



Religion, state, and the Jewish identity crisis in Israel

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Table of Contents

<i>1</i>	The Author
<i>3</i>	The new Israeli order
<i>4</i>	Cultural duality in Jewish society in Israel
<i>8</i>	The debate about the role of religion in the state
<i>10</i>	The issues in dispute
<i>21</i>	Conclusion
<i>22</i>	The Center for Middle East Policy

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The new Israeli order

In June 2015, Israeli President Reuven Rivlin delivered a seminal address, which came to be known as the “four tribes speech.” Speaking at the annual Herzliya conference, he surveyed the expected demographic trends in Israeli society in the next generation. He showed that while during the 20th century there was a clear and firm secular majority in Israel, over the coming years, however, this majority will dwindle and will be replaced by a “new Israeli order” composed of four major identity groups that are fairly equal in size with no clear hegemonic center: ultra-Orthodox (*Haredi*) Jews, national-religious (a.k.a. Modern Orthodox) Jews, secular Jews, and Arabs.

President Rivlin stressed that this new Israeli order is not merely a prediction; it already exists among young Israeli schoolchildren. Since the Israeli education system is divided into separate streams, with each serving one of the four identity groups, we can be fairly precise in projecting that the future demographics of the county will be roughly one quarter ultra-Orthodox, another quarter Arab, approximately 15 percent national-religious, and the balance—some 38 percent—secular Jews. This distribution is not static; the emerging trend is that the secular group will continue to decrease and there will be an increase in the share of ultra-Orthodox and national-religious Jews, whose rate of natural increase far exceeds that of secular Jews and Arab citizens of Israel.

According to President Rivlin, “the new Israeli order now requires us to abandon the accepted view of a majority and minorities, and move to a new concept of partnership between the various population sectors in our society. Clarification of the essence of this partnership is a task of all of Israeli society.”

In the following pages, I will examine one of the greatest threats to the concept of partnership between populations in Israel: the tension between religion and state. Although issues of religion and state in Israel are important not only to Jewish Israelis but to non-Jews as well—most notably Muslim and Christian Arab citizens of Israel, and to a certain degree Jews outside of Israel, some of whom are influenced by what happens in Israel in this realm—in this paper I will focus only on the intra-Jewish and intra-Israel tensions.

Cultural duality in Jewish society in Israel

Judaism is a composite that includes elements of religion, nationality, society, and culture. In the past, these identity components were perceived as constituting an integrated whole. However, a series of major changes in the lifestyle of Jews in recent generations has caused this amalgam to break down.

The most important of these changes is secularization. The last 250 years have seen a significant decrease in the centrality of the religious component of Jewish identity. Whereas in the past, moving away from religion generally meant abandoning Jewish identity completely, many Jews today opt for a lifestyle that is devoid of religious observance without giving up or compromising their Jewish identity. Instead, they emphasize other components of Jewish identity—cultural, national, and social. This change is a watershed in Jewish history, as it brings the question of the essence of Judaism to the fore. As a result of this change, although Jews in Israel have a common destiny, which makes them stand together vis-à-vis the world, they do not always feel that they are bound by a shared purpose.

The second major change in Jewish life is the establishment of the State of Israel. For thousands of years Jews lived in exile. During that time, the public aspects of Judaism were silenced and it became a way of life for individuals, families, and communities. The establishment of the State of Israel transformed this reality. The Jewish people began to control territory, and were transformed from a minority ruled by others to a Jewish majority responsible for itself. The establishment of the state created a Jewish public sphere that has Jewish politics, Jewish armed forces, a Jewish legal system, and a Jewish public domain. This is an exciting cultural, national, and religious development. It is no wonder that the establish-

ment of the State of Israel was seen by many Jews as a miracle that realized the dream of generations of Jews.

Many hoped that the founding of the State of Israel would help to resolve the question of Jewish identity. Gathering a dispersed group in one place, imposing full political responsibility on its members, and creating cultural hegemony in the public sphere should have provided the basic material for building the nation. But today, after nearly 70 years of independence, it can be seen that rather than resolving the question of identity, the Jewish state has become the main arena for the debate about the nature of Jewish identity. The success of political Zionism raised serious questions that required conceptual and practical decisions as to the nature and meaning of the Jewish collective.

Indeed, debate is one of the hallmarks of life in Israel. There is a very broad and deep area of disagreement, sometimes quite fierce, which includes a lack of consensus about the cultural orientation of Jews in Israel, the nature of the Israeli public sphere, and the role of religion in the state.

Many Jews in Israel live a life of cultural duality. They have two cultural foundations: Western-liberal culture and traditional Jewish culture. Presenting these two cultures as distinct alternatives is somewhat artificial; they are interlocked and nourish each other, and each is an organic part of the other. For the purpose of this analysis, however, I will treat them as separate cultures, so as to sharpen the focus.

In general, the three Jewish identity groups in Israel all identify with both Jewish and Western culture, albeit at different levels of internalization and awareness. Each of these cultures serves all three Jewish groups as a formative component of identity

that shapes their lifestyles and behavior. Thus, for example, many secular Israelis use certain symbolic and material products of Jewish culture and even of Jewish religion. Similarly, although the identity lexicon of national-religious and ultra-Orthodox Jews is based on Jewish religious literature, they have adopted central values of liberal culture, such as equality, self-fulfillment, freedom, acceptance of science, and the rule of law. A large majority of the Jews in Israel thus shape their lives and draw their values from the deep wellsprings of both of these two cultures.

This cultural duality has great potential to enrich Israeli society. We might have expected it to introduce diverse characteristics that would spur each culture to grow and develop in response to the challenges posed by the other. Because all Jews in Israel build their identity using fundamental components from both cultures, we might have expected that none of the three groups would reject either culture as an “other” whose influence must be silenced or suppressed; we might have expected there to be open dialogue marked by mutual respect between the two cultures.

In practice, however, Jewish society in Israel is characterized by the very opposite: a paralyzing conflict between the two cultures. The duality has spurred competition for the lion’s share of state budgets, for ideological influence, and for political power. Instead of enjoying the blessing of diversity, Israel is suffering from the curse of multiplicity. The agents of influence in each of the two cultures in Israel minimize the points of contact and similarity between the two, presenting the two cultures as rivals and competitors that are poised for an inevitable culture war. These thought leaders conceal the inclusive dimension of this cultural duality and market each culture as an exclusive sociocultural commodity that “belongs” to their group alone. They shift the relations between the two cultures, presenting them not as forces that can coexist in a complex relationship but as adversaries in a conflict in which one or the other must prevail. They re-

fuse to conduct the cultural debate on a pluralistic basis and embrace monism instead.

This leads to the following question: How is it possible to function in a situation of dual cultural loyalty, when the two cultures are sometimes at odds with each other? The question is not new, but has become much more prominent and acute in recent years. It is hurled at all Israeli Jews with increasing force. It raises questions about Israel’s social cohesion and about the very ability of Israeli society to endure.

As will be seen below, each of the three Jewish groups mentioned by President Rivlin—the secular, the ultra-Orthodox, and the national-religious—has adopted its own unique strategy for coping with this threatening duality, whether consciously or subconsciously. None of them offers an option for ideological engagement with the reality of cultural duality; rather, they present pragmatic arrangements and coping methods that were produced in response to the complex reality and preserved over time. It is easy to see, however, that these arrangements do not offer real solutions from an individual or national perspective.

The members of the national-religious camp responded by adopting and perfecting a technique of compartmentalization and avoidance of decision. For them, the dual commitment is not harmonious; instead, the members of this group have separate drawers for each of the two cultures, which they open at the appropriate time and place and fill with the content and norms of one of the two cultures. When national-religious Jews study the Torah, engage in education, and contemplate contemporary dilemmas, they fill the “Jewish drawer.” When they learn a trade, engage in work, read literature, enjoy entertainment, go to the market, and go about their everyday lives, they close the Jewish drawer and open the “Western-liberal drawer” instead. This “chest of drawers” is used not only by individuals in the national-religious community but by the community as a whole. The dividers between the drawers prevent integration between the

worlds, which results in compartmentalization and avoidance of choosing one culture over the other. This is not a harmonious solution; rather, it is a technique for survival in a world of multiple identities that are seen as irreconcilable.

It is relatively easy to identify the strategy employed by the ultra-Orthodox. They replace compartmentalization with alienation. In this model, avoidance is replaced by retreat. When it comes to cultural duality, the ultra-Orthodox have adopted the mentality of the subjugated. They define their own environment as “God’s little domain” and have given up on the rest of the Jewish people, who they view as sinners. Removing themselves in this manner allows them to cooperate with other Jews on civic matters. This cooperation is minimal and instrumental; it is not based on shared experiences and certainly is not based on common values. Thus the ultra-Orthodox strategy is not conducive to a strategy of cultivating national cohesion.

What does the secular public do? Rather than compartmentalization or alienation, secular Jews practice withdrawal from Jewish traditions. Israel’s founding generation, led by David Ben-Gurion, declared a “holy rebellion” against the works of Jewish tradition and saw the classics of the “Jewish bookshelf” as an exilic millstone around the national movement’s neck. The second generation of Israelis that followed them grew up in Jewish textual ignorance. Consequently, secular Israeli culture—as reflected in the education system, arts, philosophy, ethics, economy, law, media and politics—bears no significant traces of Jewish cultural heritage. Secular Jews have renounced many aspects of traditional Jewish life as preserved in the Jewish cultural heritage. But because the public domain in Israel is Jewish, secular Israelis experience their Jewishness tangibly, in ways that do not exist in the diaspora. These include the use of the Hebrew language, the use of the Hebrew calendar, the symbols of the state, and so on.

These three strategies—compartmentalization, alienation, and abdication—are intimately linked to the

framing narratives of each of the three communities. The secular abdication is a practical manifestation of the rebellion against tradition and rejection of the exile that characterized Ben-Gurion and his generation. The ultra-Orthodox alienation reflects that community’s estrangement from the Zionist enterprise and the state. The national-religious compartmentalization reflects the dialectic thought of Rabbi Abraham Isaac Hacoen Kook, which calls on the community to simultaneously experience, in its everyday life, a messianic mission and existence in an imperfect world. The three strategies have permitted each sector to adhere to its own framing narrative without having to deal with the implications of the narratives of the other groups for Israeli collective identity. During the first 30 years of Israel’s independence, these strategies were relatively successful. At that time, Israelis made an effort to maintain a broad consensus between the different groups and were careful not to push the others out of that consensus. Since then, however, the tradition of consensus has been crumbling and the pressure on each of the three strategies has been intensifying.

Many have analyzed the breakdown of Israeli consensus and the transformation of the state from a consensual democracy to a democracy in crisis. This is not the place to analyze the theories advanced to explain this change. For our purposes, it is sufficient to stress that the weakening of Israeli social and political consensus, as well as the focus of public discourse on cultural conflicts between the different groups, have had a negative impact on the ability of the coping strategies of the communities to satisfy their needs.

The three major Jewish groups in Israel have difficulty coping with the cultural duality of a society in crisis and are not able to integrate both cultures. In the past, this did not lead to an open crisis of identity and a direct confrontation, because the overall framework in which Israeli society operated was consensual. A practical arrangement in a supportive political climate provided

an alternative to ideological confrontation with the tension created by the cultural duality. Today, however, when Israel has become a democracy in crisis. The primary impulse of many people is no longer to seek common ground, compromise, or reconciliation; rather, they strive to make gains, accentuate differences, and denounce the flaws they find in others. While there are political and social mechanisms that can alleviate the tensions, they are not as strong as they used to be, and society is being swept into aggressive competition in the marketplace of ideas. In these conditions of prolonged crisis, a myriad of issues related to the friction between cultures have reached Israel's public agenda. Because the central groups in Israeli Jewish society do not have ideological paradigms that can help them deal with the identity crisis, the common fabric of shared existence is being stretched to its limit. Each of the main ideological camps in Israel sees the implementation of its position as a deterministic necessity. It is not merely a question of the group's interests—although they are still at play—but also of preserving their way of life.

Beyond the Jewish camps mentioned by President Rivlin, there are two other important groups of Jews in Israel: the large “traditional” (*masorti*) population, which is neither secular nor particularly observant (more than a third of Israeli Jews define themselves as “traditional”), and the non-Orthodox religious streams—Reform, Conservative, and others (a very small population that has been gaining prominence in recent years). These two camps represent a promise for softening the division that threatens to tear Israeli society apart. What they have in common is that their inner world does not reject modernity in the name of tradition; rather, it views tradition as a useful basis for interpreting and behaving in the modern world. Unlike other Israeli Jews, the members of these two camps are not distressed by the cultural duality. Today, however, their practical influence on the public arena in Israel is scant; traditional Jews are not organized institutionally or politically, while the non-Orthodox

streams, which operate through institutions in Israel and abroad, do not yet wield sufficient power to influence the Israeli national agenda.

The debate over cultural orientation described in this section exists not only on the individual or intra-communal level, but especially in the public-political arena: the state. As we shall see in the next section, this has far-reaching implications for relations between religion and state in Israel.

The debate about the role of religion in the state

Around the world, relations between religion and state are regulated in a wide variety of ways. Some countries have a strict regime of separation between the two, ranging from “friendly” separation (mutual limitations on the involvement of the religious establishment and the state in each other’s affairs) to “hostile” separation (in which the state zealously restricts religion to the private sphere). In some countries, the constitution explicitly defines the state as “secular” or “neutral,” while in others, such neutrality is derived from the interpretation of the constitution or the law in force. In still other, there is no separation of religion and state. Here too, there are different degrees of connection between the two; at the far extreme, the constitution itself stipulates the “state religion.”

In Israel, where there is no constitution, the declaration of independence includes a commitment to equality for members of all religions. However, there has never been a decision that mandates separation of religion and state, and there is no such separation in practice. Indeed, many people believe that it is difficult to sever the tie between the Jewish religion and the Jewish nation state because Jews generally perceive Judaism as both a nation and a religion. Separating the Jewish religion from the state, it is argued, might be seen as separating the Jewish nation and the state, which is contrary to the desire of the vast majority of the state’s Jewish citizens, who want Israel to be the nation state of the Jewish people.

In the absence of a formal decision regarding the relationship between religion and state, the situation in Israel is governed by a mechanism that maintains the existing arrangements, which date back to the pre-state period. Known as “the status quo,” these arrangements were born in 1947, before independence, when it was feared that the leadership of the ultra-Orthodox community might oppose the establishment of the state. To win ultra-Orthodox support, David Ben-Gurion, then the chairman

of the Jewish Agency, issued a letter known as the “status quo letter,” in which he guaranteed that the Jewish state would take Jewish religious law (*halakha*) into account on four issues: the Sabbath would be the weekly day of rest, the kosher laws would be observed in state institutions and in the Israel Defense Forces (IDF), marriage and personal status would be determined by Jewish religious law, and the religious school systems would have educational autonomy. The letter to the rabbis had no legal force, inasmuch as it was written before the establishment of the state, but has always been perceived as binding.

The “status quo” became the compass that determines the place of religion in the State of Israel. Over the years, the scope of this concept has expanded. It now serves as a general rubric for a complex network of de jure and de facto arrangements on many issues that involve encounters or friction between religion and state. These include conversion to Judaism, military conscription of the ultra-Orthodox, the status of the Chief Rabbinate as a state institution, and the religious services that the state provides to its citizens. Most of the government coalition agreements signed in recent decades in Israel, including the current coalition agreement, contain a stipulation that the status quo in matters of religion and state will be maintained.

Over the years there has been a significant erosion of some elements of the status quo, which has become an ongoing bone of contention in the relations between religion and state in Israel. Before discussing some of the central tensions between religion and state in Israel, however, it is important to have a picture of how Israeli Jews relate to religion.

Studies have shown repeatedly that the level of observance of religious tradition in Israel far exceeds the self-reported “religiosity” of Jews in Israel. In a survey conducted in 2009, only 16 percent of Jewish Israeli respondents reported that they do not observe Jew-

ish tradition at all (44 percent reported observing to some extent, 26 percent to a great extent, and 14 percent meticulously). Four of every five Jews in Israel expressed an affinity for Jewish tradition and the traditional Jewish way of life. What is more, over half of the respondents in the small group that reported that it does not observe Jewish tradition at all indicated that they would like their children to observe the tradition to some extent. More than 60 percent of respondents indicated that tradition is an important consideration when it comes to choosing a spouse.

It is interesting that this preference for tradition is not restricted to individual conduct in the private sphere. According to the survey, 59 percent of Jews in Israel believe that the Israeli government should ensure that public life is conducted according to Jewish tradition. It is true that observance of a particular precept or tradition does not necessarily reflect religious intentions or a commitment to religion; in many cases, it is an expression of other kinds of Jewish identity (national, cultural, or social). However, the survey also studied the beliefs of Israeli Jews and revealed that four out of five believe in God, 72 percent believe that prayer is effective, 57 percent believe that the Jews are the chosen people, 55 percent believe that the Torah and its precepts are divine, and 51 percent believe that the Messiah will come. The collective portrait of Israeli Jews thus indicates that not only are they not alienated from Jewish tradition but they are influenced by it and relate to it favorably both at the individual level and on the level of the state.

In the last 20 years, Israel has absorbed approximately 1 million immigrants from the former Soviet Union. Even though most of them grew up in an environment that was detached from Jewish identity and had no exposure to Jewish tradition, their integration into the fabric of Israeli life and society has included the adoption of Israeli preferences regarding the observance of Jewish tradition. The strengthening of global forces (esp. secular Western hegemonic culture) and their influence on Israeli society at the turn of the millennium also did not affect the bond between Israeli Jews and Jewish tradition. What is more, in the last decade a Jewish renaissance has been taking place before our very eyes, as significant groups of non-religious

Jews—mainly among elites such as artists, cultural leaders, and intellectuals—have displayed a renewed interest in Jewish texts. The desire for a connection to Jewish tradition thus finds expression not only in practice, but also in a spiritual and cultural quest.

But there is another, diametrically opposed side to this attitude of Israeli Jews toward tradition and religion. In the past, more than half of the Jews in Israel reported they believed that the rift between religious and secular Jews may lead to civil war. Many think that Israel is in the midst of a culture war over the character of the state. Some 55 percent believe that the relations between religious and nonreligious Jews in Israel are bad. About 60 percent report that they have few or no close friends who are different from them with regard to their degree of religious observance. And even though the national agenda is rife with existential problems in matters of defense and peace, society and the economy, a significant portion of voters in Israeli national elections vote based on their position on the tension between religion and the state.

How can we reconcile these contradictory findings? How is it possible that Israeli Jews seem to be among the most traditional groups in the West with regard to lifestyle, but at the same time, Israel is the Western country with the most troubled relations between religion and state? If Israeli society is so strongly bound to tradition and the historical memory that is anchored in religion, why does the fierce conflict between religion and the state continue to rage? The answer, in my opinion, stems from the vast chasm in Israel between actual life (how people live) and ideological life (how people understand their lives). Indeed, the common denominator between President Rivlin's three Jewish tribes is that each is bitterly opposed to the others' interpretation and evaluation of Jewish history and the Israeli present. The lack of agreement about the meaning of the past and the interpretation of the present also affects the perception of the desired future. Every ideological camp has a different utopian objective for the Jewish state and Israeli society, which stems from its own doctrines, and it derives its concept of the appropriate relations between religion and state in Israel from that objective.

The issues in dispute

How has the lack of agreement regarding religion and state been translated into daily life in Israel? This section will survey the four key issues in the relations between religion and state mentioned previously that generate conflict. The first, the Sabbath, has to do with the controversy over the preferred character of the public space in Israel; the second, conversion to Judaism, relates to the dispute over the boundaries of Jewish identity; the third, military conscription of the ultra-Orthodox, probes the extent of mutual responsibility for preserving the project of Israeli sovereignty; and the fourth, marriage and divorce law, explores the arrangements that pertain to personal status and the family, which is the most central institution in Jewish society. The section will end with a prediction of the types of disputes regarding religion and state that are likely to characterize the next generation in Israel.

The Sabbath

The Sabbath, as set forth in the Ten Commandments, is one of Judaism's most significant contributions to humanity. In the words of Abraham Joshua Heschel, it is a "sanctuary in time" that makes it possible to suspend the relentless race of daily life, in line with the Biblical command "You shall not do any work, you, or your son, or your daughter, your manservant, or your maidservant, or your cattle, or the sojourner who is within your gates" (Exodus 20:10). Orthodox Jewish law constructed a vast corpus of rules that define the nature of the rest required on the Sabbath. It includes bans on productive work, commerce, travel by motor vehicle, and anything else defined by religious law as a form of "labor."

In 1948, two days after the establishment of the State of Israel, a motion was submitted to the Provisional Council of State to establish Saturday as the country's official day of rest. However, despite dozens of attempts over the years to get the Knesset, the Israeli parliament, to enact a Sabbath and Festivals

Law, it has not done so. Even as these words are written, several bills have been submitted to the present Knesset, by parliamentarians from the coalition and opposition, which would lead to an Israeli Sabbath law. So far, however, none has met with success.

In the absence of a Sabbath law, the arrangements that determine the nature of the Sabbath in Israel are defined in Israel's Hours of Work and Rest Law (which mandates rest for employees), as well as in the municipal bylaws enacted by most of Israel's local authorities, which regulate the closure of businesses on Shabbat. Thus, the Israeli legislature has given the Sabbath a social character, rather than a religious or national character, since the legal provisions do not assign special Jewish importance to the Sabbath; rather, they use the Sabbath to implement the general principle that workers must have a day of rest.

The Hours of Work and Rest Law stipulates that every worker is entitled to a 36-hour rest period each week. For Jews it will be on Saturday, the traditional Jewish Shabbat, while for others it will be on Friday or Sunday, as they wish (Friday is the Muslim day of rest, and Sunday the Christians). Consequently, according to the law, it is forbidden to employ Jewish workers and open businesses on Saturday. There are various exceptions to this legislation (for example, when work is necessary to prevent damage that cannot be prevented in any other way), and the minister of labor is authorized to permit the employment of workers on Shabbat in a variety of settings (including hotels, hospitals, and security services).

Municipal bylaws complete the arrangement on the local level. Local authorities are empowered to determine the opening and closing times of businesses and shops within their boundaries, and can enforce these operating hours by means of fines, indictments, and even closure orders when businesses do not comply. In the 1980s, after the courts ruled that municipalities only have the au-

thority to ensure that workers get a day off and not to enforce religious observance, the legislation was amended. It now permits local authorities to “take religious tradition into consideration” when asserting their jurisdiction.

That is the law. In the real world, the battle over the character of the Sabbath takes place on the ground: in politics and in the courts. This can be seen from the following examples:

- Israel has had “Sabbath wars” that sometimes spilled over into violence. In the early 1980s, for example, when there were no religious parties in the municipal coalition in the city of Petah Tikva, the mayor decided to allow the local movie house to open on the Sabbath. This provoked weeks of protests by more than 10,000 national-religious and ultra-Orthodox demonstrators outside the theater on the Sabbath. Sometimes the police were called in and batons were swung. Many people were arrested, including the city’s chief rabbis.
- In the political realm, Israel has experienced a number of crises related to the observance of the Sabbath in the public sphere. For example, the first F-15 warplanes sold to Israel by the United States arrived one Friday afternoon in 1976. A stirring welcome reception attended by 3,000 invited guests, including Prime Minister Yitzhak Rabin and the military chief of staff, was held for them at an air force base. It was claimed that the state ceremony ran over into the Sabbath, which begins at sunset, desecrating its sanctity and wounding the feelings of the religious. As a result, the religious parties launched a political fight that eventually led to the resignation of the prime minister.
- The courts in Israel play a key role in the battle over the nature of the Sabbath, as in other matters of religion and state. In dozens of cases, judges have invoked formal grounds (such as limited scope of authority) or ethical grounds (such as the prevention of religious coercion) in order to curtail the scope of the ban on operating businesses on the Sabbath. Some see these court rulings as an important step in defending individual rights, while others see them as an inappropriate judicial intervention that undermines agreements reached democratically in the Knesset.

In an overall perspective, it is clear that although the legislative situation has not changed significantly in recent decades, and although religious and ultra-Orthodox Jews have fought bitterly to preserve the Sabbath as a holy day as they understand it, the special character of the Sabbath in Israel, in fact, has been severely eroded. Consider the following numbers: about 20 percent of shopping malls in Israel are open on Saturdays, more than 15 percent of Israeli wage-earners work on their “weekly day of rest,” and 98 percent of the movie theaters in Israel are open. In addition, more than 350 companies in diverse fields have Sabbath work permits, and many more operate without a permit, breaking the law, whose enforcement is deliberately light. Thus the long-standing status quo arrangement that dates back to the early days of the state is limping, to put it mildly.

What does the public think about this? About 60 percent of Israeli Jews want shopping centers, restaurants, and movie houses to be open on the Sabbath. At the same time, however, many Jews from all sectors of the public would like to preserve the unique character of the Sabbath as a day of rest. Thus the overall picture is that the Israeli majority, which is not religiously observant, has not turned its back on the traditional nature of the Sabbath due to its secular ideology; rather, these Israeli Jews would like to exercise their own preferences as to the nature of the Sabbath rest. It is the consumer culture, which is as dominant in Israel as it is in Europe and the United States, that is the driving force behind the efforts to change the character of the Israeli Sabbath.

One can cautiously suggest that the bulk of the political battle over the Israeli Sabbath is behind us. In general, the national-religious members of Knesset, who were in the forefront of the struggle in the past, are scarcely involved in it today. In fact, national-religious Knesset members who are members of secular parties are at the vanguard of efforts to promote new arrangements of a different kind, which will be described below. Ultra-Orthodox Jews, whose political power is on the rise, pay lip service to the battle for the Sabbath, but they seem to have realized that, as far as their own interests are concerned, the cost of the battle is greater than the benefit that would be gained.

What alternative is there to the ongoing skirmishes over the Sabbath? Many leaders of public opinion in the secular community—including cultural icons such as authors Amos Oz and Aharon Megged, political leaders such as Shelly Yachimovich (former chair of the Labor Party) and Tzipi Livni (former head of the Kadima Party), and senior jurists such as Supreme Court President Emeritus Meir Shamgar and Israel Prize Laureate Professor Ruth Gavison—have expressed concern about the drastic changes in the public character of the Sabbath in Israel. Similarly, the Israel Democracy Institute convened a taskforce of senior figures who proposed a new arrangement for the Israeli Sabbath.

The preferred model that is emerging among many people distinguishes between “permitted activities” and “forbidden activities.” On the Sabbath and festivals, the law would permit entertainment, cultural activities, and public transportation (on a reduced schedule), but would prohibit the operation of state institutions and industry and commerce—including shopping malls—except for a limited number of essential activities. It is clear that this would not impose the observance of the Sabbath in accordance with Jewish law, since the “permitted activities” listed above are prohibited on the Sabbath according to Jewish law; rather, it is an attempt to create a unique and meaningful Sabbath in the Israeli public sphere based on Israel’s cultural, socioeconomic, and national characteristics. If implemented, this proposal, which comes in many versions, would allow the Jewish state to retain a basic element of Jewish historical and national memory, without detracting from the liberal-democratic nature of the state.

Conversion

In the past few decades, the boundaries of the Jewish collective have come under pressure from various directions. Outside Israel, many Jews marry non-Jewish partners. In fact, two-thirds of the Jews in the United States marry non-Jews, and the children of such interfaith couples marry non-Jews at a rate exceeding 90 percent. This situation raises the question of whether Jewish continuity in the

diaspora is possible, an important question that is beyond the scope of the current analysis.

In Israel, the situation is different. Under both civil law and Jewish religious law, about three-quarters of Israel’s citizens are fully recognized as Jews. Thus it may well be that in the perspective of history, it will emerge that the establishment of the State of Israel and the ingathering of the exiles guaranteed not only the physical survival of the Jews, as was sought by many of the founders of political Zionism, but also the continued existence of the Jewish collective as a body with a distinct identity.

Classification of a person as a Jew influences every aspect of his or her life: the individual circle, the family circle, and the public circle. The implications of this status are subjective and objective, symbolic and practical, transient and permanent. They are intensified in Israel, which celebrates particularistic characteristics of Jewish identity by virtue of the state’s definition as a “Jewish and democratic” state. Because of the importance of defining the Jewish identity in the State of Israel, in the early days of the fledgling state, David Ben-Gurion asked 50 Jewish scholars to express their opinion as to “who is a Jew.” Based on the answers received, the state adopted the traditional halakhic criterion for defining a person as a Jew for purposes of the population registry. What is this criterion?

According to Jewish tradition, one can join the Jewish people—who, uniquely, constitute both a religion and a nation—in one of two ways. The royal road is to be born a Jew. The other path is conversion to Judaism—a process that expresses a person’s conscious choice to join the Jewish collective. According to Jewish tradition, conversion is a process in which a Gentile is reborn as a Jew. This analogy equates the two ways of joining the Jewish collective with each other and attributes the identical result to them.

The first criterion, birth, has become a matter of controversy in the Jewish world. In past generations, rabbis adopted the criterion of matrilineal descent. This is both unlike other religions and unlike the norm for other forms of identity in Judaism (e.g., tribal affiliation and the status of *kohen*—a member

of the priestly family—is determined on a patrilineal basis). This was the standard for centuries and is the accepted position of all Orthodox rabbinic authorities. In contrast, the Reform Movement, the largest Jewish denomination in the United States, recognizes a person who has a Jewish father as a Jew, even if the person's mother is not Jewish. Israeli law adopted the Orthodox matrilineal criterion when it passed the Law of Return (although citizenship is granted on a wider basis to the non-Jewish spouse and other close relatives of the Jewish immigrant).

From birth we proceed to conversion, which is at the heart of a fierce political and legal debate in Israel. Conversion has become one of the most burning issues of all matters of religion and state in Israel, and has the power to shake the country's political map. Various aspects of the issue have landed on the High court's docket from time to time, and some are there at the time of this writing. The debate on conversion has become something of a free-for-all, pitting the ultra-Orthodox against the national-religious, the Orthodox (both ultra-Orthodox and national-religious) against Reform and Conservative Jews, and the entire spectrum of religious Jews against those who do not identify as religious and who are unwilling to accept religious practice as the sole determinant of membership in the collective.

In Israel, conversion to Judaism is not regulated by primary legislation. There is only a law inherited from the British Mandate, which refers not to "conversion" but to changing affiliation from "one religious community" to another and to the manner in which a "change of religion certificate" should be issued by the "head of the religious community." Israeli government decisions, however, define the chief rabbi of the State of Israel as the head of the Jewish religious community for this purpose, and the chief rabbis traditionally have accepted the ultra-Orthodox standard as binding. As a result, in practice, the most stringent Orthodox view has a monopoly with regard to who is a convert and what constitutes conversion in Israel.

This situation has stretched the sensitive relations between the Jewish state and non-Orthodox and liberal Orthodox Jews in the United States almost to the

breaking point. Israel's choice of the ultra-Orthodox standard is seen as an insult and rejection of the religious identity choice of Reform Jews. Attempts by the leaders of the Movement for Progressive Judaism in Israel (the local branch of the Reform Movement) to obtain recognition by the Knesset have been thwarted again and again. Consequently, these leaders have turned to the courts for assistance and have sometimes persuaded judges to rule in their favor. This is not the place for a detailed discussion of the various arrangements in force, but the bottom line is clear: the ultra-Orthodox have the upper hand.

In practical terms, the dispute affects several sectors of the population: (1) approximately 100,000 immigrants from Ethiopia, some of whom are required to go through a full conversion while others are required to undergo a pro forma conversion; (2) individuals who converted abroad according to the standards of one of the religious streams there, who find that the validity of their conversion is called into question in Israel (for example, when they try to register for marriage); (3) adopted children who were born to non-Jews and were then adopted by Jews in Israel; (4) foreign nationals (such as foreign workers, athletes, people recognized as "Righteous among the Nations" for saving Jews during the Holocaust, and more); (5) Israeli citizens, many from the former Soviet Union, who are not themselves Jews and are not members of any other ethno-religious minority, who came to Israel because of a close family relationship to someone recognized as a Jew who immigrated to Israel under the Law of Return.

The conversion of people in each of these categories raises distinct questions and touches on unique sensitivities. As a rule, the conversion process for immigrants from Ethiopia has gone smoothly, as it has for adopted children. Few foreign nationals are converted in Israel, and very few foreign nationals actually request to convert. On the other hand, as noted above, the question of recognition of conversions performed abroad is an explosive issue on the national agenda. But the most important issue in the area of conversion in Israel relates to the last group, which makes up almost 5 percent of all Israeli citizens today. This group will be the focus of our discussion.

The Zionist project sees itself as the national liberation movement of the Jewish people. For this reason, the State of Israel enacted the Law of Return, which was intended to permit (almost) every Jew who wishes to enter the country and become a citizen to do so. This law is a major means to realize Israel's unique character as the Jewish nation state.

The Law of Return grants the right to immigrate to Israel not only to Jews but also to non-Jews who are part of a nuclear family that includes Jews, even if the immigrants themselves are not defined as Jewish in Israel because their mothers were not Jewish and they were not converted according to religious Jewish law. In the last 20 years, Israel has welcomed about a million immigrants from the former Soviet Union. Two-thirds of these immigrants are recognized as Jews, but the other third are not. The non-Jewish immigrants were granted citizenship under the Law of Return because they are married to a Jew, are the children or grandchildren of a Jew, or are married to the children or grandchildren of a Jew.

Israeli governments decided that converting people who are of Jewish descent (known as *zera Yisrael* or “the seed of Israel”) and converting non-Jewish family members of Jews are important national priorities. In 1995, a state conversion agency was established to serve as the executive arm for converting those who wished to become Jews. In 1999, the Joint Institute for Jewish Studies, staffed by educators from all streams of Judaism, was established to teach candidates for conversion. In 2001, a military conversion system, which makes it possible for soldiers to convert during their military service, was established. In addition to all these state systems, there are private conversion courts in Israel, which are run by ultra-Orthodox, Reform, Conservative, and recently by national-religious Jews. The conversions that take place in these courts, however, are not recognized by the state as the basis for changing personal status.

Despite the above efforts, the size of the non-Jewish population in Israel continues to grow. For many years now, more than half of the new immigrants arriving from the former Soviet Union have not

been recognized by the state as Jews; thus, each year, approximately 6,000 non-Jews are added to the Israeli population under the Law of Return. This group also has a natural growth rate of some 4,000 children a year. Compared to this increase of 10,000 non-Jews every year, the number of conversions to Judaism of immigrants from the former Soviet Union performed by all of the state systems combined—both civilian and military—is only 1,800 immigrants per year. Over the years, only some 7 percent (24,000) of this group of approximately 350,000 immigrants from the former Soviet Union have completed the full conversion process and been recognized as Jews in Israel. Given these figures, we can clearly say that the national conversion enterprise has been a dismal failure. It deals only with the margins of the growth of this group (less than 20 percent of the annual increase). At the current rate, within 20 years, this group of non-Jewish Israeli citizens will number half a million.

Why is the official state conversion effort failing? As a rule, the judges of Israel's conversion courts demand that candidates pledge to adopt the religious lifestyle that the judges themselves—many of whom are ultra-Orthodox—follow. Most prospective converts, however, do not want to lead a religious lifestyle. They see themselves as joining a nation rather than a religion. They do not want to be different from Israel's traditional and secular Jewish majority and do not understand why they are expected to observe practices that most Israeli Jews do not observe. This means that in order to convert they have to pretend. For them, the road to Judaism and to full inclusion in the Jewish nation passes through falsehood. Hence it is not surprising that the demand for conversion among immigrants from the former Soviet Union is on the wane, and that more than 90 percent of the non-Jews among them have not converted.

This fact has far-reaching implications from a public perspective, both on the level of the nation and of Israeli society. If this population does not convert, Israeli Jewish society will find itself between a rock and a hard place. On one hand, if they become fully integrated into Jewish society, society will splinter

into large subgroups that do not marry each other, as many Israeli Jews reject the possibility of intermarriage with non-Jews. The Jewish people will be split by a historic rift that cannot be repaired. On the other hand, if these immigrants are excluded from Jewish society and turn inward due to feelings of humiliation, a new Israeli “tribe” might emerge.

One way or another, these processes will trigger centrifugal forces that will push Israelis further apart. Today, the three non-Arab tribes of Israel share a common denominator: their Jewishness. This is the secret behind the resilience of Israeli society and of the State of Israel, which can mobilize a majority to support national missions by virtue of Jewish solidarity, which is stronger than any disagreement. The existence in Israeli society of a large identity group that is neither Jewish nor Arab is liable to erode this inner strength and dilute the Jewish identity of the state.

In conclusion, if the group of immigrants who are not recognized as Jews continues to expand due to further immigration and natural growth, and if it turns out that conversion is not a practical solution, the pressure will intensify not only for a change in the answer to the question “who is a Jew?” but also for a more fundamental change: separation of religion and state. Many voices are already calling for separating the two, based on different models found in the Western world. The distress of the immigrants and the blow to national solidarity that results from treating them as a separate group will swell the sails of those who call for such separation. The exclusion of the immigrants and their descendants from the Jewish collective, when their lifestyle is no different than that of secular Jews in Israel, will be perceived as an unjustifiable infringement of rights that is motivated by incomprehensible religious interests. A total separation of religion and state will be seen as the obvious solution.

The rabbinic establishment in Israel, which has adopted the most stringent halakhic line on conversion, is, by its very own actions, propelling Israeli society toward a profound change in the rules governing the interactions between religion and the state. Ironically, those who are stringent about

conversion are playing into the hands of those who do not want religion to be a decisive factor in the definition of Jewish identity and of those who wish to separate religion and state in Israel.

Military conscription of the ultra-Orthodox

The question of whether ultra-Orthodox *yeshiva* students (those attending religious schools) should be obligated to serve in the military has been an issue in Israel since the founding of the state. In May 1948, only a few days after Israel declared its independence, its Provisional State Council declared a state of emergency. One result was the institution of compulsory military service for men and women of draft age. This state of emergency remains in effect today; as a result, there is compulsory service for all Israeli citizens of draft age.

There are exceptions to this rule. Arab citizens of Israel, as well as religious and ultra-Orthodox women (who attest that they are unable to serve for “reasons of conscience or reasons of religious identity”), receive a full exemption. Men who are studying in ultra-Orthodox *yeshivas* are eligible to defer their service as long as they are enrolled in a recognized institution of religious education.

The deferrals granted to ultra-Orthodox men have their origins in the *Torato Omanuto* (“Torah is his profession”) arrangement introduced by Prime Minister David Ben-Gurion in 1948. Why did Ben-Gurion agree to defer the military service of ultra-Orthodox men? There were two factors involved. The first was the desire to preserve national unity. The uncompromising stand taken by the spiritual and political leaders of ultra-Orthodox Jews in the period before and after Israeli independence forced Ben-Gurion to make a number of compromises in order to overcome the resistance of this population to the establishment of the state. Their opposition to the Zionist government might have weakened the new government’s standing in the international arena.

The second reason for granting deferrals was the desire to rebuild the world of Torah-learning. The destruc-

tion of European Jewry in the Holocaust had all but annihilated the community of Torah scholars, which had included thousands of *yeshiva* students before the war. Ben-Gurion introduced the deferment in order to salvage and rebuild that community, which was seen by many as having immense historical and cultural importance for Jewish society.

Over time, Ben-Gurion came to regret his original decision. When the deferral arrangement was first instituted it applied to only about 400 young men. Ten years later, when the number of deferments had increased, Ben-Gurion wrote a letter to the chief rabbi, Yitzhak Halevi Herzog, in which he questioned the ethics of a situation in which most young Israelis were risking their lives defending the homeland while others remained safely indoors studying the Torah.

Whether it was or was not ethical, the deferment for men who asserted that Torah study is their “profession” continued. While it was never anchored in a specific law, it was promulgated by virtue of the defense minister’s authority to defer service on various grounds.

In 1968, when 4,700 *yeshiva* students had deferred their army service, an annual ceiling of 800 was instituted as the maximum number of students who would be allowed to defer service based on Torah study each year. But when Menachem Begin formed his government in 1977 and included the ultra-Orthodox parties in his coalition, the new defense minister, Ezer Weizman, eliminated this quota. Under the new arrangement, any ultra-Orthodox man who was enrolled in a *yeshiva*, and was not studying a profession or gainfully employed, could continue to defer conscription with no limitation. Over time this gesture proved unfortunate, because the number of ultra-Orthodox men joining the deferment track skyrocketed.

As of today, Israel’s ultra-Orthodox community constitutes about 10 percent of the country’s population (12 percent of the Jewish population). Its rate of natural increase is extremely high; about half of Israel’s ultra-Orthodox Jews are children under the age of 14. Approximately 7,000 ultra-Orthodox men turn

18 and become eligible for the draft each year. The overwhelming majority of them defer conscription by committing to full-time Torah study, which also precludes their being employed. As a result, only half of all ultra-Orthodox men aged 25–64 are employed, and some 60 percent of ultra-Orthodox families are below the poverty line. The overall cost of this arrangement to the economy is staggering; economists estimate an annual loss exceeding 8 billion shekels (around \$2.2 billion) on this account.

These numbers—which attest to the mass evasion of military service and significant economic harm to Israeli society as a whole—readily explain the growing public opposition to the deferrals for “professional Torah scholars.” Indeed, few issues have preoccupied Israeli society for as long and with as much passion as the military conscription of the ultra-Orthodox. There has been a crescendo in the intensity and tenor of that debate over the last decade.

The political power of the ultra-Orthodox parties, however, has made it impossible to assemble a Knesset majority to modify the arrangement. Stymied on this front, opponents of the arrangement have repeatedly petitioned the High Court of Justice, asking it to order an equitable draft. In 1998, the Court ruled that the situation as it existed at the time—in which the “Torah is his profession” arrangement that deferred military service for *yeshiva* students was left to the discretion of the defense minister—was not appropriate, and instructed the Knesset to either entrench the arrangement in legislation or to cancel it.

This led to the formation of a committee, headed by retired Supreme Court Justice Zvi Tal. The committee’s recommendations, known as “the Tal Law,” were enacted by the Knesset in 2000. Without going into details, it may be said that the Tal Law perpetuated the military deferment granted to all applicants who see Torah study as their vocation. An ultra-Orthodox man who wished to leave the *yeshiva* and go out to work could do so after performing one year of civilian service (as opposed to the three years of military service that is the norm for other Israeli men who serve). The Tal Law was based on the assumption that full equality cannot

be achieved and that the unique nature of the ultra-Orthodox way of life justifies a deviation from equality. Under the cover of this law, ultra-Orthodox men continued to defer their military service. In 2011, the total number of deferments was estimated at 63,000. Thus, only 600 ultra-Orthodox men were drafted by the IDF and another 1,122 opted for civilian national service. These numbers are negligible as compared to the number of men of draft age in a given year.

Why are ultra-Orthodox men opposed to conscription, while young men from the national-religious sector join the military in droves? The difference seems to derive from an ideological disagreement about the meaning of the Jewish state. The national-religious approach sees the Jewish state as a spiritual ideal, as what Rabbi Kook called “the foundation of God’s throne in the world.” This population considers the wars Israel fights as “obligatory wars” that are a religious duty, such that even a “bridegroom must leave his wedding chamber” to go out to fight. The ultra-Orthodox perspective, in contrast, is not Zionist and does not ascribe any holiness to the state; Israel’s wars, in this view, are not divinely ordained and have no spiritual dimension.

Moreover, whereas the national-religious sector is involved in day-to-day life in Israel, the ultra-Orthodox have chosen self-segregation and withdrawal from the Israeli street. The greatest fear of the ultra-Orthodox leadership is that military service will erode important elements of the identity of their youth. This concern is not unfounded. An ultra-Orthodox 18-year-old who joins the army makes a sudden leap from a sheltered life in a *yeshiva* setting within his community to an open environment. For the first time, he encounters unfamiliar ways of life, a different value system, and characters the likes of which he never imagined. What is more, the military framework, with its strict hierarchy of obedience, wields great practical and symbolic power over conscripts, and this increases its potential influence on their identity. Military activities—from driving a tank to charging a hill—also have great appeal to young men of draft age and the military experience is all-encompassing. The

aggregate effect of conscription, therefore, may indeed weaken a young man’s commitment to the lifestyle in which he grew up. Consequently, from the perspective of the ultra-Orthodox community, military service poses a serious threat to the ultra-Orthodox identity of the next generation.

Most Israelis do not accept the ultra-Orthodox arguments for avoiding military service. For them, the blood of an ultra-Orthodox Jew is no redder than that of other citizens, and the obligation and privilege to defend the State of Israel must fall equally on everyone. A close look over time reveals the depths of the public’s opposition to the special arrangement for the ultra-Orthodox, as a succession of political parties took up the cause of combating ultra-Orthodox deferments. These included parties on the right (Tzomet, led by Rafael Eitan, and Yisrael Beiteinu, headed by Avigdor Lieberman), on the left (Labor, headed by Ehud Barak, and Meretz throughout its history), and in the center (Tommy Lapid’s Shinui party, and Yesh Atid, led by Yair Lapid).

However, as discussed above, the broad social opposition to the deferment arrangement came up against the political clout of the ultra-Orthodox in the Knesset. The opponents of the deferrals petitioned the High Court to strike down the Tal Law and were victorious: in 2012, the court, by a majority of six to three, found that the law was a disproportionate infringement of the right to equality. This ruling led to the collapse of the government coalition. The Knesset elections were moved up and the results redrew Israel’s political map. What had been the largest party, Kadima, was almost wiped out. At the same time, a new party, Yesh Atid, headed by Yair Lapid, which ran on a platform calling for full conscription of the ultra-Orthodox, was a resounding success and won 19 Knesset seats. As a result of this success, a coalition was formed without the ultra-Orthodox parties, which passed a new law in 2015 that included the threat of criminal sanctions against ultra-Orthodox men who refused to serve in the army, as well as drastic cuts in state financial support for *yeshivas*. In the eyes of the ultra-Orthodox, the new law was tantamount to anti-Semitic persecution and was a

new battle in the war against religion. Hundreds of thousands took to the streets of Jerusalem in protest.

The new arrangement lasted for less than a year. The government that had been formed without the ultra-Orthodox parties fell and after the new elections, the situation was reversed; the prime minister included the ultra-Orthodox in his new coalition and the conscription law was repealed. As of this writing, the legal arrangement for the ultra-Orthodox is quite comfortable. The current legislation provides for a “period of adjustment,” which will last until 2020 and possibly until 2023, during which ultra-Orthodox men can continue to receive deferments as they have in the past. After that, the ultra-Orthodox community will have to meet an annual conscription quota that has yet to be defined. Thus in practice, the bottom line is that the “Torah is his profession” arrangement, in which full time *yeshiva* students do not serve in the army, has continued.

Since the beginning of the present century alone, the military deferment arrangement for ultra-Orthodox Jews has changed three times by means of three different laws, and a court case against the current arrangement is pending. Nearly 70 years after the arrangement was first created, the battle against deferment of military service for *yeshiva* students is far from over.

Nevertheless, in recent years, a certain change has been evident among ultra-Orthodox Jews: many more of them are choosing to study in academic frameworks and are entering the work force. Accordingly, the number of ultra-Orthodox men serving in the Israel Defense Forces (usually in separate units that the IDF had the wisdom to establish for them), is showing a moderate increase.

Marriage and divorce

The Ottoman Empire, which ruled Palestine until 1917, employed the *millet* system, under which a religious community was allowed to determine the personal status of its members according to its own religious law, which was enforced by its own religious courts. This arrangement was enshrined in the “status quo” (see Section 3 above), and continues to

be in effect in Israel today. This explains how Israel became the only Western democracy that has a religious monopoly on matters of marriage and divorce; in other Western democracies, the state recognizes the validity of a civil marriage and divorce system that applies equally to all of its citizens.

The religious monopoly in these matters is imposed on Israeli citizens of all religions. The personal status issues of Muslims, Christians, and others are adjudicated in their religious courts, while the personal status issues of Jews are determined by the state rabbinical courts, which are guided by *halakha* (Jewish religious law). The arrangement is coercive, both in its assignment of people to a religious community (which does not depend on the person’s self-definition) and with regard to the content of the arrangement.

The controversy surrounding this arrangement is deep and harsh. Some assert that the Jewish people maintained their separate identities in the diaspora and did not assimilate into their host nations because they meticulously observed the traditional laws governing the establishment and dissolution of the family unit. For them, adhering to the traditional religious prescriptions on marriage and divorce remains important today. If there were not a religious monopoly on personal status law, separate genealogical registers would be maintained by the different groups of Jews in Israel. The various religious streams would maintain such registries to exclude each other and all the religious groups would maintain them to exclude secular Jews. Jews from one group would not marry Jews from another. As a result, the Jewish people would be split into multiple factions and the unity of the Jewish people would be damaged. Some go so far as to say that preserving Jewish tradition on marriage and divorce is a fundamental matter that is one of the most important facets of the Jewish identity of the state.

Others counter that marriage and divorce are a very private matter, which makes religious coercion by the state in this realm extremely jarring. The issue at hand involves outright violations of human rights. Thus, for example, under Jewish religious law, certain couples cannot marry. A *kohen* (descendent of a priestly family) may not marry a divorcee. Similarly, a Jew cannot

marry a non-Jew, even if the non-Jew is not affiliated with another faith, as in the case of many immigrants from the former Soviet Union. In such cases, people are deprived of the fundamental right to establish a family that will be recognized by the State of Israel.

Moreover, the halakhic concept of marriage—how one becomes part of it, lives in it, and leaves it—is very different from the concept of marriage that is widespread in liberal society. Thus as the Israeli public becomes less conservative and more liberal, the gap between its preferences, which fluctuate, and the law in force, which is rooted in Jewish law, becomes wider. Examples include the gender identity of couples who wish to marry (homosexual marriage is not permitted under Orthodox Jewish law), the stability of the institution of marriage, and the conditions for dissolving a marriage.

Finally, and most importantly, Jewish law does not treat men and women equally. This can have cruel results. For example, a woman may find herself “trapped” by a husband who refuses to grant her a religious divorce. Sometimes she must buy her freedom for an exorbitant sum of money or by waiving her rights; other times, she may remain married against her will. These and other problems clearly demonstrate that in the realm of personal status, the religion and state arrangements in Israel undermine the right to equality, the right to freedom from religion and freedom of religion, and the right to marry and establish a family.

This situation has triggered an ongoing battle—both legal and social—aimed at modifying the current system. Without going into detail, we may note that Israeli civil courts have developed various solutions to circumvent or alleviate the problems. For example, they have improved the status of common law spouses, who enjoy many rights as if they were legally married. Similarly, they have granted recognition to civil marriages of Jews that have been conducted outside of Israel under the laws of a foreign country. (This has led to the phenomenon of travel abroad for purposes of marriage, both by couples who cannot marry in Israel and couples who are not willing to take part in a religious ceremony that has been im-

posed on them.) The civil courts have also taken jurisdiction to settle various matters related to divorce, such as division of property and custody of children.

Many believe that these partial solutions are not sufficient. Many organizations and movements are working to completely change the situation. These include secular organizations, which seek to bring about a civil personal status law, and non-Orthodox streams of Judaism. They are joined by groups of Orthodox religious women, some of them feminists, who stand at the forefront of the public and legal battle to modify the status quo in this matter. Supported by religious academics, these women hope to improve the situation by calling attention to more liberal and egalitarian voices that exist within the religious corpus. Such voices, for example, call for religious solutions that will deal with the problem of women whose husbands refuse to divorce them, which could influence rabbinic court rulings even while the religious monopoly is still in place.

One possible solution in the area of marriage and divorce that has a good chance of success is the “spousal registry,” a proposal for civil unions put forward by the Israel Democracy Institute. According to this proposal, the state would retain the religious monopoly in matters of marriage and divorce, but the law would offer a parallel track for establishing a family in which two interested parties can enter into a civil agreement—a “spousal covenant”—with carefully defined details and provisions. The legal situation of a couple joined by means of these agreements would be identical to that of couples who are married, but the relationship would not be recognized by the state as a “marriage.”

This proposal has good prospects for success for several reasons.

First, on the symbolic level, this arrangement does not undermine the special character of marriage as a religious institution in the Jewish state, and thus responds appropriately to the sensitivities mentioned above. In addition, the arrangement solves most of the practical problems associated with infringing upon the rights of Israeli citizens to establish and dissolve a family. The

“spousal registry” also would not contravene Jewish religious law, which would not recognize the validity of these partnerships; consequently, should the couple decide to split up, there would be no need for a religious divorce. Lastly, because the “spousal covenant” is not “marriage,” there is no concern that children of such relationships could be considered mamzerim (born from forbidden relationships between a married woman and a man who is not her husband, according to Jewish law), a difficult religious status.

In the meantime, the controversy surrounding issues of marriage and divorce in Israel continues. Many, including some Orthodox couples, “vote with their feet” and marry outside the law, in full knowledge that their marriage is not recognized by the state. This battle is far from over.

The next generation of religion-and-state conflicts

The four controversial issues reviewed above are all related to normative arrangements. It seems likely, however, that the next generation of Israelis will grapple with issues that are broader, that involve matters of principle, and that are more difficult to resolve. These issues all touch on the direct conflict between religious authority and state authority in Israel, as can be seen in the following examples.

1. The debate about Israel's borders: The most far-reaching and critical public disagreement in Israel today concerns the future of the territories that Israel conquered in the Six-Day War. This is the fault line between the Israeli right and left. Their arguments, however, are not only political. Many national-religious Jews believe that Jewish law forbids relinquishing any part of the biblical Land of Israel, even as part of peace accords that are reached by democratic decision. Consequently, these Jews challenge the Knesset's authority to pass a law that would give up territory. As a result, if at some point in the future a political plan to modify Israel's boundaries were to emerge, there is reason to fear that we would see a dramatic struggle in Israel between Jews who are loyal to “Jewish law” and those who are faithful to the “rule of law.”

2. The debate on the place of woman in the public sphere: The extreme interpretation of Jewish law held by some ultra-Orthodox Jews mandates separation between men and women in the public sphere. According to this view, women may not sing in front of a male audience or serve as commanders over male soldiers in the Israel Defense Forces. Similarly, men and women must not sit together on public transportation or in institutions of higher education, and so on. The growing number of ultra-Orthodox Jews in Israeli society threatens to inject these stringent views on gender separation into large portions of the public sphere, beyond the residential areas of the ultra-Orthodox community.
3. The debate about the legitimacy of the courts: During the years when the Jewish people did not have a sovereign state, Jewish law strictly forbid resolving disputes between Jews in local courts administered by non-Jews; rather, disputes were to be adjudicated exclusively in rabbinic courts by judges who are rabbis and whose rulings follow Jewish law. When the State of Israel was born, the rabbinic authorities transferred this stigma of illegitimacy from the Gentile courts to the Israeli civil courts; that is, they issued a religious prohibition forbidding Jews to turn to the civil courts on a long series of issues. The judicial branch of the Jewish state is viewed by some Orthodox Jews as illegitimate from the religious perspective.

The above examples all illustrate the possible implications of the Jewish religious ambition for Jewish law to regulate all facets of human life. Jewish law is all-encompassing; the area of friction between it and the laws of the state and democratic life is liable to extend to broad domains and, in effect, to be unlimited. A responsible approach to the relations between religion and state in the Israeli Jewish context must be prepared to face these challenges.

Conclusion

The encounter between a complex Jewish society composed of multiple sectors that hold different belief systems and values, and the most important organization of Jewish existence in our generation, the State of Israel, underlies the tension between religion and state in Israel. One usually thinks about this issue in the context of debates about religious arrangements that are being passed into law, such as those presented in this article, and their implications for religious coercion, the budgeting of religious services, and the like. However, the encounter between the Jewish ideological camps and the State of Israel departs from the classic arguments of those who generally debate matters of religion and state—in law, political science, and politics—and extends to an area that we may call the “discourse of identities.”

Jewish society in Israel is in the throes of an identity crisis. There is no doubt that despite the disagreements and rifts, Jews in Israel constitute a single, well-defined national group, capable of acting together to promote its goals. The state’s astonishing successes in diverse areas prove this. However, the crisis of identity poses a significant threat to Israel’s solidarity and shared future. This ongoing crisis generates constant unease in Israel’s national existence. The identity crisis is one of the fundamental factors in its political instability, its lack of a constitution, its shift from a consensual democracy to a democracy in crisis, and the chaos that characterizes the Israeli agenda. Perhaps this is only natural for an ancient people that must deal with a new form of existence—a state—while confronting an existential threat and global cultural trends.

Disagreements about identity cannot be “solved.” There is no “right answer” to any of the questions they raise. Any attempt to decide the identity conflict in favor of one side or the other, to silence the other by any means, is illegitimate—both for

liberal culture (which opposes coercion and consecrates freedom of opinion, conscience, and expression) and for Jewish tradition (which is based on rigorous, open debate about all matters). Religious coercion or coercion of religion; a secular revolution or a faith revolution; an ideological dictatorship, a judicial dictatorship, or a political dictatorship; and all aggressive actions aimed at deciding the conflict between rival identities—these must all be stricken from the agenda. Human history teaches that there is no way to prevent identities from filtering into new groups and spaces, and this is how it should be.

However, we must not conclude that the only response to the Israeli identity crisis is passivity. What is needed is open, continuing, and tolerant discourse among the people with different identities. This dialogue is not intended to paper over differences or to change identities; the goal is to increase understanding among brothers and sisters. A dialogue, in which all parties express their beliefs and values, as well as their needs, is in everyone’s best interest. Self-segregation creates demons and feeds the flames of conflict; open dialogue can build mutual trust out of the initial dispute. Disagreement does not have to impair the capacity for joint activity, as long as it is expressed in a process of sincere encounter with the other side. If we examine the issues closely, listen attentively, and feel the heart of the other side, we can appreciate that the identity conflict is being waged for the sake of honorable goals and that the truth—if it exists and there is reason to seek it—may be much more complex than may appear at first sight.

The Center for Middle East Policy

Charting the path to a Middle East at peace with itself and the world

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