1997), pp. 222, 272–7; Shmuel Shilo, *Dina de-malkhuta dina* [The Law of the State is Law], Jerusalem, 1975, pp. 60, 63.

[3] Aviezer Ravitzky, *Religion and State in Jewish Philosophy: Models of Unity, Division, Collision, and Subordination*, Jerusalem, 1998 [Hebrew] (henceforth: Ravitzky, *Religion and State*); David Novak, *Covenantal Rights*, Princeton, 2000; Alan L. Mittleman, *The Scepter Shall Not Depart from Judah*, Boston, 2000.

[4] See, for example, Nissim Gerondi, *Derashot ha-Ran* [Homilies of the Ran], Lecture no. 11, Jerusalem, 1977; Ravitzky, *Religion and State*, pp. 47–8.

particular needs during particular time periods and places. According to this interpretation, Jewish community members are individuals bound together by a partnership (*shutafut*) agreement, such that the legal basis for the community's right to exercise authority, and in particular to use force or coercive means, originates in the individual legal status of community members acting as *shutafim* (partners).[5] Thus, the interpretation that communal authority hinges on the legal category of Talmudic partnership can also justify the exercise of authority by the community. An alternative opinion holds that the legitimacy of communal authority is based on its legal equivalence to the *Beit Din*, or rabbinic court.[6] The opinion that Jewish Law defines community members as partners in an agreement is generally accepted today although, at the same time, most scholars reject the idea that communal political authority is based on partnership laws. The sole exception to this generalization is Shalom Albeck, who described Jewish contract law, in particular partnership law, as the legal basis for organizing communal public affairs. One of the most fundamental, immutable principles of partnership law in halakha grants every partner (*shutaf*) particular rights to use coercive means against his fellow partners under certain circumstances. On the basis of this principle, Albeck argues that the power to exercise coercive means is intrinsic to the halakhic definition of partnership; moreover, such means may be exercised according to standardized, theoretical principles that are believed to represent an "objective" interpretation of the partners' opinions, independent of any actual expression of consent by the individual partners. According to Albeck, the "objective meeting of the minds" (*gemirut daat*) is determined by local custom. It is assessed as the natural position that most people in the same situation would adopt, and it is calculated according to the benefit that most people are said to receive from the partnership. This "objective meeting of the minds" is legally binding on the individual partners, irrespective of the question of whether or not they gave their expressed consent. Making his argument even more far-reaching, Albeck posits that the very act of entering into a partnership agreement may not

[5] Shalom Albeck, *Dinei ha-mamonot ba-talmud* [Property and Contract Law in the Talmud], Tel Aviv, 1976, pp. 506–16 (henceforth, Albeck, *Dinei ha-mamonot*).

[6] See, Yitzhak Baer, "*Ha-yesodot veha-hathalot shel irgun ha-qehilla ha-yehudit bimei ha-beinayyim*" [The Origins of Jewish Communal Organization in the Middle Ages], *Zion* 15 (1950), pp. 29–30 (henceforth: Baer, "The Origins"); Shalom Albeck, "*Yesodot mishtar ha-qehillot bi-sfarad ad ha-rama*" [The Origins of Communal Government in Spain until the time of R. Meir Abulafia], *Zion* 25 (1960), pp. 87–93; Elon, "*Samkhut ve-otzma*," pp. 7–11; Grossman, "*Yahasam*," pp. 177–8; Soloveitchik, *Shut Ke-Makor Histori,* pp. 103–4; Menachem Elon, *Ha-Mishpat ha-'Ivri* [Jewish Law], Jerusalem, 1988, pp. 569–74; Samuel Morell, "The Constitutional Limits of Communal Government in Rabbinic Law," *Jewish Social Studies* 33 (1971), pp. 87–119; Gerald Jacob Blidstein, "*Yahid ve-rabim be-hilkhot tzibur shel yemei ha-beinayim*" [Individual and community in medieval Jewish public law], in Daniel J. Elazar (ed.), *Kinship and Consent; The Jewish Political Tradition and Its Contemporary Uses*, Ramat-Gan, 1981, pp. 215–56 (henceforth: "Individual and community").

necessarily involve any explicit expression of consent. It may, in fact, be determined by an objective assessment of an individual's circumstances and the determination that this person had no choice but to agree to partake in the communal partnership. "These are the foundations underpinnings the laws governing the public sphere and the right of the townspeople to coerce their fellows into compliance," Albeck writes. "Public law in its entirety can similarly be shown to rest on the same foundations."[7]

According to Albeck's interpretation, then, communal authority originates in a communal "social contract" of sorts. However, although Albeck's interpretation does provide a legal basis for community officers to exercise the powers vested in them as the representatives of the general will, it does not sufficiently explain the nature of communal authority. One cannot attempt to explain the power that a particular social body enjoys over other social institutions simply by arguing for the existence of a social contract. More importantly, Albeck's analysis does not explain how communal authority can override the partnership contract among community members. Such instances, in which the welfare of the community overrides private interests – even private interests that are guaranteed and protected under contract law in halakha – recur frequently in rabbinic literature and must be accounted for.

The alternative theory to that of community as partnership equates the community with the rabbinic court. Scholars who identify the rabbinic court as the principal source of communal authority quote responsa sources from Germany, France, and northern Italy from the first half of the eleventh century that made use of the halakhic principle of "*hefqer beit din hefqer*" (literally, what is made ownerless by the rabbinic court remains ownerless) to legitimate communal authority. This halakhic principle, which is anchored in several verses in the Hebrew Bible (Ezra 10: 8; Joshua 19: 51), validates the right of the court to confiscate a person's property and, if necessary, reassign individual property rights from one person to another. The implication of this principle is that the sages have ultimate control over property rights under Jewish law. According to this interpretation, communal authority rests on the authority of the rabbinic court. Haym Soloveitchik has argued that the "dubious parallel" drawn between the *qahal*, the Jewish community, and the *beit din*, rabbinic court, most likely originated in a first postulate that pervaded the tradition of the Jewish sages of the period.[8] Avraham Grossman suggests that the medieval sages transferred some of the prerogatives of the rabbinic court to the community, such as the power to confiscate private property, the power to instate regulations that go against halakhic prescriptions in the area of financial law, and the power to inflict punishments that deviated from the written letter of the law. At the same time, limitations on the authority of the rabbinic court, which

[7] Albeck, *Dine ha-mamonot*, pp. 507, 510.
[8] Haym Soloveitchik, *Shut ke-maqor histori*, pp. 103–4.

were perceived as threatening to the effectiveness of communal government, were abolished; for example, the hierarchal ordering of "larger" and "smaller" rabbinic courts or the right reserved to litigants to invalidate the court on account of hostility.[9] According to a theory introduced by Menachem Elon, the authority of the rabbinic court was the sole source for the legal classification of the community as a political entity.[10] Elon's theory rests on the modern distinction between public law, in which norms may be dictated and enforced, and private law, which does not tolerate norms of enforcement. According to Elon, the legal basis in halakha for the authority of the community to enforce its decisions is derived from the authority of the court.

Alas, the two seemingly incongruent schools of thought obscure the picture, making it difficult to construct a complete and comprehensive account of the concept of communal authority. Although Albeck's method explains certain aspects of the link between the legal status of the community members and the community's authority to administer public affairs, it does not fully explain the nature of this authority, which originates in equating the community to the rabbinic court but is also at odds with personal property rights.[11] Elon's analysis, on the other hand, gives a source for the authority vested in the community but ignores the popular sources of communal authority; namely, the power vested in each individual member that is transferred to the communal government through collective action. The most salient problem in Elon's thesis stems from the difficulty of applying modern limitations on private enforcement to medieval halakha. In fact, Talmudic halakha does not maintain such a distinction among the different branches of law: partnership law, *dinei ha-shutafim*, which Elon considers to be a subcategory of private law, permitted all partners, including townspeople, to coerce one another into compliance in specific cases. More generally, private law enforcement was a common practice during the Middle Ages in both Jewish and non-Jewish systems of law, and individuals were permitted to make use of various enforcement tools, including violence, without the intervention of public institutions.[12]

[9] See Avraham Grossman, *Hakhmei ashkenaz ha-rishonim* [The First Sages of Germany], Jerusalem, 1989, pp. 30–132 (henceforth: Grossman, *Hakhmei ashkenaz*). The hostility accusation – *teanat eiba* – is discussed on page 192. See, also, Avraham Grossman, *Hakhmei tzarfat ha-rishonim* [The First Sages of France], Jerusalem, 1995, p. 56 (henceforth: Grossman, *Hakhmei ttzarfat*); in particular his analysis, found on page 148, of Rashi's deprecating remarks about the importance of rabbinic courts in contrast to the power given to local leadership.

[10] Elon, "Samchut," pp. 10–14.

[11] Albeck's position ultimately extends from his more general belief that public law in halakha is based entirely on private law. See, Albeck, *Dine ha-mamonot*, pp. 510–16. Kaplan discusses the opinions on this matter in "Toelet," pp. 37–47.

[12] In Jewish Law: *abeid inish dineh le-nafshei*, literally: a person may take the law into his own hands (BT Baba Qama, 27b). In non-Jewish law, see R. C. Van Caenegem, "Law in the Medieval World," *Legal History*, London, 1991, pp. 146–7. Although a categorical distinction between civil and common law was upheld in Roman Law from the beginning of the third century CE, this distinction was not applied to the right to use force. Civil law governed private affairs while

In the absence of a comprehensive account of communal authority, the question remains: Can seemingly disparate data be brought together to form a coherent, internally unified legal theory? Alternatively, are we forced to conclude that medieval Jewish law supported several incongruent theories of political authority simultaneously? I am inclined toward the first possibility for two reasons. First, the circumstantial evidence supports this view: one would expect legal disputes over communal government models, if such had existed, to have been recorded in the responsa literature.[13] In reality, the literature is silent on such disputes. Second, I posit that the commitment that medieval rabbis shared to a common core of religious, moral, and legal principles transcended physical and temporal distances. That the development of the Jewish political tradition followed a similar trajectory in distant communities follows directly from this supposition. While halakhic discourse surrounding political life in medieval Germany appears to have revolved around specific, concrete issues that demanded attention, the answers were ultimately imbedded in a limited number of Talmudic legal principles. Finally, such comprehensive, internally consistent religio-political philosophies as are found, for example, in the writings of R. Meir of Rothenburg of Germany and his contemporary, R. Solomon ben Abraham Adret of Aragon (the Rashaba), further corroborate my conviction about the unity of the Jewish political tradition. These writings exemplify the unity and continuity that characterize halakha in its dealings with political questions.

The foregoing considerations motivated me to search for an overarching theory that could encompass the medieval Jewish political tradition as a whole and still account for apparent inconsistencies found in the vast body of responsa literature. This all-encompassing theory offers more than simply a revised legal definition of community. Although a legal definition of community is undoubtedly of crucial importance for any theory – in that it justifies the authority of the collective over individual members, thus establishing the communal authority to act and to enforce laws and decisions – it cannot explain the original motivation to establish a community and to secure its continuation.

To date, few scholars specializing in the Jewish political tradition have attempted to use halakhic-legal texts, particularly responsa texts, to identify the theoretical principles that guided the personal worldviews of medieval decisors when making their halakhic decisions. The history of political thought in non-Jewish medieval Europe, in contrast, has relied heavily on readings

common law governed ritual law, charity law, priests, and magistrates. See Peter Stein, *Roman Law in European History*, Cambridge, 1999, p. 21; R. C. Van Caenegem, *An Historical Introduction to Western Constitutional Law*, Cambridge (UK), 1995, pp. 1–2; Alan Watson, *The Spirit of Roman Law*, Athens, 1995, pp. 42–56. R. Meir's Responsa displays one of the earliest attempts to limit the right of individuals to use force, a fact that will be shown later in this book.

[13] Haym Soloveitchik, *Shut ke-maqor histori*, pp. 102–3.

of legal texts since the earliest times as it continues to do so today. Perhaps the only study of the Jewish political tradition ever to attempt a comparable analysis based on the halakhic traditions of medieval European Jewish communities was Yitzhak Baer's "*Ha-yesodot veha-hatalot shel irgun ha-qehilla ha-yehudit bi-yemei ha-beinayim*" [The Origins of Jewish Communal Organization in the Middle Ages], published in 1950. The article, which has maintained its preeminence and continues to influence every scholar in the field, argues that the Jewish political tradition was shaped by the contest between two source of political power, the authoritarian and the popular. Jewish hierarchical social organizations were shaped by the authoritarian source of authority, whereas the organization of the medieval Jewish community was greatly determined by the popular source of political power.[14] By juxtaposing Jewish and non-Jewish medieval law, Baer expounded the degree to which medieval Jewish Law was actually set within the general legal discourse of the surrounding non-Jewish society. Some of the key issues of medieval jurisprudence revolved around such questions as the place of the individual in society, individual rights versus collective rights, and the privileges granted to groups and corporations as legal entities. Asher Gulak was the first scholar to point out the existence of a parallel discourse in Jewish sources. Gulak claimed that the Jewish medieval sages viewed the community as an artificial, legal entity that was distinct from the individuals composing the community, thereby indicating that medieval Jewish law conceived of the community as a corporation according to its medieval European interpretation, and not according to the Talmudic concept of partnership.[15] Baer carried Asher Gulak's ideas further by incorporating into the latter's interpretation ideas found in the works of Otto Gierke, who had portrayed the church as a living organism with a metaphysical and mystical existence representing the body of Jesus.[16] Baer theorized that Jewish medieval communities viewed themselves as organic beings of a transcendental nature and as the corporal manifestations of the unity of the Jewish people, *ahdut kneset yisrael*. In drawing practical legal conclusions on the basis of these metaphysical beliefs about communal life, the Jewish legal tradition predated its Christian counterpart by several generations, according to Baer.[17]

Nevertheless, a definition of community based on the medieval legal category of the corporation would prove problematic. This category originated

[14] Baer, "Foundations," p. 48.
[15] Asher Gulak, *Yesodei ha-mishpat ha-ibri* [Foundations of Jewish Law], Tel Aviv, 1967, pp. 51–2.
[16] Otto Gierke, *Political Theories of the Middle Age*, trans. F. W. Maitland, Bristol (UK), 1996, pp. 22–4.
[17] Baer, "Foundations," pp. 34–8. For a portrayal of the community as a corporation, see also, Salo Baron, *A Social and Religious History of the Jews*, 2nd edn, vol. 11, New York, 1967, p. 21; and more recently, Mark R. Cohen, *Be-tzel ha-sahar veha-tzlab [Under Crescent and Cross: The Jews in the Middle Ages]*, Hebrew trans. Mikhal Sela, Haifa, 2001, p. 192 (henceforth: Cohen, *Under Crescent and Cross*).

in the "*corpus*" and "*collegium*" of Roman Law, terms that were used to represent groups of people externally and to enable the continued existence of the corporation independent of its individual members. In this regard, the "*corpus*" and "*collegium*" differed from the "societas" of Roman Law, which did not support legal representation of the same kind.[18] The medieval legal category of the corporation was not only greatly influenced by the Roman "*corpus*" and "*collegium*" but it also contributed legal novelties. These medieval innovations included the corporate personality of the corporate body, which was separate from the person of its individual members, and the organic, even mystical significance attributed to the union of individuals bound together in a corporation like the limbs of a living body. Groups seeking political power and legal rights sought to gain the status of a corporation. The concept of the corporation abounded in medieval political theory works concerned with civil and canon law. Still, it is unlikely that Jewish communities enjoyed the full legal status of corporations when one considers that the governing non-Jewish authorities had regarded Jews as a separate group to be governed under a separate legal code long before the legal category of the corporation had come into wide use.[19]

After the dissemination of the legal principle of the corporate personality in European systems of law during the thirteenth century, Jewish communities continued to be governed by special charters, their privileges and duties subject to abrupt change according to the whims of their governing masters.[20] It would be similarly difficult to demonstrate that medieval West European Jewish communities viewed themselves as corporations according to the non-Jewish legal definitions of their time. Their legal discourse was internal, self-referential, and based on Jewish sources. Their rabbis had extensive knowledge of partnership, *shutafut*, a concept that was greatly developed in Talmudic law, but were largely unfamiliar with the corporation. Jewish community leaders were not accustomed to viewing themselves as being separate from their fellow community members, nor did they believe that their representing the community in legal matters was problematical. The issue of legal representation had been solved in Talmudic law within the framework of partnership law, which was a more pliable legal code than its Roman equivalent and which eventually enabled assigning to the community a legal personality similar to the legal personality assigned to the corporation of the Middle Ages.

[18] Fritz Schulz, *Classical Roman Law*, Oxford, 1951, pp. 86–7; Watson, *Roman Law*, p. 28: "Unlike modern partnership, Roman partnership was almost entirely turned inward and controlled between the partners."

[19] Kenneth R. Stow, "The Jewish Community of the Middle Ages Was Not a Corporation" [Hebrew], in Isaiah Gafni and Gabriel Motzkin (eds.), *Kehuna u-melukha [Priesthood and Monarchy]*, Jerusalem, 1987, pp. 145–8; *Miut be-olam nokhri* [*Alienated Minority: The Jews of Medieval Latin Europe*], trans. Oded Peled, Jerusalem, 1997, p. 175 (henceforth: Stow, *Alienated Minority*).

[20] Cohen, *Under Crescent and Cross*, pp. 90–6.

Both Gulak and Baer pointed out elements of the halakhic definition and of the theoretical foundation of communal government that clearly could not have directly developed from the Talmudic definition of *shutafut*, partnership. These elements, furthermore, appear to be fully in keeping with the medieval legal and social "corporation." The first point to consider is the idea of Jewish unity as embodied in the concept of "*kneset yisrael*"– a concept originally found in Aggadic literature.[21] This is the idea that every Jewish community, in addition to its legal definition as a partnership, also plays a part in the religious and national unity of the Jewish people and is a member of a larger body, *keneset yisrael*. As Yitzhak Baer and Gerald J. Blidstein have shown, this idea also attributes to every member of *kneset yisrael* a share in the joint responsibility to uphold the principles of the Jewish faith and the political existence of the Jewish community.[22] The idea of the organic unity of the Jewish people, a unity transcending the individual members who make up the nation, represents a national identity, the roots of which stretch back to the medieval legal concept of the "corporation." Jewish unity is discussed here in general terms as the unity of the nation as a whole rather than of the smaller unit of the local community. However, the imagery used to represent the national unity of *kneset yisrael* is the picture of the birth of the community, the founding moment in which individuals join together to form a community.

The second point to consider is the prevalence in halakhic writings of the idea of the common good, which was introduced into European political thought in the early thirteenth century. It is also prevalent in the writings of R. Meir of Rothenburg, where it serves as legal justification for elevating the community over its individual members. Although it is possible that this principle was an immanent development of the concept of *kneset yisrael*, it seems equally likely that it resulted from the external influences of the surrounding non-Jewish legal and philosophic context, in which the idea of the common good had been in discussion since the twelfth century.[23] R. Meir empowered the community to use force or coercive means beyond those permitted to the partners of a partnership. In doing so, he added another characteristic of corporate law to the halakhic legal code governing the public sphere. Nevertheless, the legal foundation of the community for R. Meir always remains the Talmudic partnership, even as he modifies it to incorporate elements of the corporation of Roman and medieval law.

[21] Cf., for example, *Midrash Zuta on Song of Songs*, Shlomo Buber edition, Reading 8 (Vilnius, 1925); *Pesiqta Rabati*, Meir Ish Shalom edition, Reading 8 (Vienna, 1880).

[22] See Baer, "The Foundations"; and Blidstein, "Individual and Community."

[23] Aaron Yakovlevich Gurevich, *Temunat ha-olam shel yemei ha-beinayyim* [*Kategorii srednevekovoi kul'tury*] Hebrew trans. Peter Qariqsanov, Jerusalem, 1993, p. 130; Joseph Canning, *A History of Medieval Political Thought 300–1450*, London, 1996, pp. 112–13, 128–30; Antony Black, *Political Thought in Europe 1250–1450*, Cambridge [UK], 1992, pp. 24–6.

While historical studies of medieval Jewish political thought have withstood serious criticism, philosophical studies of the same subject have fared less well. Twentieth-century scholarship was marked by attempts to conceptualize the Jewish community using terms taken from modern political thought. Irving Agus, the erudite scholar of medieval Ashkenazic Jewish communities, asserts that they were autonomous and democratic.[24] In his interpretation, R. Meir's attempt to flee Germany together with members of his community was an act of civil disobedience against King Rudolph's explicit violation of Jewish property rights through the imposition of unlawful taxes. R. Meir, as presented by Agus, was a civil rights activist, according to our modern-day perception of human and civil rights. However, Agus' theory is unsupported by the evidence. True, the internal governance of the medieval Jewish communities resembled the democratic *poleis* of ancient Greece and of medieval communes, in which the citizens of the city shared responsibility for protecting the city. On the other hand, R. Meir's political theory does not address two of the most salient aspects of the theory of modern democracy: state sovereignty (although R. Meir did make efforts to increase the powers of communal officers) and human and civil rights. Finally, because modern democracy is seen as a system of government founded on fundamental principles of equality, such as gender, social, and class equality, rather than as a system of government founded on procedural, decision-making principles, Agus' thesis is generally dismissed as anachronistic. R. Meir's writings do not address the issue of gender equality, the distribution of the tax burden between the wealthy and the needy, or the important differential that was made between the opinions of the learned and everyone else's in the community (i.e., the halakhic distinction between the *mehuganim* and the general public, which will be discussed later in this book). These and other important democratic values, such as the freedom of expression, are lacking in R. Meir's theory, and yet Agus' analysis of R. Meir's "democratic" political philosophy glosses over this absence. Similarly Agus' psychological analysis of R. Meir's personality, particularly his theory of the stages in R. Meir's personal development, rests on scant evidence and does not stand the test of objective research.[25] Agus' work, nonetheless, is deserving of great appreciation for his thorough research and the discovery of hitherto-unknown responsa. It is noteworthy, too, for directing our attention to the conception of property rights in R. Meir's works and to the crucial role that these rights play in R. Meir's theory of community; which is to say, his theory of politics.

R. Meir was active at a time when Jewish political thought in Spain was divided between a unifying, theocratic conception of politics and a divisive, secularizing conception. Maimonides, as the champion of the theocratic

[24] Irving A. Agus, "Democracy in the Communities of the Early Middle Ages," *The Jewish Quarterly Review* 43 (1952–1953), pp. 153–76.

[25] Cf., Efraim Elimelech Urbach, *Baalei ha-tosfot* [The Tosafists], Jerusalem, 1995/6 (a reprint of the first edition from 1953/4), pp. 547–9 (henceforth: Urbach, *Baalei ha-tosfot*).