On the afternoon of May 14, 1948, in the Tel Aviv Museum of Art on Rothschild Boulevard, David Ben-Gurion stood up and announced to the world the birth of the State of Israel. The United Nations, he said, had recognized in November 1947 “the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state.” Accordingly, said Ben-Gurion, a provisional government would be set up at once, soon to be formalized by a “constitution which shall be adopted by the Elected Constituent Assembly not later than the first of October 1948.”
But to this day, Israel has no constitution, and the Declaration of Independence, amounting to fewer than a thousand Hebrew words, remains the core text of Israeli democracy. One long sentence embodies the founders' vision:

The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the holy places of all religions; and it will be faithful to the principles of the charter of the United Nations.

In other words, a democratic and Jewish state – but what does this mean in practice? Does “open Jewish immigration” – codified in the Law of Return of 1950 – discriminate unfairly against non-Jews? Might the civil liberties of the non-Jewish minority be circumscribed in the name of larger Jewish collective?

In 1965, Israel’s Supreme Court, headed by the Kentucky-born justice Shimon Agranat, ruled in a landmark case that an Israeli-Arab nationalist party could be banned from running in Knesset elections because it advocated the undoing of Israel as a Jewish state. Citing the Declaration of Independence, Agranat affirmed in his legal opinion that Israel was established as “a Jewish state in the Land of Israel,” fulfilling the “age-old striving for the redemption of the Jewish people.” On the other hand, in the year 2000, the National Religious Party denounced the Court’s decision in the Ka’adan case, which permitted an Arab family to build a house on state-owned land, in a Galilee village designated as Jewish. “The Jewish character of the state,” ruled Court president Aharon Barak, “does not permit Israel to discriminate between its citizens.” But what is this “Jewish character”? Is it religious, or national, or both? And to what extent should it be expressed in the public sphere? Theodor Herzl, hailed in the Declaration of Independence as the “spiritual father of the Jewish state,” addressed this issue half a century before Israel’s founding, in his visionary tract of 1896, *Der Judenstaat*:

Shall we end by having a theocracy? No, indeed. Faith unites us, knowledge gives us freedom. We shall therefore prevent any theocratic tendencies from coming to the fore on the part of our priesthood. We shall keep our priests within the confines of their temples in the same way as we shall keep our professional army within the confines of their barracks. Army and priesthood shall receive honors high as their valuable functions deserve. But they must not interfere in the administration of the state that confers distinction upon them, else they will conjure up difficulties without and within.

It hasn’t quite worked out that way, much to the chagrin of many Israelis. For others, however, the omnipresence of Jewish law and tradition in Israeli life is the foremost justification for the state’s existence. For example, Yisrael (Robert) Aumann, winner of the Nobel Prize for economics in 2005 – an Orthodox Jew who was born in Frankfurt in 1930, and in 1956 made aliyah from the United States – recently told an interviewer that he lives in Israel “because I am a religious Jew. If I would have been seeking separation [of religion from state], I would have remained in America.”

In 2008, the enduring questions remain: Is a democratic and Jewish state a viable and vigorous concept, or an inevitable contradiction in terms? What needs to be done to maintain the delicate balance between these two ideals? On the occasion of Israel’s 60th birthday, *Havruta* asked a range of Israeli scholars and thinkers to share their opinions.
When we ask whether there is a tension in the relationship between the Jewish aspect of the state and the democratic aspect of the state, the answer depends on what we mean by the Jewish aspect, by medina yehudit, a Jewish state. Israel as a “Jewish-democratic state” has a complex identity, because this combination is challenged by two extremes. It is challenged by Arab citizens of Israel who want a democratic state but don’t want a Jewish state; and by the ultra-Orthodox in Israel who want a Jewish state but not a democratic state. This means that the very core identity of the state is under siege by a growing number of Israeli citizens, so that the majority, in my opinion, need to reaffirm and redefine the nature of the identity of the Jewish-democratic state.

What are the elements of this Jewishness? I want to mention four. The first element is that the state, to use Max Weber’s terms, is an organ that has a monopoly on the legitimate use of violence. As such, the state has as a core mission to promote the political interest of the Jewish people. Not only of the citizens of Israel. Can we find justification for this preferential, national aspect of the state? Sure we can. Given the problematic history of the Jews without the power to defend themselves, the Jewish people has an absolute right for such self-determination. If a core aspect of the Jewish state inheres in its physical and political power, gained through its economy and other means, it may dedicate that to some degree to the political well-being of the Jews.

The second aspect of the Jewish-democratic state is the Law of Return. Jews, wherever they are, have a privileged entry to this state, and can get immediate citizenship if they so wish in the state. Is it justified? Sure! I would say it is an affirmative action for the Jewish people, and I say that when there will be a Palestinian state, and I hope there will be, I won’t object to them having a Palestinian law of return, and I’ll fully understand that. I won’t say, “Why does a Palestinian refugee from Lebanon have more of a right of entry there than a Kuwaiti? It’s a racist state.” The reason why I wouldn’t say that is because the Palestinians have an equally justifiable claim for a homeland, historically, as Jews have for a state of their own.

The third aspect is the public sphere: the calendar, public symbols, language, these are all Jewish. This is like any other state: In France they speak French, the public symbols have to do with the particular history of the French nation, the flag, civil holidays, Bastille Day, and so on. In the United States they have Memorial Day, the Fourth of July; and we have our own calendar. The fourth aspect is that the state as a sponsor of centralized education is committed to the production of different varieties of Jewish culture, rather than a monolithic culture. These, for me, are the four pillars of a Jewish-democratic state. Here it also should end. In order for Israel’s Jewish character to coalesce with its democratic nature, it must abide by two important constraints.

The first regards the non-Jewish minority, the Israeli Arabs. There are many nation-states in the world, and we judge whether...
they are democratic by the degree to which their identity as a nation-state produces byproducts of discrimination. The fact that this is a Jewish nation-state should not impinge on the civil rights of non-Jews, their economic rights, access to resources, to political representation, to land. Everything that every citizen gets. If we discriminate against them, not only de jure but also de facto, we fail to be loyal to the combination of a Jewish-democratic state. Our obligation also includes dedicating some of the resources of the state to foster Arab culture for the Arab citizens. It includes allowing for an Arab public space, making Arabic a second official language, and allowing this community to follow a calendar of its own. So that’s one constraint on the Jewishness of the state.

The state cannot be simultaneously the state of the Jews and a Jewish state in a religious sense.

The second element is the intra-Jewish one. The coercive mechanism of the state is not the appropriate tool for adjudicating debates on Jewish identity that originate from the 19th-century rift between Orthodoxy and Reform and secular Jews. A Jewish state, for me, being a state for the entire Jewish people, does not legislate laws concerning how to keep Shabbat, because Jews have been debating since the 19th century whether and how to keep Shabbat. The state cannot be simultaneously the state of the Jews and a Jewish state in a religious sense. Because as soon as you begin to legislate the form of Shabbat conduct, you alienate many Israeli Jews, and this is a home for all of us. A state has to guarantee the right of every Jew to pursue his own understanding of Jewishness as long as he respects the other rights of Jews to have the same rights as he has. Not only that, I would say in the long term, the attempt to Judaize the state through religious legislation is not only harmful to its pluralistic democratic nature, but is also harmful to Judaism. Because nothing is gained spiritually from coercing the observance of halacha. So I would say it’s in the interest of the Jewishness of the state not to engage the coercive mechanism of the state in issues pertaining to its religious or secular identity of its citizens.

I would guess that 70 percent of Israelis would go along, more or less, with my formulation. The problem is that this 70 percent is internally divided with regard to the Israeli-Palestinian conflict and the future of the territories, so that the question of Israeli democracy has been held hostage to this issue. But I do think that now is a good moment to reaffirm the identity of the state as a Jewish state.
The challenges facing the modern, sovereign Jewish democratic state have their origins in antiquity. First of all, from the days of Joshua to the destruction of the Second Temple and beyond, the complexities of Jewish power and the physical and cultural dangers of powerlessness are central themes in the texts we now consider sacred history. Secondly, from the time of the rabbinic sages, Jewish decision-making was founded on principles similar to the ancient version of democratic values that the rabbis learned from Greco-Roman society. Albeit a narrow layer of the upper class, the sages adopted a process of decision-making according to the majority. The best-known application of such a principle appears in a famous story in the Babylonian Talmud regarding the question of whether or not an oven that had become impure could be purified. A debate among sages is resolved not by divine intervention, but by majority rule. At the end of the story, the prophet Elijah says that God at that very hour is laughing, enjoying the fact that the human process has overtaken the heavenly process for determining law. In other words, for the rabbis, there was certainly an ongoing tension between a culture of revelation and halacha and the concept of majority rule, but it’s important to note that they had already absorbed a central democratic principle into the most sacred arenas of their culture.

Over the centuries, whenever possible, the rabbinic leadership in the Diaspora employed the principle of dina d’malchuta dina – the law of the sovereign state is the law. Thus local laws governing commerce or taxation, for example, should be observed by Jews. Tensions between the Jewish way of life and the surrounding culture were inevitable, but they were resolved, as best as possible, in conformity with the Talmudic rationale mipnei darkei shalom, “for the sake of peace.” But what happens now, when Jews are once again sovereign, governing not only a widely diverse Jewish population but other people as well?

The State of Israel is both democratic and Jewish, but does not necessarily function according to the principles of halacha. For many Orthodox Jews in Israel, this poses a significant problem. Now the sovereign authority is not a non-Jewish “other” to whom one must accommodate oneself in order to survive, but instead a governmental apparatus, established and run by Jews, whose values both reflect and reject aspects of halacha. There thus emerges a conflict between two sources of authority. One is the Torah, which certainly contains many undemocratic, and even anti-democratic, elements; and the other is the democratic ideal of Western states. Israel’s Declaration of Independence assures freedom of religion and rejects discrimination on the basis of gender or ethnicity – but are these values easily maintained in a state that is also fundamentally Jewish? The intrinsic paradox of a state with both a religious and a democratic identity is underscored every day. Should the state regulate the observance of Shabbat? Of kashrut? Can it regulate the sale of pork? Allow or prohibit the selling of hametz during Passover?

Avraham Burg, the former Speaker of the Knesset, once put it this way: Where does...
The tension between these ideas is thus felt in every area of Israeli life and governance.

For me, as an Israeli Reform rabbi, the issues are more complex than they are for the secular Israeli Jews, but hardly the paradox they are for the orthodox. Because our non-Orthodox streams of Judaism are to such a great extent a product, and a full embrace, of modernity and the values it proposed - including equality, democracy, freedom of conscience, freedom of religion, and cultural pluralism - there is very little conflict between Judaism and democracy. Liberal Jews, believing that Judaism can continue to respond to changing circumstances, and wanting to reap the benefits of the equal participation of all Jews in the larger society, in the Diaspora and for many decades now in Israel as well, have emphasized the values of social justice that have existed, since the beginning, within the Jewish tradition and in Jewish texts, and have worked to facilitate the evolution of Judaism toward a greater harmony with democratic ideals. Liberal Judaism has also afforded itself the right to change the elements of the ancient system which were crippling and unjust, such as the laws limiting the rights and participation of women as equals in the all spheres of Jewish life.

The State of Israel, which accepts only an orthodox rabbinate, regularly fails to uphold the rights of liberal Jews.
In this sense, the contemporary State of Israel is the quintessential arena for liberal values. Only here can a Jewish and democratic society fully emerge. At the same time, the problem of religious pluralism in Israel is significant. While we liberal Jews most fully embrace the values of democracy, the State nonetheless maintains an unequal status for liberal Jews. The State, which accepts only an orthodox rabbinate, regularly fails to uphold the rights of liberal Jew. It fails to recognize the Jewish and legal legitimacy of our religious ceremonies, it fails to support equally our congregations and clergy, and it largely fails to allow for the religious freedom that should stand at the heart of any democracy.

As a woman rabbi in Israel, I am constantly faced with the institutionalized lack of equality for women in Judaism and the lack of religious pluralism; and yet I see, on a daily basis, a strong desire among liberal and secular women and men to attend our prayer services and celebrate our life-cycle ceremonies. These Israelis appreciate the integration of the values of a pluralistic and serious Judaism together with the foundational principles of equality and dignity for all human beings, regardless of gender or sexual orientation.

One of the greatest achievements of this period of history is the extent to which democratic societies and liberal Judaism have been partners in upholding a shared valued system. Strikingly, regardless of the political problem of religious pluralism in Israel, if you are a secular Jew, or a liberal Jew, in Israel or elsewhere, there is essentially little or no conflict between Judaism and democracy. Judaism is a source of one’s political or cultural identity and democracy is the foundation for collective political life. But for secular and most non-orthodox Jews, Judaism is not primarily a legal system or even a single source of authority. The sources of Jewish tradition have significant spiritual and moral authority in one’s life, but for the non-orthodox modern Jew, it will never be a higher authority than the value of democracy. Ultimately, the modern Jew remains, for better or for worse, primarily a citizen of the world or, if Israeli, primarily an Israeli by nationality and culture but a citizen of the world in terms of universal values.

Thus, Liberal Judaism, in my view, whether lived in the Diaspora or in Israel, is perhaps the best possible integration of both a modern Judaism which validates a wide variety of interpretations of Jewish culture and the basic principles of equality and pluralism inherent in democracy.
We recite the idiom “Jewish democratic state” as if by saying it often enough it will materialize. It’s interesting in this context to think about how all this discussion of a Jewish democratic state has become so widespread in recent years. It was not such a popular topic some 20 or 30 years ago, or even a decade ago. Only in recent years has it become an issue that is discussed all the time and is used to preach, explain and justify all sorts of things.

My feeling is that the mobilization of so many people – teachers, rabbis, judges, university lecturers – to reiterate this notion is all that’s left as we face reality. We whisper these words and hope for some kind of miracle so that this thing – the Jewish democratic state - will happen. For the reality is exactly the opposite.

This state is neither Jewish nor democratic. It is not Jewish in the simple numerical sense, since about 45 percent of the inhabitants ruled by the state are not Jews. Neither is the state democratic, since at least a third of those who are ruled by the state – three and a half million people – are not citizens of the state. The combination of these facts completely refutes the claim that Israel is a “Jewish democratic state.” This notion expresses a wish, a fantasy, a utopia, but it is not in the realm of reality.

Why do we not see this? Why is this not obvious? Because when people talk about Israel they remove the Occupied Territories from the equation. In other words, they do not count the Palestinians, but only the Jews living in the territories. In the territories there are half a million Jews who are Israeli citizens, while the Palestinians are noncitizens and are not counted. In this way, it is possible to continue playing this game, denying reality. The territories, which after all existed long before this formula of a Jewish democratic state became so popular, are not considered part of Israel – yet this is exactly what enables them to be part of Israel. They are excluded in order to be included. We rule over these territories that we say are not actually Israel, so that Israel itself can remain legitimate in our eyes, and internationally as well.

It is true that there are religious and secular right wingers – perhaps about 20 percent of the population – that see the territories as an inextricable part of Israel and identify the State of Israel with the Land of Israel. The only question from this group’s perspective is how to maintain this situation without including the Palestinians as citizens, in order not to jeopardize the demographic balance. This is an important but marginal group.

In the consciousness of most Israelis, of most of those people that serve in the IDF, the territories are “outside.” And this is the way they are ruled and dominated, by keeping them outside the collective consciousness and outside from a legal perspective. There is a different legal system there, different relations between the occupier and the occupied. And yet the occupied are subject to the Israeli regime. The tension that this creates constantly increases, until something is done to deal with it – but only in order to reduce the tension and contain it, not in order to change the conditions that produce it.
I think that the disengagement from Gaza was designed to reduce the demographic threat. Now we can presumably say that the Palestinians in Gaza are *really* outside, Gaza is not occupied, its inhabitants are not governed by Israel, hence they should not be counted. But of course this outside isn’t really an outside, since Israel continues to control the perimeter of Gaza and to enter Gaza whenever it wants, to impose an economic blockade on the Strip, to neglect the welfare of the residents of Gaza and to ruin their lives on a daily basis. So while it is true that Israel does not directly govern and administer the sewage systems or the schools within the Gaza Strip, Israel still dictates the framework of life in Gaza by the siege that it imposes. In my view, the Gazans are also still part of us, and must be counted, since so much of their lives is still dictated by what the Israeli army and government do or fail to do.

By firing rockets on Israeli towns and villages the Palestinians help create the illusion of a border between us and them, an illusion that often serves Hamas as much as the Israeli government. But these rockets are nothing more than the currently most available mode of violent resistance to Israeli violence the Palestinians have. Just like car bombs or suicide bombs before, these rockets, too, have not affected the basic contours of the Israeli framework of rule and domination.

If we define a regime by the form of the relationship between the rulers and the ruled, then one must count all of those who are dominated, and examine how they are dominated. The huge number of noncitizens subject to Israeli rule for more than four decades suffices to refute the claim that Israel is a democracy. Indeed, every democracy has a backyard, every democracy has citizens with impaired citizenship; the reality of any democracy always falls short of the ideal of democracy. But it’s a matter of proportion. The question is: How many of those ruled are full citizens, in comparison to “incomplete” or impaired citizens? And how many are “incomplete” citizens versus those who

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Members of the Jewish self-defense group Hashomer, Palestine, ca. 1913
aren’t citizens at all? And also, is there a process of inclusion of noncitizens and impaired citizens into the realm of citizenship; is there a prospect for change and emancipation for the non-citizens and amelioration of the condition of the impaired ones?

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If there is a process of change, it is a negative one. We have one-third who are not citizens at all; and Israeli Arabs, who make about one-fifth of the citizenry, are “impaired” citizens. These are citizens who have been systematically dispossessed and discriminated against and who still do not enjoy the same access to state land and to the various state apparatuses as the Jews. But if you look really hard, you will see that the division is even more complicated because those under Israeli control in Gaza have a different status from Palestinians in the West Bank. Those who are ruled in East Jerusalem are not ruled in the same way as those in Ramallah. The Bedouin subjects in Israel are not governed in the same way as the Jews in the Negev, and so on.

So we see that Israeli citizenship is structured by ethnic and geographic differences, and by some kind of cross-reference between ethnic criteria – for example, Bedouin, Druze, Palestinians – and geographic ones: Galilee, the West Bank, Jerusalem, Gaza. In the West Bank there are lines separating Judea in the south and Samaria in the north, and both from East Jerusalem. Gradually there are growing differentiations of the legal status of Palestinian inhabitants in each region, evidently in East Jerusalem, but also, less markedly, between the northern and southern parts of the West Bank.

A state that is anchored in law and democracy and yet exerts its rule on the basis of such classifications is, of course, not a democratic state at all.
In a world where the principle of peoples’ right to national self-determination is a given, the expression “a Jewish and democratic state” seems entirely unproblematic to me. I cannot understand the claim that the application of the right for self-determination by the Jewish people is a contradiction in terms – in other words, that a state declaring itself as the fulfillment of Jews’ right for self-determination is inherently undemocratic.

All Arab states are undemocratic. Does this mean that there is an inherent contradiction between an Arab and democratic state? Of course, Arab regimes are criticized, but the fact that Arab states are Arab (and officially define themselves as such) is taken for granted. How could it be that a person pretending to uphold equality and universal values can say that a state with an Arab majority and a non-Arab minority (which is the case in many places) can be legitimately defined as an Arab state, while the only state in the Middle East with a Jewish majority and a non-Jewish minority has something wrong with it because it is a Jewish state? How can that be considered a progressive stance?

We must not confuse between the basic questions at stake. States in the modern world are granted to peoples, not religions. The intra-Jewish debate on nationhood and religion is fascinating, but it should be entirely separate from the question of the right of the Jewish people to statehood, to national independence. Nonetheless, it has accompanied Israel’s existence from the very beginning.

Among those who signed the Israeli Declaration of Independence were members of the Marxist Mapam – The United Workers’ Party – and one member of the Communist Party. They would never have thought that by signing the Jewish state’s founding document they were granting any privileged status to the Jewish religion within the governmental system – or giving legitimacy to discrimination against non-Jewish citizens.

The protocols of the Provisional Council of State, which drew up the document in 1948, reveal a fascinating debate on the proclamation’s reference to God, which ended with the compromise “Placing our trust in the Rock of Israel [Tzur Yisrael], we affix our signatures to this proclamation.”

Mapam’s representative said he refused to proclaim his faith in something he did not believe in. The representative of the ultra-Orthodox Agudat Yisrael stood up and said that in his eyes, as a faithful Jew, it would be horribly offensive to found the Jewish state without making an explicit mention of the Almighty, and to make do with an implied reference to Him. Then Ben-Gurion got up and said: each and every one of us knows what Rock of Israel they believe in – the gentleman on my right knows and the gentleman on my left knows, and so do I. So please, don’t force me to hold a vote on this question.

What to do with all this baggage in the face of modernity is another question. I do not side with the radical secularism that seeks to strike out religion from public life altogether. The Jewish and democratic state, as any democracy, should be run by all the citizens of Israel, including non-Jews. There is nothing exceptional about having a national minority within a nation-state. But since religious
and traditional Jews constitute a significant presence in the state, and part of the secular public also relates to Jewish tradition to a degree, it is obvious that Jewish tradition would influence the character of the state, and this is fine. But it should be without crossing the boundaries of human rights and civic equality, and other such values. Where is the line drawn? This is a legitimate subject for debate.

The fact that the Jewish people are entitled to have a state of their own does not mean that it cannot have an internal struggle about the nature of its modern culture.

The dominance of rabbinical courts in matters of family law is an example of a wrong that should be undone. It is true that those who support the current state of affairs do so in the name of the Jewish tradition. Yet I am under no obligation to accept their interpretation of the state’s Jewish character. I believe that the state should allow civil marriages. The jurisdiction of rabbinical courts goes beyond international democratic norms. It’s unreasonable. It brings about inconvenience, not catastrophe – after all, there are arrangements such as the “Cyprus marriage,” so nobody is really prevented from marrying – but it’s fundamentally wrong. Therefore, I support civil marriages in Israel, in the same way that the Greeks struggled for theirs and achieved it, and as the Italians and the Irish obtained the right to divorce. Creating this option does not necessarily mean separating the institutions of religion and state, though if we did separate them it would not cancel out the state’s Jewish character. In the eyes of the rabbis it would, but this is a matter of interpretation.

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The religious believe its nature should be dictated by halacha and that there is no alternative Jewish culture. I accept halacha as part of Jewish heritage and tradition, but any application of ancient heritage and tradition in a modern democracy must, of course, be subject to modern norms.

The Law of Return, which is criticized in certain circles, remains in my opinion within the framework of the state’s democratic principles. First of all, factually, various democracies have similar laws in light of similar historical circumstances. Other nations with a diaspora also have laws that express many aspects of the link between the state and its dispersed nationals, including the matter of citizenship. This reality not only exists, it also becomes more and more prevalent. Here, too, the Greeks are a case in point. Diaspora Greeks are not necessarily emigrants from modern Greece. There are Greek communi-
ties that date back to the time of Cleopatra, Homer or Pericles. There was a Greek diaspora long before the founding of the Greek state.

The International Convention against racial discrimination explicitly allows states to privilege members of certain groups in matters of immigration and naturalization. That is why if we recognize the fact that the Jewish state is a state of the Jewish people in the sense that it grants the Jews independence, then clearly communities outside of Israel may consider themselves attached to Israel, and Israel may consider itself attached to them. Israel cannot discriminate among its own citizens, but it can favor Jews who live outside the state.

This creates a problem in terms of the equality of Palestinian Arabs, because the Palestinians also have a diaspora. This is the genuine problem as regards the Law of Return. A Palestinian refugee who does not have a state that will take him in unconditionally is clearly subject to injustice, when a Jew with full citizenship in another country may move to Israel whenever he so chooses, without having to be a refugee in order to be granted citizenship here. But the injustice, the inequality, is not created by the fact that Jews have a state that grants them this right, but by the fact that the Palestinians do not have a state that grants them this right. Thus the remedy is not to take this right away from Jews, but to grant it to the Palestinians in the Palestinian state. This is the two-state solution – if there are two states then there are two laws of return.

Both the term “Jewish” and the term “democratic” have numerous interpretations. This means that two people can talk about Jewishness and democracy, and their paths will never cross. It also means that we can match various interpretations for the term “Jewish” with diverse definitions of “democratic” and all combinations will work. If, however, we choose other definitions for each of the terms, they will clash. This is why it is so hard to talk about this subject intelligently in public discourse in Israel.

Factually and historically, the combination “Jewish and democratic” came into being at the time of the establishment of the state, based on a concept that we did not choose. This notion appeared in a United Nations General Assembly declaration recognizing the mutual right of Jews and Arabs to independent states, provided that two democratic states would be established in Palestine – one for each nation. Therefore, the term “Jewish” did not pertain to the nature of the regime, or to the prevailing culture, and certainly not to the state religion. Rather, it sought to describe the majority population living in the very small area that was designated for the Jewish state. The UN guidelines instructed the future state to be entirely democratic and to grant full rights to its non-Jewish citizenry – which was expected to have been a marginal minority.

The same was expected to prevail in the Arab state that was to have been established on the Arab portion of Palestine. Its population would have been Arab, and it would have been entirely democratic. Thus understood, I find the United Nations’ definition acceptable.
expresses the right for self-definition of the ethnic group that calls itself Jewish; it is a right similar to that enjoyed by the French, the Finns or the Uzbeks, for example.

The greatest achievement of Jewish national revival and of Zionism is that Israel’s official language is Hebrew. There is nothing more Jewish than this.

I beg to differ, however, where the designation “Jewish” is also understood as dictating the character of the state, painting a certain picture of how it should reflect the Jewish majority and Jewish religion. While some of these repercussions are completely legitimate, others take a leap beyond a red line that I find illegitimate. It is legitimate, when designating the weekly day of rest – and it is customary for countries to have an official day of rest – that in Israel this day would be Saturday rather than Sunday, even though this creates a problem for banking, commerce and coordination with other countries. It seems to me absolutely fine that the official state calendar is the Jewish calendar, as a cultural, symbolic matter, with the standard dates noted next to the Jewish dates. Or fixing school breaks according to festivals: In the United States, where the majority is Christian, the midyear break extends from Christmas to New Year’s; it is fine that school holidays in Israel will be on Rosh Hashanah, Hanukkah and Passover. Though we have Muslim and Christian minority groups, it is fine for these designations to express the Jewish character of the state.

Similarly, the greatest achievement of Jewish national revival and of Zionism is that Israel’s official language is Hebrew. There is nothing more Jewish than this. Verdicts in our courts are written in Hebrew, reflecting an Israeli reality that is ultimately a Jewish-Israeli reality. These reflect a collective mood shaped by its Jewish majority, a mood that nonetheless follows democratic principles. Israel is a Jewish state in that we, as well as the minorities in Israel, speak Hebrew. This, by the way, does not mean that we should not speak Arabic as well.

What I find unacceptable is that the state takes upon itself to determine for each person, through the Law of Return, whether they are Jewish or not, and what being Jewish means. This law blurs the boundaries between democratic principles and a national-religious perception. In my eyes conversion to Judaism should not give automatic entitlement to Israeli citizenship.

What I find equally problematic, if not more so, is that Jewish citizens in this country are forced to abide by Jewish law in its Orthodox, fundamentalist interpretation. The State of Israel, for example, does not have civil matrimonial laws. Therefore, in

Orit Kamir, a senior fellow at the Shalom Hartman Institute, serves as a professor of law, culture and gender at the Hebrew University of Jerusalem and the University of Michigan Law School, and as co-director of the Israeli Center for Human Dignity. Photo by: Yaniv Golan
order for a Jewish citizen of the state to be married or divorced in Israel, he or she must follow the laws of halacha as interpreted by Orthodox rabbinical authorities, who today lean toward unprecedented strictness. This means that a Jewish citizen in Israel cannot marry a Muslim or a Christian, or even a Jewish partner, in a secular ceremony. If the ceremony is performed by a Reform or Conservative rabbi in Israel, it is not recognized by the state. This renders the state utterly undemocratic in this respect. And this is only one example of religious coercion.

The State of Israel as a democracy is not at all justified in enforcing a very specific definition of Jewish identity that is intertwined with a religious definition. Therefore, if we have realistic aspirations for our state to reflect the original meaning of the expression “Jewish and democratic,” then its Jewish citizens should be able to define their Jewishness in any way they choose. Most Israeli Jews choose not to drive on Yom Kippur and choose to hold a Seder and eat matzot on Passover. This is a Jewish-cultural choice, and there is no need to enforce it through legislation. In the same way, family law should also follow democratic principles, in order for the entire body of Israeli legislation to reflect this fundamental aspiration of the polity to be run as a democracy. Family law is a much more troubling issue that reinforces segregation from the non-Jews in our midst, and a prohibition, an actual injunction, against mingling with them. This is simply unthinkable.

In terms of civil rights, the group that suffers most from discrimination in the name of Judaism is the Palestinians under Israeli rule, who are noncitizens. From a legal perspective, the society unequivocally discriminates against all women, Jewish and non-Jewish alike — a complete violation of democratic rights, based on the most severe and anachronistic enforcement of ancient patriarchal rules. The political establishment blames this on the coercion of ultra-Orthodox politicians, but this is a groundless claim. The religious public also protested against traffic on Shabbat and television broadcasts on Shabbat, and lost out to the majority. But on this issue of family law, Jewish men had no qualms over giving into religious demands and grant themselves legal privileges over women.

In Israel, a Jewish woman can only obtain a divorce if her husband agrees to sign a get — a religious writ of divorce. If he refuses, she remains permanently in the status of aguna — barred from remarrying. This is true even if her husband beats and abuses her, even if he left her and lives with another woman. If he has children with another woman – they are legitimate Jews. But if the aguna has children with another man, they are considered illegitimate, mamzerim, and therefore may not be an integral part of the Jewish community and cannot marry in Israel, ever. This means, as a practical matter, that in the State of Israel, many agunot refuse to live with another man and will not have children because they don’t want them to be mamzerim. An arrangement that forces them into such restrictions is certainly not democratic, and I do not think that it is Jewish either.
In Israel there is a wide gap between practical life – the way people live – and ideological life – the way people understand their lives. On a behavioral and individual level, the vast majority of all Jews in Israel – secular, traditional, religious and even ultra-Orthodox – appear to identify with both the Western-liberal culture and the Jewish-traditional culture. Obviously, the members of each sector do so at different levels of internalization and awareness, but almost every Israeli Jew lives in some kind of cultural duality. Individual Israelis have fashioned their lives out of the rich values of both cultures.

The openness to cultural plurality disappears when it comes to the ideological and collective level. On that level Israelis must choose. Each sector fights to maintain its own unique and uncompromising identity by standing behind one particular flag – traditional or Western; Jewish or liberal – and by rejecting the cultural influences that seem to originate from the natural domain of the other camp.

The distressing outcome is that Israelis are being thrust into a power struggle in the marketplace of ideas. For zealots of “liberal truth,” the presence of Judaism, and especially the religious component in public life, corrupts politics, violates human rights, reduces the level of rational discourse and diverts Israel from its proper path. In contrast, advocates for the religious version of Jewish heritage preach for a Jewish state that is free of any “foreign” democratic influences. They see the manifestations of Western cultural values in Israel as a loss of national identity, a betrayal of Jewish history and a nullification of the significance of national rebirth. Each side is entrenched in a single cultural truth. The realization of one side’s dream comes at the expense of the other’s nightmarish reality. The end result is a severe and prolonged collective identity crisis.

Real dialogue could lead to the creation of a complex identity, based on both the liberal worldview of the present and the Jewish memory of the past.

So what is the solution? In addressing this question, it is important that we be aware of the distinction between truth and values: one can not integrate two contradictory truths, but it is certainly possible to integrate two different sets of values. To overcome this identity crisis, Israelis must begin to understand that the different cultural preferences are not necessarily two contradictory “truths” from which they must choose one and dismiss the other. Rather, they should see the encounter between the traditional-Jewish world and the liberal-Western world in the Jewish state as an opportunity for dialogue between varied beliefs and preferences.
Stepping back from an all-or-nothing “discussion of truth” should in no way diminish the importance and validity that people attribute to their values. Just as the commitment that binds a couple, or parents and their children, can be deep and unconditional, even though it does not reflect a truth statement, so too can religious and secular people be committed unconditionally to their worldviews – and base their actions and behavior on them – even if their views do not reflect an objective truth.

This analysis leads us to draw one obvious conclusion: If the parties to the Israeli debate are no longer armed with the absolute truth, then they should be promoting their positions with humility and respect for other positions. They are not entitled to take a patronizing cultural stance vis-à-vis the other, and they should understand that the sincerity and depth that derive from a person’s decision to be religious or secular-liberal can also nurture a personal choice in the opposite direction.

When a significant portion of the Jewish population in Israel internalizes this idea, we will be able to pursue a discussion on a new Israeli identity, to be held among the various identity groups. It is hard to predict such a discussion’s outcome: a real dialogue could lead to some fascinating surprises. In any event, I feel it is safe to say that the potential end result of such a dialogue would be the creation of a complex identity, based on both the liberal worldview of the present and the Jewish memory of the past. The “liberals” must understand that without tradition, Israel will lose its unique identity in the global, egalitarian world, which trivializes cultures and looks for a common denominator. The “religious” must understand that without openness and internalization of Western culture, Israel will lose relevancy, and our civilization will be reduced to the scope of an unsuccessful Native American reservation that is fated to fail.

We in Israel have work to do, on shaping the substance of Jewish-Israeli identity whose roots would be planted deep in the Jewish past, but whose upper branches would spread to include all of life’s realities in the present and in the future.
Let me begin first with “Jewish” as a religious category. The very distinction between “Jewish” as an adjective describing a national identity and “Jewish” as describing a religious identity is a uniquely modern distinction. Prior to the Emancipation, neither Jew nor gentile would see any distinction nor comprehend it as problematic, because to be Jewish nationally or Jewish religiously was one and the same.

Then came the emancipation of European Jews, and Moses Mendelssohn spoke about being a Jew at home and a German outside, and for German Jews that meant adopting a German national identity. One of the most important features of ultra-Orthodoxy was a rejection of this distinction. To this day, the haredi community expresses Jewish yearning for pre-modern existence. This is a factor in the inner complexity of Israel, where religiosity is understood primarily in an Orthodox fashion, be it the anti-modernist haredi identity or that of modern Orthodoxy.

In recent decades, however, the consensus over the Orthodox definition has eroded. Alternative forms of Judaism have emerged, whether in the form of trying to implant into Israel forms of modern Judaism that didn’t really have a hold in Israeli society – Reform or liberal Judaism, or Conservative Masorti Judaism – or what we may loosely call new-age religiosity. The interesting thing about new-age religiosity is that it has a strong anarchic streak to it, which has different expressions in different groups. These include antinomian sects at the margin of the haredi world or the completely lawless existence of certain groups in the West Bank.

By and large, the public presence of religion in Israel is still traditionally Orthodox. As for nonreligious Israelis, I think that today secularism is a mostly default identity and not an ideological identity. But for those who do hold it as an ideology, Jewish secularism in Israel has moved from being anticlerical to being antireligious.

If we look back at the past 60 years, what we see is that we’ve had a status quo that was really a ceasefire line, which was not very effective in regulating the tensions between religion and state in Israel. What we have not succeeded in achieving is a constitutional structure for defining the role of Judaism in our democracy. What we see in Israel today is a weakening of the hold of public religion, on the one hand, and an upsurge of popular religion, including new forms of it. Religious legislation is not on the agenda, the Ministry of Religious Affairs is falling apart, and all in all, the Israeli public sphere is pretty much secular. I remember back in 1996, when I took part in discussions on creating a constitution, speaking to Aryeh Deri, the leader of the religious Shas party, who was then at the height of his power. Deri said, “No one can pass religious legislation today, it’s impossible.” Now, I would say kal va’homer, it’s all the more true, because we have a very weak parliament incapable of undertaking the serious legislative work that needs to be done.

At the same time, many Israelis, religious and secular alike, have distanced themselves from the strong identity claims that the state made in its first decades on its Jewish
citizens. For a liberal-minded Israeli this may be seen as a tremendous achievement; but at the same time a good way of assessing the modern republic is through the slogan of the French revolution – Liberty, Equality, Fraternity. I think that what we’ve gained in liberty in Israel, we have lost in terms of fraternity or solidarity, most clearly in terms of the role of government in social welfare. We’ve seen a dramatic erosion in the social responsibility of government, and this is a grave problem. It is true that the level of activity of individuals and NGOs in this is very high, and yet I think that a society that does demand a great deal of sacrifice from its citizens has a special public obligation in terms of social welfare and care.

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When we speak of “Jewish” as a nationality, here the question is the role and place that our society is capable of giving to non-Jews who are full citizens in our polity, so that they would be able to call Israel their home without qualification. I can’t stop a Palestin-
ian from experiencing the destruction of his home as his nakba, his catastrophe. We need to realize that our Homecoming was experienced by others as a trauma, as rape. Recognizing this, acknowledging the price paid by others, their pain, does not delegitimize our own claim. And I think that the Israeli polity has failed to recognize their suffering. Realizing that they suffered a tragedy doesn’t mean that their right of return is self-evident, and it doesn’t mean that we don’t have our right of return. With regard to Palestinians who are Israeli citizens, let me offer an analogy. There may be many Hungarians who live in Romania, but they have a limited claim to cultural autonomy in Romania, because they have the option of living in Hungary. Similarly, if Palestinian national rights are implemented in a Palestinian state, that is how the issue of Palestinian cultural autonomy will find adequate resolution. I think that the issue of territory, where you draw the lines, is a secondary issue. The main thing is the liberty of the people and the national right of an indigenous people to their own country.

The prolonged occupation of the Palestinian population has been a disaster for Israel on many levels. This has gone on for forty years, two-thirds of our existence. I have no delusions about the nature of the Palestinian national movement, the fact that they see the conflict as a zero-sum game. When Palestinians speak of justice, they don’t think that you or I have rights here, therefore their justice is one-sided. This, in my opinion, undermines their own claim.

But I do think that the occupation has not only eroded our values, it’s dangerous for our souls on a religious level. Jewish national identity has too often been turned into a means for ruling over another people and has contributed to a slow process of racism in our society. By the way, I do think that a major catalyst for this racism was Palestinian terror. But that doesn’t mean that there isn’t a sickness within us now, whatever its causes were. I think that the manner of dealing with uprooted settlers has been another expression of how brutal and callous Israeli politics have become.

So the two issues overlap. The political reality reinforces the kinds of understanding of Judaism that at the minimum are chauvinistic, and in their radical forms outright racist. It’s here that we find the greatest problems for Israeli democracy. Right now I believe Israeli society doesn’t know how to deal with this.

All in all, Israel is a fascinating place to live. It’s a society that is highly technological, it has undergone a very profound process of liberalization, and it is a military power in which the power is also controlled by concerns of political morality. I think that these complexities are what makes Israel highly vibrant – but after 60 years it has too many questions to ask itself, and too many problems to confront for it to rest on its laurels.