

**The Gavison-Medan Covenant**  
Main Points and Principles

Yoav Artsieli

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Foundation for a New Covenant among Jews  
in Matters of Religion and State in Israel

**The Gavison-Medan Covenant**  
**Main Points and Principles**

Yoav Artsieli



The Israel Democracy Institute



The AVI CHAI Foundation

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## Preface by the Authors of the Covenant to the Essay “Main Points and Principles”

During January 2003, around the time of the Knesset elections, the preliminary edition of our essay, “Foundation for a New Covenant among Jews in Matters of Religion and State in Israel” was published.\* To a large extent, the elections were conducted not only in the shadow of the violent conflict with the Palestinians and its impact on the internal political struggle within the State of Israel, but also in the throes of the internal political battle over the country’s profile. This battle is being waged even among those who agree – including the covenant’s framers and the majority of the nation’s population – that Israel is and should remain the state of the Jewish people. This battle has yet to be decided. The dispute, at least as presented in the media, has become increasingly divisive, evoking such hatred and suspicion among various social sectors as to jeopardize the possibility of collaboration. The covenant was written to broach these problems from a different angle, emphasizing our commonalities. It therefore aims to create a common ground, through **a common framework which, while unifying, leaves room for disagreement on a number of issues;** such a framework has the potential to be beneficial to all parties.

After three years of drafts and revisions, the covenant is now ready for what will be the longer leg of its journey—the trip through the public and the political system. This journey began with the blessing of the President of Israel, Moshe Katsav, and other leading figures. At the time this document went to press, the covenant was slowly circulating the tortuous corridors of Israel’s political institutions, and its main task still lies ahead: the creation of a public and educational climate, underlying which is the notion that our commonalities must prevail over our

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\* The preliminary version was entitled: “A Foundation for a New Social Covenant between Religiously Observant and Secular Jews in Israel”.

differences. Recognition of this fact will enable the creation of an operative framework for devising solutions, and discourage a particular side from forcing defeat upon the other. It is our intention in publishing this volume to present the spirit of the covenant and its practical proposals to a broad cross-section of the population. Once the document has been widely circulated, we will examine how the proposals fared under scrutiny, and then draft the final version.

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The covenant itself, with all its preambles and clarifications, is too long and complex for the amount of time the average person will have to devote to it. We have therefore encouraged the publication of the following essay, **Main Points and Principles**, written by our colleague Yoav Artsieli, under our guidance and direction. In keeping with our request, the essay is written in the first person and preserves the spirit of the original. The aim of this (relatively!) brief essay was not brevity *per se*, but a wish to present all of our proposals in every sphere together with the **main points** of their explanations. Also articulated here are the **principles** on which the covenant is based. The main points and principles are introduced in this essay after two particularly short prefaces. The first is “**The Spirit of the Covenant and a Summary of its Proposals**” (this is the only chapter that we wrote ourselves, aside from this introduction), and the second is “**The Background to the Writing of the Covenant**”. We recommend that readers who cannot read the entire essay confine themselves to these short sections.

### What, then, are the main points and principles?

The **main points** of this essay are the central ideas that we sought to introduce in the covenant, and through them to arrive at a proposal for agreed arrangements in various areas.

The legal-civic and theoretical-universal examination of the proposed provisions was conducted primarily by Prof. Gavison, while Rabbi Medan focused chiefly on the theological-halakhic inquiry. In seeking to retain the spirit of each of our explanations, the author of the present text at times deliberately repeats similar statements with the differing and unique emphases brought by each of us.

The main points also contain references to the chief aspects of each proposal. We advise readers to begin each chapter by reading the main points, which include a clear rendering of the highlights and innovations of the proposal, with references to the specific sections. We suggest reading the proposal itself only afterward (proposals are presented in a distinct graphic format at the beginning of each chapter and appear in the original).

The **principles** were distilled in a concise and judicious fashion by the author from the long personal forewords we wrote in the original covenant. They relate the ideological dilemmas experienced by each of us in our joint endeavor and our respective reasons for embarking on this endeavor despite the difficulties. The principles demonstrate that it is possible to arrive at a single joint proposal without contradicting the tenets of our divergent beliefs: the Torah and Jewish law on the one hand, and the centrality of the principles of equality and human dignity and liberty on the other.



In the full version of the covenant our personal forewords preceded the proposals and their explanations. In this rendering we assume a reverse approach, beginning with the agreed, practical proposals, each preceded by elucidations (“Main Points”), and only subsequently presenting the personal credos that guided each of us in this endeavor (“Principles”).

As mentioned, this essay – in contradistinction to the covenant as a whole – was written not by us, but under our guidance. With all due modesty, we believe that reading the covenant itself – despite the effort required – enables one to explore the roots of the problems and clarify them more thoroughly than can be achieved through a study of the Main Points and Principles alone. We accept, however, that there is a need for this essay as well, as it provides an important prelude to any study of the complete document. We thought it appropriate that a single author, who understands both of our styles and knows the covenant well, should present this issue in his own style, which is lighter and more popular and flowing than our own. We therefore welcome this essay and believe that it can provide the basis for a public discourse regarding the covenant, its main points and its principles, a discourse in whose absence we will have failed to accomplish very much. For, not all wisdom resides within us, nor is it our responsibility to complete the task. Of this we are certain: the common ground is extensive, while that which divides us can be settled in a manner that is agreeable to both sides, even if it differs somewhat from that proposed in the covenant. And this agreement is of critical importance to us all.

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We would like again to thank Israel Harel for conceiving this project and bringing it into being. Without him none of this would have been possible.

Yonina Hoffman, Meir ben Shahar and Yoav Artsieli assisted us greatly in the course of our work.

The **Shalom Hartman Institute** and the **Rabin Center** were the generous hosts of the covenant during the first two years of the work in process. Sarit Idel coordinated the work of the discussion groups at the Shalom Hartman Institute.

And a final thanks to the Israel Democracy Institute and the AVI CHAI Foundation, which undertook the publication of the full covenant, of this essay **Main Points and Principles**, including its translation into English and Russian, and the vitally important mission of introducing the covenant to the public.

**Ruth Gavison and Yaacov Medan**  
Jerusalem, Independence Day 2003

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## The Spirit of the Covenant and a Summary of its Proposals

**With the aim** of promoting Jewish solidarity, a sense of unity and shared destiny among the various segments of the Jewish people and especially within the State of Israel, and dignity for each and every one of its sectors,

**And out of a deep faith** in two principles: that the State of Israel is the state of the Jewish people with all that this entails, and that the State of Israel upholds equality for all citizens and full respect for their human rights as individuals as its *raison d'être* -

**we propose to agree upon the following guidelines:**

The State of Israel is the place where the Jewish people is exercising its right to self-determination in part of its historical homeland. The state's existence, security and prosperity depend upon a sense of a shared destiny among the different sectors of the Jewish people and of mutual responsibility between them. Profound disagreements currently pose a threat to this partnership, to the point of generating baseless hatred among different groups. The covenant provides a consensual operating framework that enables the preservation of the lifestyles of the respective groups while emphasizing the common ground.

Israel is a Jewish and democratic state. Israel will continue to respect the equal rights of all its citizens, Jewish and non-Jewish, along with freedom of religion and conscience, in the spirit of the Proclamation of Independence. In addition to this social covenant between sectors of the Jewish public in Israel (and in the Diaspora), it would be appropriate to seek out a common civil-political framework for all citizens of the state.

The best way of addressing fundamental disagreements is to establish a practical framework that is acceptable to all sectors of the Jewish public in Israel, through a process of dialogue. In this manner the dignity of all groups is upheld, with an attendant commitment to protect the beliefs and lifestyles of each, enabling all groups to act in a coordinated fashion to promote shared existential goals. The spirit of the covenant rejects the use of coercion against any group in order to persuade it to relinquish that which it holds as holy and dear. It permits and even mandates agreements concerning the shared public domain, which take into account the beliefs of every group. Given that division of the public domain completely among the various groups is neither possible nor desirable, its ordering requires coordination and balancing. The covenant also rejects the introduction of unilateral changes in agreements, and changes achieved through political or juridical decisions, while welcoming the institution of a consensual decision-making procedure.

We appeal to the leaders of the Jewish public in Israel to embrace the spirit of the covenant in all future discourse on matters of religion and state. This would be in the interest of maintaining peaceful conduct. It is also the call of the hour, in view of the disastrous consequences of exacerbating the social divide.

Acting in the spirit of the covenant as we understand it, we have drafted proposals for consensual arrangements concerning several issues currently steeped in controversy – relations between Torah and state and relations between different communities within the Jewish population. We believe that the adoption of these proposals will significantly advance the basic objectives of the covenant.

We therefore call upon the Israeli Jewish public to study the spirit of the covenant, its fundamental tenets and the proposals it comprises, and to work towards the adoption of such a document.

### Following are the proposals in concise format:

**Principle of Return:** Every “member of the Jewish people” will be eligible to immigrate to Israel, including the child of a Jewish father and a person who has converted through a recognized procedure. Even someone who converted in a manner that diverges from the tradition of the “Shulhan Arukh” will be entitled to register himself as a Jew in the population registry.

**Personal Status:** The right to establish a family will be recognized. The law of the state will permit weddings conducted according to any ceremony the couple chooses, and the marriage will be recorded in the population registry. No individual in Israel will be allowed to marry who is not single both according to state law and according to a strict interpretation of the laws of his religion.

**The Sabbath:** Saturday is the official day of rest in Israel. Persons will not be employed and will not be required to work in manufacturing, trade or services on the Sabbath. Cultural events, entertainment and a reduced schedule of public transportation will be permitted to meet demand.

**Principle of Non-Coercion:** The elimination of any monopoly exercised by a particular group on overall arrangements; at the same time, the right of every group to preserve its own lifestyle according to its own conception and interpretation will be respected. The same will hold true in matters of burial, dietary

laws, the Sabbath, religious services and prayer arrangements at the Western Wall.

**Legal Implementation:** The covenant will be anchored in law such that it will be difficult to introduce partial and unilateral changes into its mechanisms. It is in the spirit of the covenant as a whole to give preference to mechanisms for negotiation and compromise over legislative and judicial decision-making. The courts, therefore, will not be granted the authority to invalidate laws concerning the covenant. The interpretation of the covenant, insofar as there is no court case involved, will be entrusted to an accepted representative public body, in order to encourage consensual interpretation without the need for recourse through the courts.

**Ruth Gavison and Yaacov Medan**

## The Background to the Writing of the Covenant

Before the establishment of the state and in the early years after its founding there prevailed a *status quo* arrangement, an accepted framework for relations between the religiously observant and the secular in the State of Israel. **This framework regarded the issues that the sides agreed upon to be of overriding importance, and the disputes between them – secondary.** Groups that considered the disputes to be primary and the common ground to be of only secondary importance were effectively marginalized.

Complex processes within Israeli society and its political system, changes in the relations between the state and the Jewish Diaspora, and changes in Western society as a whole have undermined the common framework, deepened the internal rift and seriously impaired accepted conflict resolution mechanisms. At the same time, the practice of turning to the courts to resolve disputes and to increase judicial involvement in shaping relations between the groups has intensified. **Attempts to decide definitively between sides have replaced the practice of reconciling differences between them, and the divide, rather than being remedied, has deepened.** Attempts at conflict resolution have been isolated, e.g., the Ne'eman Committee on the authority to perform conversions, and the Tzameret Committee regarding public transportation on the Sabbath in Jerusalem. These attempts were not always successful. Public trust in government institutions – the Knesset, the government and the judiciary – began to erode.

Many began to feel the need to construct **a new framework agreement between factions of the Jewish public in Israel.** Many groups and prominent individuals have tried to sketch the outline of such an agreement. All these attempts attest to the need for an accepted arrangement, one not contingent upon

opportunistic power plays or *quid pro quo* alone, and which would not undermine our ability to grapple jointly with the existential problems of our society and country. A stable arrangement is needed to order the totality of relations between Torah and state and among the diverse groups that call Israel home: the religiously observant, the traditional and the free thinkers in all their diversity.

The covenant is, among other things, a product of learning from the experience of others – where they succeeded and where they were less successful. No doubt the covenant has its flaws as well, but it also has advantages, which this document seeks to elucidate.

In the covenant we strove, despite our highly different backgrounds, to create first and foremost a document that is the result not of the political balance of power at a given moment, but of a sober recognition of the necessity for all parties to live and act together, to preserve that which already exists and to emphasize the common ground. If the project succeeds, it can lay the groundwork for a fundamental trust among all groups. Such trust ensures a collective recognition of the need to maintain the joint framework, whose very existence allows every group to uphold its particular ideals, while all groups continue to clarify the arguments among them. The trust that developed between the two of us inspired a willingness in each of us to insist only on that which is absolutely necessary for his or her existence, and to forgo the rest for the sake of consensus. In this manner we were able to reach agreement on numerous issues on both the general and the specific levels, to penetrate to their core, and to elucidate them to the finest detail, concealing nothing.

The process we underwent during our partnership differed from the processes experienced by other, parallel groups that have addressed the relations between secularists-traditionalists-religiously observant. In order to forge a broad consensus to



fashion a final document binding on everyone, as many groups and subgroups as possible need to participate extensively. Extensive participation, however, creates inefficiency, obstructs progress, leads people to further entrench themselves in their original stances and tends to produce ill-defined solutions – solutions that are semantic rather than substantive, and are liable to skirt the most painful issues in the short term while jeopardizing the stability of the entire covenant in the medium and long terms. For this reason we chose to work in a two-person format. This allowed us to overcome the above drawbacks with relative ease. With all the distance between our worldviews on every conceivable subject and between the fundamental sources to which we feel committed, there is no question that it was beyond our power to give expression to all of the groups we would like to be partners in the covenant; and without a broad consensus in favor of the covenant, we have accomplished nothing. Consequently, after a preliminary formulation of our proposals, we presented them, chapter by chapter, to a broad discussion group where various sectors were represented. After listening to participants' feedback, we adapted the specifics of our proposals accordingly. We hope that in so doing we were able to compensate to a large degree for the intrinsic drawback of our basic method, that of working only as a pair.

Nonetheless, we cannot entirely escape a major drawback of our method: Important groups in Israeli society were partner to our proposal only very partially. Among these are the ultra-Orthodox public on the one hand and the Reform and Conservative on the other, along with the large traditional public, new immigrant groups and others. We sought to the best of our abilities not to shortchange these groups and to take into account that which they hold dear; however this cannot be compared to an authentic representation of these groups in their own right.

We are acutely aware that some groups will be unable to express active support for the covenant where it conflicts with their principles, but we will do our best to facilitate their willingness not to oppose it openly.

In the State of Israel it is difficult to divorce the internal-Jewish problem, which we have focused on almost exclusively, from the problem of the state's treatment of its non-Jewish citizens, specifically of the large Arab minority. We have preferred to address only the internal Jewish question, by crafting a living framework for a single people. A dialogue conducted only between the two of us is not the proper framework in which to discuss the question of the relations between Jews and non-Jews in the State of Israel. Notwithstanding this fact, however, in the course of our work we also touched on points that have an impact on the non-Jewish public in Israel, and we have made every effort to respect them and their beliefs, without discriminating against them or patronizing them in any way.

**Regarding the structure of our work:** The division of the covenant into chapters was designed not only for convenience and clarity, but in order to emphasize that every chapter can stand on its own independently of the concurrent acceptance of the other issues, although we would certainly prefer to reach a global agreement. But what holds true with regard to accepting one chapter without the others certainly does not hold true regarding the possibility of accepting only part of a chapter (the “easy” part), while rejecting other sections (the “hard” parts). **The acceptance of some of the provisions of the arrangement on a given issue and rejection of others divests the covenant of its meaning.** Our joint proposal with its separate explanations is also designed to stress that we have no intention of consolidating all the diverse sectors of the Jewish people into a single unit.

**The way of law must be one, while value systems and lifestyles will remain different and variegated, each in its own way.** The profound disagreement between value systems may be explored in greater depth and even expanded through genuine methods of elucidation, but without the need to defeat and dominate the other side.

**The need for a covenant of this type existed in the past as well. But now, in light of our existential distress and the growing concern that the powers of discord will overcome the defenders of the common interest and unity among the Jewish people as a whole and within the State of Israel in particular, what was formerly a need for a new social covenant has become an absolute necessity. Quite possibly, the time is ripe to aim for a broad consensus in favor of the covenant, with its main points and principles.**



## Main Points

## Chapter One

# Return, Citizenship, Population Registry and Conversion

### The Proposal

#### A. The Principle of Return

**A Basic Law will be promulgated to the following effect:**

1. Every member of the Jewish people is eligible to immigrate to Israel. Specific provisions to this effect will be anchored in law.
2. This Basic Law may be changed only by a majority of eighty Members of Knesset.
3. The same majority required to change the Basic Law will be required to legislate it.
4. In this Basic Law, a “member of the Jewish people” is defined as:
  - 1) The child of a father or mother who is Jewish according to halakha, or
  - 2) An individual who has joined the Jewish people, and who fulfills one of the following criteria:
    - a) Leads a Jewish lifestyle.
    - b) Suffers persecution on account of being Jewish.

A person who considers himself a member of another religion will not fall under Section 4.

**Other laws and regulations will specify that:**

5. The appointed minister, subject to Cabinet approval,

will stipulate criteria for determining the methods of joining the Jewish people and of fulfilling conditions a or b. The condition “leads a Jewish lifestyle” will include living in accordance with Jewish law or according to an accepted Jewish tradition (in other words, Christian groups such as “Messianic Jews” will not be considered Jewish). These criteria can (and should) be detailed in published regulations. The criteria will not be subject to judicial review.

6. One way of joining the Jewish people is through conversion. However, for purposes of being considered a “member of the Jewish people” as defined in this Basic Law, conversion is not the only way to join the Jewish people.

In any place where there is a distinct Jewish community with its own mandatory practices that define its identity and its members’ affiliation to it, an individual who consistently follows these practices and is a member of that community will be considered to have joined the Jewish people. A committee appointed by the presiding minister with the Cabinet’s approval will determine the details of the principles and their application in keeping with the above criteria in every community according to its own characteristics.

#### **B. Arrangements for Acquiring Citizenship**

1. Israeli citizenship is acquired either through birth, under the Law of Return, or through naturalization.
2. As a rule, only a citizen who is also a resident will pass

on citizenship to his children through birth.

3. A person who is eligible to immigrate under the Law of Return will receive an entry permit into Israel. He will be eligible for naturalization after the passage of a given period of time (three to five years), after he has made a declaration of loyalty to the state and demonstrated a certain degree of proficiency in the Hebrew language and a certain acquaintance with Jewish heritage, the history of the state and its institutions. As a rule, there will be no obligation to relinquish prior citizenship. The immigrant's induction into full mandatory service in the security forces will immediately exempt him from the waiting period and from the other requirements. A person who is eligible to immigrate but never undergoes naturalization will receive permanent resident status in Israel. The Minister of the Interior is authorized to exempt an individual, or a small group, from the requirement for a waiting period or for showing a certain proficiency in the Hebrew language.
4. The nuclear family (spouse and accompanying minor children) of a person who is eligible to immigrate according to the Law of Return ("a member of the Jewish people") will be eligible, like him, for entry and residency permits in Israel. If the immigrant becomes naturalized, his spouse and minor children will also receive citizenship once they become naturalized, if they fulfill the requirements of the naturalization law.
5. Only a person who makes *Aliya* – that is, who arrives here from abroad for purposes of immigration – will be eligible to become naturalized here through the Law of



Return, and to confer rights on those family members who immigrate with him.

6. Naturalization is subject to the judgment of the Minister of the Interior.

We will not elaborate on points of law in which we do not seek to change the *status quo*. The rules governing naturalization will be specified in published regulations and directives.

7. Special arrangements with regard to naturalization will apply in cases of family unification:

- a) An Israeli citizen who resides in the country is entitled to have his spouse receive a residency permit in Israel. The minister is also authorized to grant residency rights to the minor children of a citizen who were born before he took citizenship. His spouse will be given preference in receiving a permanent residency permit or in undergoing naturalization.
- b) A person who became a naturalized citizen of Israel will not confer rights on his spouse during the first seven years of his naturalization.
- c) “Spouse” for purposes of this law is a member of the opposite gender to whom an individual is legally married.

Regulations may specify tests for the recognition of the validity and genuineness of a marriage for purposes of conferring “spousal” rights. A non-resident parent will have the right to visit Israel to see his or her minor child.

### C. Population Registry and Conversion

1. It will be explicitly declared that the population registry bases itself on the declaration of the individual being registered, which should be grounded in verifiable facts. Registration itself is not evidence of the validity of the information appearing in the registry.
2. The population registry will include mention of a person's religion. We did not reach agreement regarding the registration of nationality.

**Ruth Gavison's suggestion:** The nationality category will be erased from the population registry and from identity cards.

**Yaacov Medan's suggestion:** Nationality will continue to be recorded in the population registry and on identity cards. A person will be entitled to record his nationality as "the people of Israel" if he is the child of a Jewish mother or a Jewish father, or if he has converted.

3. A person who wishes to have his religion recorded as Jewish will make a declaration regarding the basis of his Jewishness and choose between two possibilities: as the child of a Jewish mother or through conversion. If he converted, the date and place of the conversion and the identity of the rabbinic court presiding over the conversion will be recorded in the population registry. The regulations will stipulate how these facts are to be recorded (For instance: Mr./Ms. \_\_\_\_\_ was converted on date \_\_\_\_\_ in place \_\_\_\_\_ by

Rabbi \_\_\_\_\_ under the auspices of the rabbinic court of Progressive Judaism).

4. The regulations will stipulate rules for recognizing conversions: No conversion ceremony will be recognized unless it was carried out by a rabbinic court acting on behalf of the Jewish community of the individual at the time of his conversion. Rabbinic courts under the aegis of the Chief Rabbinate will be considered to be acting on behalf of the community. A community will be considered Jewish if it belongs to a stream of Judaism recognized by the government, after consultation with representatives of the Chief Rabbinate and the Jewish Agency.
5. No special status in the population registry will be granted to conversion performed according to the Ne'eman Committee track. Nevertheless, we consider this consensual route to be highly significant, and an individual who wishes to join the Jewish religion by way of conversion would benefit from taking this route in that the act of his joining will be complete and recognized by Jewish law and its interpreters. Both Jewish society and the individuals joining it have a common interest in a complete and successful integration, and this integration will be eased if those who seek it are able to participate fully in Jewish life in a manner recognized by all streams of Judaism. Such recognition assumes and imposes an obligation of encouragement on both government institutions and the rabbinic conversion courts.
6. Population registry records on the personal status of a given individual will be open for scrutiny by the

officials responsible for recording marriages and by any person with the written approval of the individual concerned. With regard to other persons, accepted rules concerning information access will apply.

## Main Points of Ruth Gavison's Explanation

### Background

The first chapter is comprised of four topics (return, citizenship, population registry and conversion), all of which revolve around one central issue: the Jewish collective – its character, the connection between it, the Land of Israel and the State of Israel, the connection between Jews in Israel and in the Diaspora, and primarily, how one goes about joining the Jewish people and how membership in this collective is determined.

### The Current Situation and the Difficulties Posed

The proposal addresses the difficulties of the current situation, and it is more easily understood against the backdrop of these difficulties.

**The first difficulty** is related to the argument over the principle of Return. Arab citizens of Israel, the Palestinians and Arab countries have always opposed the Law of Return, viewing it as unacceptable discrimination on the basis of religion or nationality. The religious definition of a “Jew” that has appeared in the Law of Return since its amendment in 1970 has reinforced criticism of the law by many Arabs, leading to Israel’s portrayal as a theocracy – an entity with no right to self-determination according to the laws of the world’s nations. Radical left Jews have lent their support to this critique as well. According to the

critique, even if there was once a certain justification for the Law of Return during the early years of the state, that justification has lost its validity.

**The second difficulty** stems from the internal Jewish debate over the definition of “Jew” in the Law of Return and the population registry. Should the definition be religious? National? Who should decide? From our standpoint, the key question is the institutional one: Is the issue a subject for political negotiations to be conducted in government institutions, a question of Jewish law to be determined by religious institutions, or perhaps a question of fundamental human rights, to be decided by the courts?

**The third difficulty** arises from the automatic, immediate bestowal of citizenship on current immigrants to Israel under the Law of Return. This situation often exposes the state to unrestricted waves of immigration liable to injure the welfare of its established citizens and residents. It also enables immigrants to take an active part in elections before they have become fully integrated into the life of the state and developed an understanding of the fabric of life here and of the country’s particular problems.

**The fourth difficulty** stems from the overly comprehensive scope of the Law of Return at present. The principle of Return, even according to its supporters, is meant to promote the fulfillment of the Jewish people’s right to political self-determination in Israel. The current arrangement (clause 4a in the Law of Return) confers the right to immigrate to family members as well, extending as far as to the wife of a man whose grandfather was a Jew, even if this Jewish grandfather, all of whose relations are gentiles, is no longer living and even if he is living but never immigrated to Israel

himself. These arrangements are neither logical nor just, especially in light of Israel's (legitimate) opposition to the realization of the "Right" of Return to which the Palestinians lay claim.

**The fifth difficulty** derives from the nature of the current solution contained in the Law of Return: A narrow halakhic definition of "Jew", together with the expansion of the circle of those eligible to immigrate. By adopting an exclusively halakhic definition of the boundaries of the Jewish people, this solution undercuts the broad meaning of the Jewish people and of the mutual responsibility that exists among it, despite the fact that in the current socio-political reality, a considerable portion of the public – both Jewish and non-Jewish – does not view the boundaries of the Jewish people in this fashion.

#### **Main Points of the Proposal: Addressing the Difficulties**

The proposal is intended to address at least partially the above difficulties.

#### **The Principle of Return**

My basic premise is that it is legitimate for the Jewish people to fulfill its right to self-determination in the State of Israel. This legitimacy justifies adopting an appropriate immigration policy. Such policies are an accepted practice in international law, and are in place in a number of nations. With regard to the Jewish people there is another justification as well – that of reverse discrimination. We thereby advocate that the principle of Return be anchored in a Basic Law rather than an ordinary law, which is the current state of affairs (For a more extensive discussion of the issue see clauses 1-3 of our proposal). Anchoring the law at the constitutional level is fitting from a symbolic point of view, but it is also important in case the principle is ever challenged

against the principle of civil equality (a challenge which presupposes two controversial assumptions: 1. that the principle of equality is anchored in the Basic Laws; and 2. that the Basic Laws confer upon the courts the right of judicial review). For the same reason we also suggest securing the general definition of eligibility for Return at the constitutional level: “a member of the Jewish people”, through a national rather than a religious (“who is a Jew”) definition. I believe that by so doing we provide an answer to the first and fifth difficulties in the existing arrangement enumerated above (the religious definition of a Jew on a narrow halakhic basis).

**Who is eligible for immigration – Expansion on two fronts:**

The proposed arrangement excludes people who do not define themselves as Jewish, but does not reject someone who views himself as Jewish yet whose concept of Judaism diverges from the halakhic Orthodox interpretation. Our proposal expands the circle of eligibility for immigration on two planes.

**First expansion – born of a Jewish father:** This is based on a halakhic definition for purposes of determining the Jewishness of the parents of someone who applies to immigrate to Israel, but not for purposes of determining the Jewishness of the applicant himself. The child of a Jewish father (a father who is Jewish according to halakha, i.e. whose mother is Jewish) will be entitled to immigrate to Israel, even if the mother of the applicant himself is not Jewish.

**Second expansion – One who joins:** According to our proposal, a “member of the Jewish people” includes anyone who converted through a serious, reliable conversion process accepted by a recognized stream of Judaism (Orthodox, Conservative or Reform) and to whom one of the following conditions applies:

1. He maintains a Jewish lifestyle, or 2. He is persecuted on

account of his Judaism. These supplementary conditions were added in order to ensure that the conversion was genuinely performed for purposes of joining the Jewish people (clause 4 of our proposal regarding the principle of Return).

**Joining – Not by way of conversion?** Our proposal **permits** recognition of the act of joining even without a formal conversion process (as can be inferred from the language: “One way of joining the Jewish people is through conversion” – clause 6 of our proposal regarding the principle of Return). It is **desirable** to enable a person to join without conversion. This approach derives from the Jewish-cultural-secular worldview, according to which it is possible to maintain a genuine bond with the Jewish people based on Hebrew culture, language and literature. Inclusion of this type of expansive category can offer an opportunity for creative development in the most difficult issues of contemporary Jewish identity. In my opinion, this definition is called for in view of the Jewish reality in the United States today, and even more so because of the reality to be expected in the next generation.

**A “second-class” Jew?** People have told us that we are reinforcing the distinction between a “full” (Orthodox) Jew and a “member of the Jewish people”, whose Judaism is “in question”. The criticism implies that a more creative and flexible thought process could have produced a unified resolution of the question “Who is a Jew”, a hope voiced by David Ben Gurion in his letter to rabbinic scholars. For our part, we acknowledge that a uniform definition is not possible, preferring instead to adopt a solution that distinguishes between the different contexts in which the question of affiliation to the Jewish people arises.

### **Citizenship and Naturalization**

Israeli citizenship is a subject that must be treated seriously, and should require a period of acculturation and a declaration



of loyalty to the state before being awarded – even to someone who immigrated in accordance with the Law of Return. We differentiate between *Aliya* – fulfilling the right to settle in Israel – and the acquisition of citizenship, which also affords the right of political participation in elections. This will promote equal treatment in naturalization procedures. Enlistment in full IDF service will exempt a person from the adjustment period. Requirement of an adjustment period makes naturalization under the Law of Return similar to naturalization in other ways.

**Conferral of citizenship by a citizen:** We propose equalizing the ability to confer citizenship so that it is the same for Jews and non-Jews, and adding a general condition: A citizen will be entitled to confer citizenship on his child only if he himself is a resident of the state (clause 2 of our proposal regarding arrangements for acquiring citizenship). The purpose of the change was to ensure that citizenship be granted only to someone who has a genuine connection with Israel. The change will not harm someone who resides abroad for a limited period of time (such as a student).

**The circle of those eligible for citizenship:** We advise substantially restricting clause 4a of the existing Law of Return, by enabling those persons eligible to immigrate to confer citizenship only on members of their immediate nuclear family (clause 4 of our proposal regarding arrangements for acquiring citizenship). This helps resolve the fourth difficulty in the existing arrangement mentioned above (broad circle of eligibility).

### Population Registry

**Registration of nationality:** This is the only point in the entire covenant regarding which we failed to reach agreement (clause 2 of our proposal regarding population registry and conversion). I suggested eliminating the category of nationality in the population registry and the identity card. Rabbi Medan recommends leaving

it and enabling Jews to register their nationality as “the People of Israel”. In my opinion, this is a problematic suggestion: Israeli citizenship is supposed to be neutral with regard to nationality or religion, while here it is given a specifically Jewish cast. Is “the People of Israel” the Jewish people in Israel and the Diaspora? Only in Israel? Or does it comprise the entire Israeli nation, with all its citizens, including the non-Jews?

I am not in any way minimizing the profound significance of national affiliation. On the contrary, it is possible and to my mind necessary to continue educating people according to a worldview that acknowledges their religious or national identity as an important component in the quality of their lives. But there is no imperative that this discourse on issues of identity be accompanied by official state registration.

**Registration of religion:** We suggest that the population registry be based on a person’s own declaration, thus allowing someone who converted through a non-Orthodox conversion to register himself without any problem; this registration, however, will be transparent and will include the type of conversion (clause 3 of our proposal regarding population registry and conversion). The proposed transparency has evoked resentment among the non-Orthodox streams, to my mind without justification. The wish to conceal the type of conversion is unfounded. Registration cannot resolve the debate over the validity of non-Orthodox conversions. It can only prevent the exercise of a monopoly by the Orthodox over who is to be registered as a Jew in the population registry. The separation between the intra-religious question and the state’s population registry is designed to address the second difficulty mentioned above in the existing arrangement (the “institutional” difficulty).

### Conversion

Only a person who converted before immigrating to Israel, and

not for the purpose of immigration, will be eligible to immigrate under the Law of Return. I supported the recommendation that persons wishing to convert take the Ne'eman Committee route; the committee proposes maintaining the Orthodox monopoly over the rabbinic courts that perform conversions, while simultaneously opening a joint seminary for conversions (clause 5 in our proposal regarding population registry and conversion). Predictably, there were representatives of the non-Orthodox movements who complained about this recommendation. I understand those who are disappointed by the manner in which the attitude towards the Ne'eman Committee recommendations developed. Our proposal supports the recognition and registration of non-Orthodox conversions in Israel – first, because it is desirable to permit someone who wants to join a non-Orthodox community to convert according to the rules of his community. But more importantly, Orthodox conversions, at least in the way they are carried out by some rabbis, obligate the individual to observe the commandments and to educate his children in a religious institution. The result is that someone who does not intend to keep the commandments is precluded from converting, or he is compelled to lie in order to convert, and lives in perpetual fear that his conversion will be annulled simply because he wants to live in Israel without having to observe the commandments.

Our proposal, then, resolves the practical problem of conversion for the purpose of acquiring Israeli citizenship. It recognizes conversions performed by every stream and allows them to be registered according to an inclusive approach while guaranteeing transparency.

At the same time, I reassert my recommendation regarding the Ne'eman Committee, independent of Return or the population registry. There is only one way of joining the Jewish people that is acceptable to all streams, and that is the Orthodox way. This is a fact. No law promulgated by the state and no political agreement is going to change this. Israel is home to a large

Orthodox community. It will be easier for someone who plans to live in Israel to become Jewish in a manner that is also recognized by halakha. Nevertheless, since most Jews who live in Israel do not keep the commandments, I see no reason to demand that those who join us embrace a specifically Orthodox way of life. I believe that the leaders of Orthodoxy should display suitable flexibility and enable persons to join even without a commitment to follow a religious lifestyle. I know there are Orthodox rabbis who implement this approach in practice. The problem, as usual, is one of leadership, and of recognizing the call of the hour.

## Main Points of Yaacov Medan's Explanation

### The Principle of Return

The children of a Jewish father and a non-Jewish mother are considered thoroughly non-Jewish from the standpoint of the halakha, as regards their personal status and obligation to keep commandments. We therefore did not use the term “Jew”, which is also a halakhic term, in referring to them, preferring the more general term, “member of the Jewish people”, which is more fitting for the “seed of Israel”. We both agree that these individuals are eligible to immigrate according to the Law of Return (see clauses 1-4 of our proposal regarding the principle of return). I do not feel that even if they grew up with a Jewish identity and perhaps suffered on its account, willingly or unwillingly, that the Torah necessarily commands us to ignore their link to the Jewish people and the Land of Israel and to relate to them as total strangers. Certainly it is appropriate to show them human solidarity. **In the view of at least some rabbinic scholars it is our duty to try to draw to Judaism the children of a Jewish father and a non-Jewish mother, children who are connected to the seed of Israel.\***

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\* This emerges from the *responsa* of rabbinic authorities in recent generations: Rabbi Zvi Hirsch Kalisher and Rabbi Benzion Hai Uzziel, who was the Chief Rabbi of Israel, etc.

Furthermore, although Rabbi Moshe Feinstein considered the Ethiopian immigrants to be gentiles, he nevertheless supported the efforts to bring them to Israel and convert them, due to their Jewish consciousness and their emotional identification with their Jewishness. So he writes in a letter to his grandson, Rabbi Mordechai Tendler, on the subject:

“One should know, that even if by law they are not Jewish, in any event, since they think they are Jewish, and risk their lives for the sake of their Jewishness, we are obligated to save them”.

Notwithstanding the above, it should be noted that some immigrants currently arriving in Israel lack all connection to Judaism, and are interested in joining the State of Israel only because the living conditions here are superior to the living conditions in their countries of origin – without any wish on their part for some link (however minimal) to Judaism. The principle of Return we have formulated will include “An individual who has joined the Jewish people”, but only if he has an authentic tie to Judaism.

I admit that I accepted this formulation with a heavy heart. From my vantage point, it is replete with pitfalls. But I became convinced that on the secular side there are many good people whose intention in legislating this clause was to take responsibility for their neighbors, those gentiles who consider themselves Jews, in the spirit of the responsibility displayed towards them by Rabbi Feinstein. Rabbi Feinstein did not address the case of those who join the Jewish people under the conditions we stipulated. But it is possible that we can bring them to Israel and convert them as well.

### **Registration of Religion**

Registration in the population registry is a formal matter conducted by clerks in accordance with the declaration of the

person being registered. We have agreed that only the child of a Jewish mother or someone who has converted will be registered as belonging to the Jewish religion. Regarding the question of the character of the conversion, in my opinion it would not be in consonance with the aims of the covenant to take measures which the public is likely to view as excluding the Reform and Conservative from the Jewish people, along the lines of the Karaites, for example. The argument we have with these two movements is sharp and bitter, and it must be conducted in the proper arenas – respectfully, but aggressively and without compromising the pillars of our faith and the halakhic tradition. Nevertheless, Reform and Conservative Jews are part of the Jewish people. To dismiss their conversions outright is correct from a halakhic standpoint. But to cancel them entirely from the population registry as well – after the Conservative and Reform movements agreed to conversions according to the halakha of the “Shulhan Arukh” in the manner proposed by the Ne’eman Committee, the Chief Rabbinate being the side who rejected the committee’s conclusions – would likely be considered an expulsion from the Jewish people. We therefore recommended registering those who converted in this manner as Jews in the population registry, with the identity of those who converted them recorded explicitly. We also decided that the population registry would be based on the declaration of the person being registered, which is to be grounded in verifiable facts, but that appearance of this information in the registry would not in itself be considered evidence of its validity (clause 1 of our proposal on the population registry and conversion).

It is imperative that the population registry be transparent. If the observant community cannot rely on it, they will be compelled to keep communal genealogical records. The result of such records is liable to be an irrevocable divide between the observant and

their brothers. **During the second Temple period as well, such books of lineage were an important factor in fomenting baseless hatred and the Temple's subsequent destruction.**

#### Registration of Nationality

**I preferred the term “the People of Israel” to “Jewish”.** The expression “Jewish” comprises a description of the individual himself, and is a thoroughly halakhic term (clause 2 of our proposal regarding the population registry and conversion). “The People of Israel” is a more general expression, and I prefer to employ it rather than to eliminate the nationality category – which to my mind is unthinkable in a state that defines itself as the state of the Jewish people.

#### A Summary of My Position – The Cumulative Weight of Various Considerations

With regard to the population registry, it was necessary to make painful concessions in order to salvage that which I deem essential. The fact that it will be possible to register a gentile as a member of the Jewish religion on the basis of a Reform conversion, which goes against the Torah and Jewish law in effect since time immemorial, and that in many cases such conversions are performed without even a minimum of national responsibility – is quite intolerable to me. The considerations that brought me to assent to this proposal, which I enumerated above, may not each measure up independently. But it seems to me at least that some of them together have cumulative weight.

#### **I will list these considerations again:**

1. The chance of winning in the political arena or the courts is not good (in keeping with the decisions of the High Court, the current entry policy into Israel is more flexible than ever).
2. Instead of devoting superfluous energies to battles in these spheres, it appears to me to be far more crucial to win the

battle for the heart of the “man on the street” who votes in the elections every few years. The voter will determine our ability to contain the damage: “Our deeds will draw them close – or our deeds will push them away”. The cultivation or alienation of the voter depends only on us.

3. The rabbinate openly and officially refused to accept the Ne’eman compromise regarding conversion, despite the fact that the joint conversion seminary is directed primarily by Jews faithful to the “Shulhan Arukh”. The rabbinate feared that such an acceptance would be construed as recognition of other streams. This state of affairs enabled (to my mind unjustifiably) the Reform and Conservative to argue that despite the establishment of the joint conversion seminary, they are not bound by the Ne’eman compromise, and they continue to demand recognition of their conversions. The resulting situation is liable to produce a stampede in the direction of the Reform and Conservative among prospective converts.
4. The power struggles taking place in the courts and the political arena often degenerate into personal animosities, which only detract from the ideological struggle. In the context of my public endeavors I have encountered figures from the Conservative and Reform movements from whom I can learn – and I certainly have no interest in attacking them personally. My spiritual struggle against what they represent is unrelenting, yet the Conservative and Reform streams belong to the Jewish people – and the uncompromising spiritual battle with them needs to be conducted in the sphere of public discourse, not in the courts or the political arena.
5. **In my view, there is no question that the most important point is the proposed change in the Law of Return, which will prevent total gentiles from taking up residence here in Israel, as well as avoid mass-scale indiscriminate**



**conversions by parties not committed to the “Shulhan Arukh”.**

In conclusion: I am aware of the fact that from the perspective of the religiously observant the covenant's proposal is a regression from the existing law. However for some time now the situation on the ground has been as far removed from the law as East is from West. With regard to the situation in practice, the covenant effects a dramatic improvement. This in and of itself is preferable to me, especially given that it is part of a willingly undertaken joint agreement, that adheres to the spirit of the covenant as a whole.

## Chapter Two

### Personal Status: Marriage and the Dissolution of Marriage

#### The Proposal

1. A Basic Law will be promulgated to the following effect: Every person has the right to establish a family. Specific provisions to this effect will be anchored in law.
2. Only those persons who have received a marriage license from the state are eligible for marriage. Such a license will be granted only to a man and a woman, both of whom are single, at an age specified by law, between whom there exists no prohibited blood relationship. A person will be considered as single only if he is defined as such both according to civil law and according to the law of his religion.  
It shall be explicitly stipulated that a Jew may be recognized as single for purposes of this clause only by a rabbinic court authorized by the Chief Rabbinate, or by a rabbinic court abroad which is recognized by the Chief Rabbinate.
3. Upon receipt of the marriage license the couple will be informed of their legal rights and obligations within the marriage framework, and their options with regard to the wedding ceremony and marriage vows.
4. After receipt of the marriage license, the couple may choose the type of ceremony and the person to conduct it according to their preferences. Permits to conduct weddings will be granted by the state to a civil registrar and to other persons authorized to conduct wedding

ceremonies according to the laws of their respective communities.

5. The state will recognize marriage ceremonies conducted abroad, unless they violate the conditions enumerated in clause 2.
6. Legal judgments concerning a marriage, with the exception of judgments regarding the validity or applicability of the marriage, will be made by a civil or rabbinic court according to the preference of the parties. If the parties disagree, the matter will be adjudicated before a special tribunal composed of a civil judge, a rabbinic judge and a civil judge who considers himself subject to religious law.
7. Dissolution of marriages will be conducted by civil and rabbinic courts. A civil court is permitted to condition a civil dissolution on the prior conclusion of the marriage according to religious law (in accordance with clause 2). Every document testifying to the dissolution of a marriage will prominently refer to the directive of clause 2 , while citing its language.
8. Personal status will be recorded in identity cards, together with a reference to the population registry. The registry will specify the type of marriage ceremony or dissolution of the marriage, the identity of the person who conducted it, its date and place. Registration particulars will be specified in official regulations. For example: Personal status: married. Officiating individual: the registrar (Or: Rabbi so-and-so from the Chief Rabbinate. Or: Rabbi so-and-so from the Conservative Movement). Details of the registration will be amended in accordance with the needs of the

various religions and streams, at the request of their respective representatives. If a marriage was dissolved through more than one procedure, the population registry will record the particulars of each dissolution procedure. The registry will distinguish between a person whose marriage was dissolved (while recording the details of the procedure) and a person who was divorced in accordance with clause 2. The directives in clause 6 of the “Population Registry and Conversion” chapter will apply here.

9. The state will participate in financing religious institutions (religious officials who conduct weddings, rabbinic courts) in accordance with the scope of their use.
10. In the matter of child custody, all civil and rabbinic courts will render their judgments according to the principle of the welfare of the child. This principle will be interpreted in accordance with the world views of the specific party in question.
11. All civil and rabbinic courts are bound by the principle of the equality of the sexes. Religious courts will follow their own laws, and these will supersede other directives.
12. The sweeping legal recognition of common-law spouses and their rights will be abolished. The rights of persons who reside together outside of the legal framework of marriage shall be organized in contracts and special arrangements according to need.
13. These directives will apply to those persons who marry after their dissemination. Transitional rules will be stipulated in order to shorten the length of time in which different legal arrangements are applied to married couples in Israel.

## Main Points of Ruth Gavison's Explanations

Our proposal in the sphere of personal status is revolutionary, as it abolishes the religious monopoly over matters of personal status.

### The Current Situation Infringes Basic Rights in a Number of Ways:

1. The most severe example is the fact that the Israeli justice system does not provide a legal marriage option to anyone who cannot marry according to the laws of the recognized religious communities in Israel.
2. Even if religious marriage laws were perfect and afforded complete liberty and full equality to all, the religious monopoly on marriage and its dissolution would still infringe the citizen's basic rights. A law of the state that obliges a person to conduct a religious ceremony even if he is not so inclined is a law that infringes both one's freedom from religion (by compelling religious activity, which violates a person's beliefs) and one's freedom of religion (if the same person wishes to wed in a manner consistent with beliefs that diverge from those imposed upon him).
3. The religiously observant have no sanctioned option of living together without a religious marriage ceremony. They do not have the possibility of choosing to live as a couple without receiving government approval.
4. In the **Bavli** ruling the High Court ordered rabbinic court judges to apply certain fundamental principles of civil law in their rulings. Thus, when there is a conflict between religious law and civil principles, this is liable to infringe on the religious freedom of the judges and of those who choose to have their case adjudicated according to Torah law.

### Can the Infringements of Basic Rights Be Justified?

The mechanism for review of Basic Laws (1992) permits the infringement of rights if it is required for a legitimate purpose. Promoting the cohesiveness of the Jewish community is a **worthy objective** for the State of Israel, in which the Jewish people exercises its right to self-determination. The Orthodox monopoly on matters of marriage and divorce therefore fulfills the first (preliminary) component of the requirement of **proportionality**: It contributes in a rational fashion to furthering its own objective. But the Orthodox monopoly does not meet the test of the second, substantive component: The infringement of basic rights is “more than required”. It comes at a heavy price – from the standpoint of individual rights, from a systemic standpoint, from a cultural standpoint and even from a religious standpoint. It imposes on religion the burden to provide an adequate response to human hardships that religion would prohibit but the state must provide.

### Principles of Our Proposal

From my perspective, on the one hand, democracy does not mandate a religion and nation-blind marriage regime; on the other hand, the Jewishness of the state neither mandates nor justifies a religious monopoly, certainly not an Orthodox monopoly, on marriage. The proposal demonstrates that it is possible to recommend changes that will reduce the substantive damage to basic rights sustained under the existing arrangement, yet will also be attentive (some would argue – excessively so) to the legitimate interest in acknowledging the identity-cultural cohesiveness of religious communities in Israel.

**The first two clauses of our proposal reduce the three first types of infringement caused to basic rights in the existing arrangement enumerated above.**

The proposal accepts (clause 1) the principle that the right to

establish a family must not be restricted on the grounds of religious, national or racial affiliation. It confines itself to requirements that are almost universally recognized: age, monogamy, the absence of prohibited blood relations and heterosexuality.

Whoever wishes to marry in a manner recognized by the state must apply for a license (clause 2). We do not advise instituting a blanket prohibition against marriage without a license; therefore, according to the proposal, a couple is permitted to wed in a private religious ceremony without applying for a license, but they will be considered “single” for purposes of civil law.

The proposal abolishes the possibility of marrying a second wife, a possibility currently available to Jewish men who have obtained special permission to that effect from a rabbinic court. The proposal establishes a general prohibition against bigamy, applying equally to both sexes.

The dramatic change introduced in clause 2 is not in what the clause includes, but in what it lacks: The arrangement we propose does not require that couples marrying in Israel be fit for marriage according to the laws of any religion.

Suggestions have been put forth in the past for alterations to the legal order on behalf of persons forbidden to marry by Jewish religious law (non-Jews with Jews, Jews with a *mamzer*, a person born to a married Jewish woman by a man other than her husband, male descendants of the priestly line with certain Jewish women such as divorcees, etc.). Our proposal does not impose a stigma on these individuals, granting freedom from religion to all citizens instead.

**The status of same-sex relationships:** Under current law same-sex marriages are not recognized in Israel, and the claim has been made that the arrangement in clause 2 of the covenant undercuts

the struggle of same-sex couples for legal recognition. This is due to the fact that the proposed arrangement recognizes the right to marry of couples who cannot marry according to the existing rules, but notably leaves out only same-sex couples. It should be acknowledged that the complaint is not groundless. I personally believe that the permanent bonding of homosexual couples fills an important emotional function for them, and that there is a real social interest in recognizing this function of an intimate relationship and finding methods to establish and reinforce it. On the other hand, I am not convinced that these couples have the “right” to demand legal recognition of their commitment as a marriage in every sense. However, this is an important cultural debate, not a legal issue deriving from the subject of basic rights. It should be noted that most countries around the world forbid marriage between members of the same sex. Homosexual advocacy organizations contend that this is an infringement of equality, as they are being denied, on an irrelevant basis such as sexual orientation, the fundamental right to establish a family. But this is to assume that which one seeks to prove: The normative debate cannot be decided simply by saying that the basis is irrelevant. For that is precisely what is at issue. Naturally, we do not advocate prohibiting same-sex relationships, or imposing legal restrictions on ways of ordering the mutual rights of such couples.

**Divorce according to Jewish law – Considering the welfare of the child and concerns regarding a schism in the nation:** The *coda* to clause 2 states that a person will be considered single only if he is also considered single according to religious law. This is not an easy *coda* for the free-thinking public (and even for a portion of the observant). There are those who claim it is actually worse than the *status quo* on this issue. They give two reasons:



First, religious coercion “returns” in the case of divorce; second, the principle of equality is compromised by the humiliation and practical difficulty involved in obtaining a Jewish bill of divorce (*get*). **Despite these concerns, I stand behind the agreement.**

**First**, the secular public must understand that the requirement for divorce according to Orthodox halakha is **critical** for the religiously observant. Without this requirement, there would be no alternative to maintaining independent genealogical records. We can reasonably assume that if independent records were instituted, no agreement would be reached to eliminate the Orthodox monopoly.

**Second**, the proposed arrangement is needed to protect ‘the best interests of the child’. Only this arrangement guarantees that a woman defined as already married by Jewish law will not remarry. A child born to a woman whose previous marriage has not been dissolved is a *mamzer*, a “bastard” according to Jewish law. And the halakhic status of a “bastard” deals a mortal blow to the child’s basic right to marry, while stigmatizing him in the eyes of the wider Israeli religious community.

**Third**, and perhaps most important, is the fear of dividing the nation. From my perspective, the reason for requiring a religious divorce is not a religious reason *per se*, but a cultural-national one. Society is allowed to limit the freedom of those of its members who benefit from the fact that they live in a society in which their community exercises national self-determination.

We propose that the state take responsibility for actively giving the couple information regarding all the various options they have for getting married (clause 3). This is a way to encourage religious and cultural pluralism, and people will be able to make an intelligent choice regarding the marriage ceremony that suits them from among the spectrum of possibilities – civil or religious.

It is important to stress that we reject the idea that the state should

only recognize a civil ceremony. Religious identity can have an important and recognized place in the public arena as well, as in the case of the marriage rite. A couple who chooses a religious ceremony will not have to belong to any religious community either before or after the ceremony (clause 4).

We do not think it necessary to permit circumvention of the central moral judgments of a particular society by automatically obliging it to recognize the judgments of another state. In principle, it seems to us that a foreign institution of marriage should be accepted only if its principles are also recognized in Israel (clause 5). If a person seeks to change the legal situation in Israel, he should engage the political, governmental and social systems here.

Our proposal also resolves the problem that is inherent in the **Bavli** ruling (the fourth type of infringement of basic rights in the existing arrangement enumerated above). According to clause 6 of our proposal, the religious courts will continue, if they so wish, to adjudicate according to their interpretations of religious law, yet those who submit their affairs to these courts will do so by choice and consent. In this state of affairs it seems to us that the High Court should treat the rulings of the rabbinic courts as a type of arbitration based on the consent of the parties; the Court will therefore have no cause to intervene simply because the operating principles of the rabbinic courts strike them as unjust.

The state will also recognize **a civil dissolution of marriage**, although this may not suffice for purposes of remarriage (clause 7). It should be stressed that the revolution our proposal instigates is also a semantic one: The expression “to dissolve” a marriage is more neutral than that of “divorce”, and certainly more appropriate in cases where the severing of the relationship is specifically at the woman’s initiative.

The population registry will reflect the multiple modes of marriage

and its dissolution, while maintaining a strict transparency that makes it possible to ascertain the type of ceremony that was performed (clause 8).

The proposed arrangement also enables autonomy and cultural freedom in matters such as child custody (clause 10) and ordering the relations between men and women (clause 11). Every court is bound by the principles of the welfare of the child and equality of the sexes, yet each institution will interpret these principles in accordance with its own norms and the dictates of the community it serves.

Finally, a **sweeping** recognition of common-law marriage developed in light of the fact that many couples were not legally permitted to marry. In the wake of our proposal, such recognition seems unnecessary for those who are now able to wed (clause 12). Whoever cannot marry even according to our proposal will be able to rely on these laws when necessary.

## Main Points of Yaacov Medan's Explanation

### Introduction

Since the founding of the state, the conduct of marriage and divorce according to Jewish law has been an important means of preserving minimal unity in Israeli Jewish society. However, there are difficulties in upholding Jewish law in Israel in its current configuration. One example is the problematic issue of individuals who are forbidden to wed for halakhic reasons, a dilemma that must be addressed. The problems deriving from divorces that are not according to halakha are immeasurably more intractable than those deriving from marriages not according to halakha. **Our proposal is therefore based on the principle that with regard to marriage the “religious” side will bend over backwards to accommodate the secular, and with regard to**

**divorce, the “secular” side will exert itself to the same extent to accommodate the religious.**

#### **Considerations that Led Me to Support the Proposal**

Over the last thirty years the number of couples getting married has increased due to population growth, yet the rate of those who wed through the rabbinate has not risen accordingly. Many of those who refrain from marrying through the rabbinate feel that the religious ceremony is too onerous for them.

In the present legal situation, the public can be classified into three groups.

**Group one:** Couples who have not formalized the bond between them in the state’s population registry, contenting themselves to date with the status of common-law spouses. One can reasonably assume that ultimately these couples will avail themselves of the civil marriage track, following the revocation of the sweeping recognition of the status of common-law marriages, a step that we recommend.

**Group two:** Couples who are not religiously observant but who have respect for tradition and family structure – and therefore have chosen to marry “in keeping with the laws of Moses and the Jewish people”. I assume that this is a substantial group. I hope and believe that even after our proposal is adopted they will continue to wed in ceremonies with a religious character, in which marriage is treated as an eternal and obligatory covenant. After all, this is their forefathers’ tradition – and they do not keep it out of religious coercion, certainly not after implementation of our proposal.

**Group three – the intermediate group:** Couples who are deterred by the *semi*-legal status of common-law marriages and therefore wed in accordance with Jewish law, although they feel no affinity for the tradition. In future, members of this group

will be able to choose the option of civil marriage, which is not in accordance with halakha. I regret the impact on this group, but assume that the group is not very large. To recall, even from a halakhic standpoint this is not considered a descent into the realm of forbidden sexual relations, only a transgression of the less serious prohibition of conjugal life without proper sanctification of the marriage.

The primary benefit of our proposal with regard to this intermediate group is the ordered and totally transparent (clause 8) registration of various types of conjugal bond that exist in Israeli Jewish society, and the continued survival into the next generation. I hope that members of the group will continue to wed “according to the laws of Moses and the Jewish people”, if only out of respect for tradition in the absence of religious coercion. The state will not recognize marriage ceremonies conducted abroad if they are inconsistent with clause 2 of our proposal (see clause 5), nor will it recognize common-law marriages (clause 12). In any event, by means of the organized registration we will be able to prevent the need for keeping genealogical records. I already elaborated on the pernicious effect of these in the previous chapter.

**Civil dissolution of marriages** – The purpose here is to enable a woman who cannot obtain a halakhic bill of divorcement from her husband (and who may be living under a threat of violence on his part) to sever the marriage from all points of view except for the halakhic one forbidding her to wed another.

I fervently hope and pray that the civil dissolution of marriage to which I have assented after serious hesitation will not present a pitfall for the separated wife, who is liable to err in thinking that she is free to remarry. She will not be able to do so, and this will be thoroughly clarified to the couple if they are indeed granted a civil dissolution of the marriage. An added important benefit deriving from our proposal is the resolution of the distressing

“race to the courts” problem (clause 6), which has generated considerable difficulties.

### Summary of My Position

The main accomplishment of our proposal, for the sake of which I have agreed to painful concessions, is that an individual will not be considered single unless he is also single according to the halakha, even if he was married in a civil ceremony and was granted a civil dissolution of that marriage. **My position is based on the fear of increasing the incidence of legally sanctioned “bastards” (*mamzerim*), which from my perspective is catastrophic on three levels: personal, religious and national.**

**Personal level:** The principle of the welfare of the child mandates that legal arrangements should reduce to a minimum the likelihood of the birth of “bastards”, because the personal price these children will have to pay is untenable.

**Religious level:** According to Jewish law, this is a sin of incalculable dimension.

**Most importantly – the national level:** Addressing this phenomenon abets the effort to avoid any need for genealogical records and danger of a national schism.

## Chapter Three

### The Sabbath

#### The Proposal

1. A Basic Law will be promulgated to the following effect: The Sabbath is the official day of rest of the State of Israel.
2. Government offices, educational institutions, factories, banks, services and commercial establishments will be closed on the Sabbath. The prohibition against opening on the Sabbath will apply equally to urban areas, kibbutzim and moshavim, and along the roads. Essential industries, hospitals and essential services will operate within a Sabbath framework, as is the current custom.
3. Employees have the right not to work on the Sabbath. Non-Jewish employees have the right not to work on their religious days of rest. No Sabbath-observing individual will be discriminated against in terms of hiring or promotion in the workplace. A self-employed businessperson will not hire employees to work on the Sabbath. Workplaces operating on the Sabbath will engage employees to work on that day on a rotating basis, and to the extent possible will give Sabbath-observing employees the opportunity to perform higher-paid work during the week.
4. Restaurants and places of entertainment will not be forbidden to operate on the Sabbath, subject to suitable locations and noise levels. A limited number

of small grocery stores, gas stations and pharmacies will not be forbidden to operate on the Sabbath.

A concession to operate on the Sabbath may be awarded on a rotating basis, for a special fee. Restaurants, museums and other places of entertainment that are open on the Sabbath will close on another day of the week. Particulars of these arrangements will be elaborated and defined by an authorized committee of the local authority.

5. Transportation routes will remain open during all hours of the day and all days of the week. In towns or neighborhoods having a solid majority of Sabbath-observing residents, or in other locations where traffic should be limited to certain times, transportation routes may be closed for all or part of the Sabbath as per an authorized decision of the local authority. Local and public authorities are permitted to take measures to reduce the volume of traffic on the Sabbath in designated locations. Transportation arteries will not be closed for reasons of Sabbath observance.
6. A modified form of public transport will be permitted on the Sabbath on a reduced schedule, in order to afford mobility to those who depend on public transport while preserving to the extent possible the character of the Sabbath in the public domain and restricting the need to work on the Sabbath. Consideration will be given to operating public transport on the Sabbath by special concessionaires and by means of small vehicles (such as minibuses).



7. Commercial establishments which so desire will be entitled to open on Saturday night after the conclusion of the Sabbath, and to extend their hours of operation during the week.
8. Steps will be taken to facilitate recreation on the Sabbath in a manner that does not involve Sabbath desecration in establishments such as museums, zoos and national parks, or participation in events (for example, offering the advance sale of tickets).
9. The possibility of transferring sporting and other events which are currently held on the Sabbath to weekdays will be investigated.
10. A comprehensive effort will be made to move the entire economy over to a five-day work week, in order to enable joint social, family, sporting and cultural events on days other than the Sabbath. An employee required to work on the Sabbath will not be required to work as well on the other general day of rest.
11. Sabbath observance in the IDF will be discussed within the framework of a general discussion of the military.
12. Sabbath arrangements will not apply to local authorities having a majority of non-Jewish residents.
13. Official Israeli representatives abroad will not conduct official diplomatic activity on the Sabbath or Jewish holidays, and will not publicly desecrate the Sabbath in the course of their official duties.
14. Particulars of the arrangements, the specification of essential institutions and Sabbath frameworks, the identification of main traffic arteries, the ordering

of public transport and restrictions on location and noise for Sabbath activities will be determined by special committees. With regard to arrangements on the national level, the committee will be chosen by the prime minister. With regard to local arrangements, the committee will be chosen by the head of the local authority and the interior minister, in consultation with representatives of all municipal parties. Arrangements regarding an alternative day of rest other than the Sabbath and extended operating hours will be specified in regulations or secondary municipal legislation.

15. The above arrangements will be strictly and systematically enforced in order to effectively preserve the character of the public domain on the Sabbath.
16. This proposal does not attempt to detail all of the existing Sabbath arrangements. We recommend that these arrangements be reviewed anew in light of the principles of our proposal.

### Main Points of Ruth Gavison's Explanation

My assent to the enforcement of certain restrictions on the Sabbath does not stem from religious coercion. My reason for assenting – as a free-thinking Jewish woman living in a state that wishes to preserve its Jewish-Hebrew public culture – is my own independent wish for a prominent and significant expression of the uniqueness of the Sabbath within the Israeli public domain. I therefore accept the fact that this constitutes a restriction

of individual freedom for cultural purposes. I admit that in this matter the proposal is paternalistic. In my opinion, the arrangement confers numerous advantages from the standpoint of the secular public. In addition to the main achievement – that of negotiations and the creation of a consensual framework outside of the courts – **there are five key gains for the non-observant public:**

**One** – Clarification that the debate between the observant and the secular on Sabbath-related issues is not halakhic, but cultural.

**Two** – Explicit agreement that Sabbath arrangements are not designed to compel Sabbath observance.

**Three** – Agreement concerning the principle that those who do not own a private vehicle are also entitled to freedom of mobility on the Sabbath (clause 6).

**Four** – Explicit recognition that the operation of restaurants and places of entertainment on the Sabbath is not anomalous (clause 4).

**Five** – Transfer of decisions regarding the form of the Sabbath in a given town or neighborhood to the residents and their representatives, so that they do not become pawns in the hands of politicians.

True, the secular public will be obliged to organize their purchases somewhat differently and to forgo shopping on the Sabbath (other than at a small number of convenience stores that will be open), but from my perspective the gain in this case far exceeds the loss.

**Does the proposed arrangement entail damage to fundamental liberties?** I reject the claim that the restrictions on Sabbath occupations entailed in our proposal violate Basic Laws by infringing freedom of occupation or on general liberty. These important constitutional rights do not imply the freedom to conduct commercial activity seven days a week or twenty-four hours a day. The restriction for purposes of enforcing a general day of rest is for the sake of a worthy objective. In my judgment,

the limitations mentioned in the proposal do not exceed that which is required. There may be those who take issue with one or another component of the restrictions, but there is no sweeping constitutional claim here.

**Would it be appropriate to designate a different general day of rest?** The argument has been made that in a multi-cultural society a religiously “neutral” day of rest should be selected, in order to help bring about a crystallization of the civil nationality. It may well be that in principle this is indeed the appropriate solution for strong multi-cultural societies, but it does not seem fitting for the only country in the world with a Jewish majority and which was established in order to enable Jews to live in the only society having a Jewish-Hebrew public culture.

**Finally, in my view the proposal is also advantageous from the standpoint of the religiously observant:** They are not required to approve or validate the activities of others on the Sabbath, only to accept that the common legal framework is not designed to enforce religious commandments on those who do not wish to keep them.

### **Main Points of Yaacov Medan's Explanation**

**The importance of the Sabbath for the religious public is clear. For the secular public, the Sabbath can have at least three values:**

**One** – Time out from the daily involvement in work and the pursuit of money and a livelihood;

**Two** – A central mode of expression of an overall Jewish – not necessarily religious – identity. Even Ahad Ha'am, a thoroughly secular Zionist thinker, viewed Sabbath observance as a national value, coining the phrase: “More than the Jewish people kept the Sabbath, the Sabbath kept them”;

**Three** – Mutual concessions on the issue of the Sabbath, which has been a perennial stumbling block in religious-secular relations, may actually serve as an opening for a renewed healing process in Israeli society.

As an observant Jew, I accept the fact that the value of keeping the Sabbath in the public arena does not nullify, at least from a practical point of view, the value of respecting the individual's freedom to act in accordance with his own beliefs on the Sabbath, or in any other disputed sphere (clause 4). Nevertheless, the Sabbath should take precedence over the economic interests of commercial bodies – and factories and commercial establishments will be closed on the Sabbath (clause 2).

In order to prevent discrimination favoring secular salaried or self-employed individuals over the observant, we stipulated that in principle employees will not work on the Sabbath – and in workplaces that do operate on the Sabbath, such as places of entertainment, as specified in clause 4, Sabbath employment will be conducted on a rotating basis (clause 3).

When we formulated the proposal regarding the Sabbath I had three principles in mind:

**First principle** – To instill in the mind of the public the conviction that there is a solution to the perpetual war between observant and secular in Israel that is not brutal or domineering. I expand upon this idea in my personal foreword as well.

**Second principle** – To refrain as much as possible from violating the prohibition against creating pitfalls for others. In other words: Nowhere does the covenant grant permission or exoneration for desecrating the Sabbath. What it does do is reduce state intervention in the form of imposing restrictions on the Sabbath.

Accordingly, in my humble opinion, our proposal does not pose a distinct halakhic problem.

**Third principle** – To weigh the damage our proposal inflicts on the character of the Sabbath, not only against the ideal image of the Sabbath but also against existing reality. This reality can be measured on two planes: The situation in the street reflects the present – and already today there is extensive Sabbath desecration; and the situation in the courts reflects the future—where contemporary judicial decisions presage a trend towards expanded Sabbath desecration.

I am aware of the serious concerns regarding the future if the proposal on the Sabbath is adopted (the price is high, in terms of Sabbath observance). I have given them my careful consideration, while weighing them against the dangers of a future in which no effort is made to reach an agreement with the secular public and affairs are allowed to proceed at their own momentum. The fears are great in both scenarios. In my judgment the hazards of quietism are not only more palpable, they are more severe.

## Chapter Four

### Other Issues

#### A. Religious Councils

##### The Proposal

1. A national authority will be established to provide religious services for Jews. Its budget will be stipulated by law, and will be covered by the ministries of the Interior and Religious Affairs. The authority will be supervised jointly by the two ministries.
2. The scope of services to be supplied by this authority will be stipulated by law. The services will be furnished in consultation with the Chief Rabbinate and the local rabbinate. Services for the non-Orthodox and secular streams will be provided according to special rules to be determined. These services will not be subordinate to the rabbinate. They will be budgeted by the authority according to the scope of the religious services required by the various groups. All services will be subject to the oversight of the State Comptroller.
3. Employees of the national authority will be selected by tender for six-year appointments. The hiring criteria will be exclusively professional-administrative. Candidates for these positions must receive prior approval from the committee for oversight of appointments in the public sector. The authority will hire employees as required to provide services. Both their selection and their employment will be governed by civil service regulations.\*

\* In January 2004, the Ministry of Religious Affairs was abolished. The proposal should be adopted to this reality.

## Main Points of the Explanation of Ruth Gavison and Yaacov Medan

According to our understanding, the councils' main task is to supply services to citizens, whether religious or secular and regardless of what stream they belong to. It is our assessment that principled disputes over the authority of the halakha and other issues, with all their importance, have no direct bearing on the specific function of the religious councils – and the more we distinguish between the two, the better. In our opinion, employees who provide religious services should be subject to the relevant regulations and receive instruction from the presiding rabbis. We have a great stake in their talents and integrity, and much less interest in their communal affiliations or their religious or secular worldviews.

Similarly, experience has shown that budgetary authority and budgetary oversight for religious services should be removed from the local authorities, thereby neutralizing a possible source of friction – ideological and financial – which has been harmful in the past. For reasons that are self-explanatory, we have severed the connection between the budget for addressing the religious needs of populations that do not regard themselves as subject to the Chief Rabbinate of Israel and the directives of rabbis operating under its auspices.

## B. Kashrut – Religious Dietary Laws

### The Proposal

1. The State of Israel will ensure maximal transparency on the subject of kashrut with regard to the preparation and sale of food products. Deception in matters of kashrut



will be categorized as a serious offence. Special effort will be made to increase the effective enforcement of the law.

2. Public kitchens in Israel which serve the Jewish sector (for example, the IDF, schools, government ministries, offices and hospitals) will be kosher.
3. A national licensing authority will be established for matters of kashrut. Its members will be appointed according to professional-administrative criteria, with the approval of the Chief Rabbinate and under the supervision of the Civil Service Commissioner. The authority will be independently financed through fees paid by food manufacturers and marketers. These fees will be price controlled. "Kashrut" in the operations of the national authority will define those foods and components that are permissible to consume according to Jewish law as derived from the "Shulhan Aruch".
4. No kashrut certificate will be issued to a factory or other establishment by anyone other than the authority or bodies under its authorization. Kashrut inspectors and supervisors will be employed by the authority or bodies under its authorization.
5. The authority will be entitled to classify different levels of kashrut certification, and to issue kashrut confirmation and certificates accordingly.
6. The authority will grant approval to other bodies to issue kashrut certificates in accordance with their customs. Such approval will be granted upon written submission of the list of kashrut requirements and a description of the proposed supervisory mechanism, along with printed kashrut certificates that clearly specify the identity of the

body providing the certification. In order to prevent deception, kashrut certificates will be designed so that they are distinguishable from one another. Bodies authorized to issue their own kashrut certificates will include Reform and Conservative organizations. The authority will allocate finances from its own budget to pay for the activities of other approved bodies.

7. The kashrut authority will be forbidden to take into account extraneous considerations in granting kashrut certifications or in supervising any body that provides food to its clients, e.g., it may not deny kashrut certification because a Reform marriage ceremony was performed in the same venue, etc. Desecration of the Sabbath in a catering hall's kitchen, however, is likely to be legitimate grounds for denying kashrut certification.
8. Official representatives of the State of Israel will be obliged to refrain from eating obviously non-kosher food at official meals in the course of their duties.
9. We see no need to change the existing arrangements concerning the import of non-kosher meat.

### Main Points of Ruth Gavison's Explanation

There is no argument over the fact that there must be arrangements enabling people who wish to keep kosher to do so. From my perspective, the only question is why kashrut should be a public issue involving the state. I believe there are three answers to this. **First**, in situations of joint activity, separation is liable to produce waste and to compartmentalize different segments of the population. There is a need for one food system, and it must be

kosher. The multiplicity of streams in Judaism mandates that the food system be one that does not exclude the Orthodox (clauses 1-3). **Second**, in overseas venues as well there are contexts in which kashrut is important. Just as Israel's missions around the world refrain from operating on the Sabbath, it is also fitting that they should observe kashrut (clause 8). **Third**, deception in kashrut is fraud. If the law is brought to bear against deceptive advertising, there is no reason not to use it against deception in kashrut (clause 1). Here as well, our proposal explicitly permits a variety of kashrut arrangements reflecting the positions of diverse streams of Judaism, with the main goal being transparency and preventing deception.

#### Main Points of Yaacov Medan's Explanation

Our proposal (clauses 1, 3 and 4) underscores the importance of full transparency in matters of kashrut, affirms that deception with regard to kashrut is a serious offence, and recommends launching a campaign for effective enforcement in the sphere of kashrut. In taking into account the freedom of every person to eat whatever he pleases, in my judgment it is important to refrain from proscribing a limited quantity of imported non-kosher meat, including pork. From my perspective, it would be appropriate to forbid pig farming in Eretz Israel out of national, not necessarily religious, considerations. We did not reach agreement on this point, and it remains open for public discussion.

## C. Pathology and Organ Transplants

### The Proposal

An ongoing discourse is taking place on this subject between various sectors of Israeli society, a discourse which finds expression in existing legislation. The Anatomy and Pathology Law of 1953, with its amendments, along with the memorandum of the Director General of the Ministry of Health on determining the moment of death, offer a reasonable consensus, generally speaking, and we see no need to change it.

## D. Burial

### The Proposal

1. Israel will maintain both religious and civil cemeteries.
2. Existing religious cemeteries in the Jewish sector will continue to practice Jewish burial in accordance with Jewish law.
3. Future allocation of cemetery tracts will be in accordance with demand, while enabling the conduct of civil burials throughout Israel.
4. Permission will be granted to establish civil and other burial societies, which will be allowed to conduct burial ceremonies in accordance with the wishes of the deceased or his family. The state will participate in financing these services in the same way that it underwrites existing Hevra Kadisha services.
5. The greater the possibilities of genuine choice among burial styles, the less justification there will be for High Court intervention in burial practices in religious cemeteries.

6. Existing law will be amended in order to enable alternative burial, even in cases where the deceased failed to express a preference, so long as there is no disagreement among his first-degree relatives, given the absence of any public interest in preferring halakhic burial.
7. It will be expressly stipulated that civil cemeteries will bury those who are not eligible for burial in other cemeteries, even if they did not declare a preference in advance.
8. The existing legal situation will be explained to the public, and they will be informed that an effective condition for realizing the right to alternative burial (non-religious, in existing cemeteries) is the expression of a preference by the deceased (or his relatives).

#### **Main Points of Ruth Gavison's Explanation \***

Most of the items in our proposal are self-explanatory. The sixth clause is the chief innovation with regard to existing law; it reinforces the principle of choice concerning a suitable burial, in contrast with the current burial practice which is religious by default. We suggest that the first-degree relatives of the deceased be entitled to choose a civil burial, even if the deceased did not actively express such a preference. At present there is no public awareness of the right to choose alternative burial, for example by saying so in a will. It should be assumed that in most cases, if there is no controversy within the family concerning which type of burial the deceased would have chosen, the family's wishes will reflect those of the dead, and they should be honored. In cases of disagreement, the deceased should be buried according to the default option of traditional Jewish burial.

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\* Yaacov Medan did not submit any explanations on the topic of burial.

## E. Prayer at the Western Wall Plaza

### The Proposal

1. The Western Wall plaza and adjacent areas are sites of religious and national significance.
2. The Western Wall plaza should be accessible to all the people who have an interest in it, while upholding the public order and standards of behavior appropriate to the character of the site.
3. The authority to determine what constitutes behavior appropriate to the character of the site will be entrusted to a person or body (hereinafter: “the authorized body”) to be jointly appointed by the ministers of Religious Affairs and Internal Security.\* In the event of disagreement, the prime minister will have the final decision as to whom to grant this authority.
4. The authorized body will conduct itself with sensitivity to the public welfare and to freedom of worship and religion for all. The decisions of the authorized body do not confer legitimacy on a specific prayer style or type of behavior. The decisions of the authorized body in this matter will not be subject to judicial review.

In order to remove doubt we stress that if the authorized body determines that the current prayer plaza of the Wall is to be considered a synagogue abiding by Orthodox customs, this does not unreasonably infringe upon the freedom of worship of those who seek to pray otherwise.

One possible solution, in our opinion, would be to distinguish between the front section of the plaza that serves as a synagogue and which can be reserved for prayer

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\* In January 2004, the ministry of religious affairs was abolished. The proposal should be adopted to this reality.

according to the (Orthodox) custom, and the more distant section, where IDF swearing-in ceremonies are conducted and where other prayer services could be held. This is not a unique suggestion, but in our proposal the chief criterion for the decision must be that it conforms to a proper decision-making mechanism which takes all considerations into account.

### Main Points of Ruth Gavison's Explanation

The issue of women's prayer at the Wall is a prime example of a conflict between opposing views. The proposed arrangement does not take an explicit position on the specific question of whether Women of the Wall (or any other group) is entitled to pray at the Wall as it sees fit. The arrangement only stipulates that the site must be generally accessible and that behavior therein may be restricted both for reasons of public order and out of considerations related to the character of the site. We propose appointing an authorized body to be responsible for determining what constitutes behavior appropriate to the character of the site. Clause 4 explicitly states that such authorized body will not exercise unrestricted authority. It is expressly specified that the body will be permitted (and obligated) to take into account criteria of public welfare, but also criteria of freedom of worship and religion for all. We clarify that even a decision determining that the **current prayer plaza** is to be considered an Orthodox synagogue (in contradistinction to the Wall plaza as a whole, which serves as a forum for events of a national, non-religious nature) would not be an infringement of freedom of worship. Insofar as the decisions of the authorized body are taken within the framework of these constraints on its authority, it will not be subject to judicial review.

### Main Points of Yaacov Medan's Explanation

I have an opinion on the painful subject of the Women of the Wall and the use of the act of worship as a banner to march under in a public struggle to achieve equal rights for women. But I will refrain from addressing this subject.

Nonetheless, I wish to protest against what I view as a blatant injustice. On the one hand, religious bodies are willing to raise a hue and cry against what they consider to be the wrong perpetrated in the Wall plaza by the Women of the Wall or adherents of Reform Judaism. Yet on the other hand, they maintain a docile silence in the face of the dictates of the government, the police and the courts, which forcibly repress any outcry over the evil that is being perpetrated on the Holy Mount itself through the destruction of Temple relics, the burial of corpses on the Mount, the prohibition against Jews entering the site, and the creation of a *prima facie* Muslim claim to the area.

### F. The IDF

#### The Proposal

1. The operating principles of the Israel Defense Forces should reflect the profound connection between the army's existence and the character of the state. We welcome the change in the IDF's ethical code, which clarifies that the IDF is the army of the state of the Jewish people.
2. Jewish and non-Jewish soldiers serve together in the IDF, each with different ties to the commandments of their religions. The IDF must ensure that religiously observant soldiers (of all religions and streams) can



serve in a manner that allows them to uphold the commandments of their respective religions.

3. No soldier will be obligated to take part in a religious ceremony against his will. This rule will not apply to general educational activities that promote national values. The IDF needs to formulate a position regarding “private” activities within its framework.
4. **Kashrut:** The IDF must ensure that the food served to soldiers is kosher, and that its kitchen facilities are not used in a manner that renders common cooking and eating utensils unfit for those who observe kashrut. Efforts must be made to explain the importance of this matter and to enforce it. A solution must also be found for those soldiers having especially strict kashrut needs.
5. **The Sabbath:** This subject is divided into numerous sub clauses:
  - a. **Cooking and kitchen:** These substantially relate to the kashrut issue mentioned above.
  - b. **Vehicular travel:** The accepted principle is that activity dictated by security needs is permissible, while other forms of activity that desecrate the Sabbath are not. This principle must be enforced.
  - c. **Parental visits:** It is recommended that such visits be permitted, subject to the commander’s judgment.
  - d. **Individual behavior:** In practice there is no official obligation for individuals to keep the Sabbath, even in the public military domain. This state of affairs should continue.
  - e. Operational activities that are not vital on the Sabbath shall not be conducted on that day.

6. Activities and facilities operated by the Soldier's Committee (swimming pools, entertainment, etc.) and by the Rehabilitation Department (soldiers' homes and their facilities, activities on behalf of disabled veterans, etc.) will allocate hours, activities and privileges for the religiously observant in accordance with their numbers (for example, separate hours for men and women in the pool and gym, other activities that are restricted by the laws of modesty, the Sabbath, etc.).
7. **Opening of additional positions to women:** We recommend identifying options for giving women soldiers equal opportunities, provided this does not impair the ability of religiously observant soldiers to uphold their religious obligations, does not present them with difficult and superfluous conflicts, and does not prevent them from serving in every military profession and every type of unit.
8. **National service for women:** This should be expanded and offered to secular women as well in place of military service, and for the same period of time as military service. The rights of women in national service will be made equal to those of women performing military service. Ultra-Orthodox women will be offered a separate, voluntary arrangement.
9. **Equality in military service for men:** The current state of affairs in the IDF, in both regular army service and the reserves, embodies glaring inequalities in the discharge of the obligation of military service between one person and another, and at times between one sector and another. Suitable solutions will have to

be found through negotiations and compromise, and by means of graduated arrangements. The ultimate objective must be an egalitarian arrangement in which various population sectors are mobilized to share the security and social burdens.

10. **The IDF rabbinate:** The army institution designed to address religious issues is the military rabbinate. We recommend that the appointment of the IDF's chief military rabbi be non-partisan and disinterested, so as to allow him to perform his task well.
11. We welcome the trend to increase and to anchor in law the rights of IDF conscripts and of those who do active reserve duty.

### Main Points of Ruth Gavison's Explanation

**Equality and the integration of women:** The struggle waged by women against their exclusion is justified, but it should be remembered that this is not a struggle against religion. Unfortunately, the exclusion of women in Israel is at times a cultural, social and economic phenomenon no less than a religious one. Nevertheless, we must guard against the tendency to jump to the conclusion that the one proper mode of addressing past patterns of exclusion is by means of a sweeping imposition of a policy of "gender-blindness". The inclusion of women into combat units staffed by yeshiva students would likely evoke physical and emotional tensions that could undermine the units' operational efficiency (tensions that Rabbi Medan dwells on below). In my opinion, this is a legitimate consideration that would justify separate (but equal) units for men and women

(clause 7). Is it our intention to encourage hesder yeshiva boys to enlist in ultra-Orthodox Nahal units?

**Drafting of yeshiva students:** In principle, the security and work loads need to be shared equitably. It is my conviction that it is preferable to implement the Tal committee recommendations (with improvements, perhaps, but only consensual ones) for a limited time period in order to set in motion the gradual process of integrating the ultra-Orthodox into military and national service rather than maintain the *status quo*, which only increases the scope of the problem. On the other hand, the *status quo* is preferable to enacting instant legislation for a mandatory draft now. In my assessment such legislation would not produce an immediate mobilization, given the opposition of the ultra-Orthodox as well as the absence of infrastructures to accommodate such soldiers and a general lack of interest on the part of the army. The legislation would only generate contempt for the law and lead both sides to dig in their heels (clause 9).

### Main Points of Yaacov Medan's Explanation

Recently, the operational patterns of the military rabbinate have changed significantly for the better. This is a welcome development, since for many years the rabbinate engaged in political intrigues that damaged its functioning.

I would like to expand on a difficult subject: the opening of field positions to young women. I will refrain from expressing my opinion here about the general connection between equal rights and equal dignity between the sexes, which in my opinion are values of unrivaled importance, and equality of roles, clothing and appearance between the sexes. In my view, those who set the public agenda in Israeli society have paid insufficient attention

to the differences between the two “equalities”, starting from an erroneous attribution of identity between the two. Mixed units are liable to cause – and in practice do cause – the religiously observant soldier to violate the prohibition against being alone with a woman (for example, through joint guard duty). I believe that it will be impossible to establish mixed units, and that most units will be composed exclusively of men.

To conclude this chapter, our proposal states that we welcome the change in the IDF’s ethical code specifying that the IDF is the army of the state of the Jewish people (clause 1). This addition further hones the obligation of the Israel Defense Forces to defend unconditionally and at any price the existence of the Jewish people in its only country, and its commitment to every Jew wherever he may be.

## Chapter Five

### Legal Arrangements in Matters of Religion and State

#### The proposal

1. The agreements reached in the covenant are predicated upon painful concessions by both sides, with the ultimate aim of enabling the stable coexistence of religiously observant and secular populations within one national framework. These concessions mandate mutual trust between the sides, and a willingness to desist from introducing unilateral changes in a given part of the covenant's components. Any disruption of the delicate balance would undermine the entire covenant.
2. For this reason, the covenant's arrangements must be anchored in legislation. Moreover, the legislative process should be guided by an emphasis on the importance of the inner equilibrium that has been achieved within the covenant on every issue.
3. We make no recommendations regarding the specific legislative format. There are a number of possibilities, which are not mutually exclusive. For example: Basic Law: Religion and State; the addition of the clause "The contents of the Basic Laws notwithstanding", to the proposed legislation; the addition of a paragraph to the existing Basic Laws themselves exempting the proposed arrangements of the covenant from their purview.
4. The spirit of the covenant – which is no less important than its particular arrangements on the various issues – favors mechanisms of negotiation and agreement over decisions

that may or must be handed down by the courts. Rightly or wrongly, a court is perceived as leaning towards one side of an argument between two sides. Our proposed covenant attempts to strike a balance between the sides, yet if its legal interpretation appears to one party to be biased in favor of the other, it will lose its ability to win the faith of the public and its objective will not be realized. We therefore recommend stating explicitly that the courts will not be empowered to void legal arrangements stipulated in the covenant. The manner in which the covenant's arrangements are interpreted is also of great importance. We recommend entrusting such interpretation, as long as the need for it does not arise in the context of litigation, to a representative public body. This will serve to minimize the necessity for such litigation and enhance the likelihood of arriving at mutually agreeable interpretations.

### Main Points of Ruth Gavison's Explanation

This enterprise favors mechanisms of negotiation and consensual arrangements over decisions that are handed down and must be handed down by the courts. The courts themselves appear to acknowledge that the domain of religion and state does not lend itself to judicial verdicts. Take, for example, the conflict over traffic on Bar Ilan St. on the Sabbath, which the courts referred to a public committee for decision, the arrangements regarding conversion and the drafting of yeshiva students which were referred to the Knesset, and the Women of the Wall issue, which was transferred to the executive branch. Furthermore, the judicial system as a whole is devoting much more attention now

to attempts to steer clear of litigation and encourage compromise and arbitration, with the declared intent of avoiding the need to settle conflicts by judicial decree. This is designed to save the courts time and reduce the interminable delays associated with protracted judicial proceedings, but is also grounded in a profound understanding that it is preferable to **resolve** a conflict than to **decide** it. A party that regards itself as a partner in resolving a conflict will be a better partner in future engagements than one whose case was decided **against** him in court. The goal of the social covenant is to create a situation in which there will be little or no incentive to refer decisions on these matters to the courts. In our opinion, such a state of affairs would be desirable both with regard to the issues themselves and from the standpoint of the courts. The prevailing lack of faith in the courts subverts the willingness of the public to reach an agreement (due to fears over how it will be interpreted), while damaging the courts as well. Since the Basic Laws were promulgated in 1992 the High Court has voided Knesset legislation in three instances. This situation gives rise to fears that if the covenant's proposed arrangements are only anchored in regular Knesset laws, the High Court could nullify them or rule them invalid on the claim that this legislation is not compatible with the Basic Laws. Explicit sentiments to this effect were voiced by religious and ultra-Orthodox Knesset members who were shown the covenant. Particular cause for concern would arise if it were possible to void specific sections of the covenant while maintaining others. The courts tread lightly with regard to complex social arrangements, and grant them the appropriate weight when interpreting a law or contemplating its annulment.

We advocate (clause 4) confining the interpretation of the arrangements – so long as the need for such interpretation arises not in the context of litigation, but before a lawsuit is initiated – to



a public representative body, with the aim of minimizing the need for litigation and enhancing the chances of arriving at a mutually satisfactory interpretation.

In addition, the following legislative options might be worth considering:

**First** – Legislation of a Basic Law of Religion and State. This law would anchor the principles of the arrangements, affirming their immutability and the inner equilibrium among them. This option carries an important symbolic advantage.

**Second** – Admittedly less elegant, but more efficient: the addition of the clause “The contents of the Basic Laws notwithstanding” to every law pertaining to the subjects of the covenant, an addition that will impede a reductive interpretation of covenant arrangements.

**Third** – Amending the Basic Laws to remove legislation on the subjects of the covenant from their purview. The above options are not necessarily mutually exclusive. They could all be adopted simultaneously, primarily in cases where the legislative process proceeds in stages.

### Main Points of Yaacov Medan’s Explanation

Further to Prof. Gavison’s legal analysis, with which I concur, I would like to elucidate the argument from my vantage point as a religious Zionist. When I show the covenant to leading religious Zionist figures, I feel that to a large extent their reservations stem from concerns regarding a future erosion of the remaining link between the state and the Torah commandments, once the covenant has contributed to weakening this link.

**This fear is founded on three main points:**

**One: A basic suspicion of the secular public.** An analogous fear exists to a large extent on the secular side as well. I will only say that the covenant addresses itself precisely to this point, and that in order to break the cycle of suspicion, there is a need for mutual trust.

**Two: A degeneration of the *status quo* in a manner that has weakened the link between the state and the Torah.** Will the covenant be able to halt this trend? In my opinion, the covenant will indeed act as a braking mechanism in the deteriorating *status quo*, if it achieves the public status that we are seeking and if it is accepted willingly and with mutual trust.

**Three: The composition of the High Court and the tenor of its judgments on matters of religion and state in recent years.** I believe that the adoption of our recommendations in this chapter will reduce apprehensions concerning judicial intervention in the covenant's interpretation and possible annulment of its provisions. In any event, the more the social covenant succeeds in garnering the public's respect, the more the courts are likely to treat it with respect.

# Principles

## Main Principles of Yaacov Medan in the Covenant

In order to provide readers with a tool for assessing the covenant, the following are the main points of my perspective on the matter.

### The “Two Carts” Parable

A fundamental argument divides the Jewish public in Israel: Is the core principle we are called upon to uphold that of human freedom and dignity, the defense of which is the state’s primary objective, or is it the preservation of the Jewish people and Jewish identity? These values may be compared to two carts, which on a broad flat plain can travel side by side in perfect harmony. On a steep and narrow incline, however, when one cart is forced to stand aside to make way for the other, liberals will prefer the cart bearing democratic values while the guardians of tradition will opt for the second cart.

I count myself among the second group and the basic unit to which I belong, for better or worse, is that of the Jewish people. The Jews are one family, the offspring of our three patriarchs and four matriarchs, a single historical unit. The Jewish people, delivered out of Egypt by the Almighty, joined in a mutual covenant with God on Mount Sinai, vowing to uphold the Law and keep the commandments, and accepting the sanctions ordained for violating that covenant.

### “A Single Ship”

**The Jewish people entered this covenant as a people and not as individuals**, and the commandments we keep have a collective, not individual, significance. This is the meaning of the mutual responsibility that connects all Jews, which refers not only to a shared struggle for existence and mutual aid, but also to the collective fulfillment of the commandments required to uphold

the Sinai covenant. This mutual responsibility affords the nation its identity. The individual has no escape from this framework, much as a person who sails on a ship cannot abandon the ship or his commitment to its safety in mid-ocean. Mutual responsibility became even more powerful once a distinct association was established for the sake of a single purpose, a single ship: the State of Israel. In my view, this association must be for the sake of Heaven. Numerous ultra-Orthodox (not all!) refused to participate in the establishment of the State of Israel and the creation of its laws. By comparison, those who considered themselves part of the state understood that **its establishment included an important foundation that was for the sake of Heaven, even if not all its components were “kosher”**.<sup>1</sup>

This position ostensibly dictates a perpetual struggle over the character of the country’s laws, in order to mold them as far as possible in the image of the Torah, or at least an imperative to do the utmost to preserve the *status quo* and prevent deterioration.

### The Price of the Struggle

While I firmly believe that it is necessary for the laws of the state to conform to the Torah, it appears to me that there are three additional factors that must be taken into account.

**Factor one – The heightened alienation in secular society towards anything reminiscent of the Torah.** This disaffection seeps into the traditional sectors of society as well, to new immigrants and to the ever-larger fringe elements of religious-Zionist youth, who are powerless in the face of the hatred directed against them by secular public opinion. Alienation and hatred have many sources. They are the product of unbridled incitement and irrational fear born of ignorance that the observant public is

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<sup>1</sup> Rabbi Avraham Yitzhak HaCohen Kook adopted this approach in his work **The Lights of Holiness**. Rabbi Eliezer Waldenberg, an important halakhic scholar in the ultra-Orthodox world, also wrote in this vein in his book **The Laws of a State**.

about to take over Israeli society. This ignorance coincides with the emergence of a generation of observant and free-thinking Jews who grew up in separate neighborhoods and were educated in separate school systems, completely foreign to one another.

Alienation is also the product of the notion that one's standard of living is more important than internal social cohesion. In addition, the large wave of immigration from the CIS has reintroduced the question of Jewish identity to the public agenda. While admittedly there are numerous examples of renewed interest in religion and of a desire to return to Jewish roots, the above-mentioned distress is genuine and we are all charged with its resolution. It is not my intention to engage in finger-pointing. Rather, perhaps a reexamination of that portion of the laws connected with religion and state, which is at the crux of the tension, will be part of the solution.

**Factor two – As time elapses, the gap between the written law, which reflects the *status quo* of the 1950s, and today's reality, which receives government approval primarily through the judicial branch – guided more by questions of individual liberties than by the values dear to the guardians of tradition – grows wider.**

The interpretation of the law in a manner that erodes its substance by a homogeneous group convinced of the righteousness of its liberal exegesis should trouble all devotees of democracy. It should be of even greater concern to those who seek to keep the state of the Jewish people and its laws close to the Torah. It may be worth trying to stem the tide through some kind of mutual agreement, even at a high price, in order to avoid finding ourselves helpless before a law stripped of all practical efficacy, in which all restrictions connected with Jewish identity, personal status, the Sabbath and other spheres have been abrogated. This is on the assumption that the agreement creates genuine goodwill

between the two sides, which serves to fortify us against the above-mentioned erosion.

**Factor three – Most important of all: The rift in Israeli society stems from the continual friction over matters of religion and state, which risks generating a schism from which there can be no return.** The idea of “Israeliness”, which posits the common denominator of our identity as members of the State of Israel rather than of the Jewish people, may ultimately prevail. The State of Israel, if not defined as the state of the Jewish people, will not be bound as a state to the Jewish tradition, and it will not be rooted in this land. The Jewish heritage will become a tribal legacy with no connection to the state, its laws and institutions. The division between “Jews” and “Israelis”, when juxtaposed against a large Arab population with a distinct national and religious identity having no connection to the State of Israel, will weaken us and jeopardize our existence here. **If a day comes when we are called upon to fight a war of the few against the many, our internal cohesiveness may determine our fate.** Social disintegration, or the resolution of matters of principle through subterfuge and political power plays, is not an effective formula for survival. **A national consensus issuing from goodwill and a maximal readiness for concessions on both sides is likely to emerge only if each party is convinced that the other is also compromising to the best of its ability.**

It is clear to us all that the path of joint resolution demands effort and sacrifice, while the eventuality of schism flows naturally from the wellsprings of protracted conflict. Thus, **a failure to decide between the two possibilities is tantamount to an explicit choice to sever Israeliness from Judaism with all that this entails, as described above.**

### The Difference Between a “Covenant” and an “Agreement”

I acknowledge that the choice to enter a joint covenant may be construed as tactical rather than substantive, as a “survival maneuver”, a provisional retreat by a weak community as it awaits an opportune moment. Such an approach, however, befits a temporary “agreement” in which each side tends to its own interests, rather than a “covenant” in which both sides engage in a genuine collaboration of everyone on behalf of the whole, motivated by an aspiration for true unity and sincere respect for the values of the other.

Some of the critics who assume that the motives of observant persons endorsing the covenant are tainted, and that this is an “agreement” and not a “covenant”, seek to destroy the political power of the observant camp by driving them down. Given the size of the religious community, however, such an attempt could only succeed through enlisting the Arab public and its representatives in order to muster a slim majority in favor of the relevant parliamentary initiative. The price that this alliance is likely to entail would undermine the value of any such initiative. To these critics I respond with an emphatic: “No”!

Regardless of the strength of the observant camp, **my intentions in promoting the covenant are sincere**, without relinquishing the ideology of responsibility to the covenant between the Holy One and His people.

**To clarify this point I will elaborate on two principles:**

**First principle: Responsibility for the wholeness of the Jewish people and its continued existence.** Love in the Torah is directed towards the people, not to an ideology. The object of love, responsibility and shared destiny is the Jew<sup>2</sup> *per se*, by virtue of his spiritual and religious level, not observance of the Torah and the commandments<sup>3</sup> (Jewish law is ostensibly hostile to those who have repudiated the commandments, yet scrutiny

2 And in a broader sphere, all of humanity, excluding instances of legitimate suspicion and fear of foreigners.

3 This is contrary to the practice in Christianity, which clearly distinguishes between believing Christians and others. Christian “love” is selective and preaches hatred towards “heretics”.



of the original sources and of the commentaries of a number of rabbinic scholars indicates beyond a doubt that the hostility is merely tactical, designed to deter transgressors and others who might follow in their path. The applicability of such hostility today is very limited, since in any case those who have rejected the commandments are very numerous). Responsibility for the Jewish people is an independent value pervading the halakha and Jewish thought, and it stands apart from the honoring of the covenant with the Almighty, which is the “second tier” in the building of the Jewish people.

The responsibility we have towards every member of our people applies so long as the individual is indeed Jewish and defines himself as such based on a reasonable definition. Self-definition as a Jew need not in any way coincide with one’s beliefs or the degree to which one observes the commandments, but it must include several immutable principles (discussed in the covenant). The desire to arrive at a covenant between the parties in the protracted intra-Jewish conflict is therefore genuine, stemming from a sense of responsibility for the wholeness of the people and its continued existence, not merely a desire to defend Torah observance.

**Second principle: There is no great value in forcing someone to keep a commandment for the sake of improving his lot in the afterlife, etc.** An examination of religious *responsa* shows that coercion can be used when there is a fear of the spread of lawlessness: Jewish religious society is obligated to contend with one who transgresses a rabbinical decree, a “fence breacher”, when it is deemed likely that his example will lead to a rupture in the constraints of the communal, or even national, framework of keeping the commandments – one of the foundations for Torah observance. Yet today, now that the “fence” has already been breached, coercion no longer serves to maintain the law. Even

if coercion can sometimes protect the Torah superficially, the damage it causes outstrips the benefits, given that society as a whole does not observe the commandments as in the past. In no halakhic source did I find support for forcing observance in contemporary reality, when one sector of the population would have to impose the Torah lifestyle on another.

The objective of the present covenant is therefore to define the lines of agreement of the entire public, which must be acceptable to the individual. Clearly, any issue on which there is less than a broad national consensus cannot be imposed through coercion, and even if it were legislated, in practice there would be no agreement on obeying that particular law.

There is no halakhic basis for one sector's imposition of a Torah lifestyle on another. With regard to individuals, coercion in matters of Torah and the commandments will not succeed today for those who do not already belong to an avowedly religious framework. The concepts of democracy and personal liberty have been so thoroughly internalized in our human culture that regardless of whether we view them as positive, negative or "mixed", we are compelled to acknowledge that human history is shaped by the hand of God, and we are incapable of changing its course. There is no alternative but to come to terms with this reality, and to focus our efforts on "making the world a better place under God's kingship" by means of persuasion, personal example, and, in the words of the Hazon Ish, "bonds of love". At least after the fact we will be able to recognize the virtues of this method, which strives more to follow the biblical ethos of "We shall do and we shall heed", rather than the coercive model of "He hung the mountain over them like a pail", according to one midrashic rendering of the revelation at Sinai. **The advantages of willing over forced acceptance are numerous, even if the route to that acceptance is long and arduous.**

## On Tolerance and Secular Zionism from the Standpoint of the Religiously Observant

**As noted, according to my understanding, a covenant is not a *quid pro quo* transaction. It is a genuine partnership, and views the common ground as the main focus, with each party obligated to contribute all it can to the collective good.** Can a person who is committed to the covenant with the Holy One forge a true partnership with the secular public that promotes a culture that rejects the path along which God has commanded us to walk? I believe such a partnership is possible. How is it possible? In order to answer that question, I will attempt to present the secular worldview as it appears through the prism of a believer.

Before addressing secularism, I will first say a word about the principle of tolerance. It seems to me that this concept may include an additional factor above and beyond those that are normally enumerated: an informed understanding of our own value, our helplessness and our limitations. We may clearly distinguish between the ideological disputes we have with other world views, including those that champion a denial of God (a dispute in which we are entitled to be zealous), and our dispute with the organizations and people who represent these worldviews, towards whom we can be tolerant, on principle. We love and honor ourselves despite our faults; naturally we can do the same for others. If we are persuaded that the other is an honorable person who adheres to his own principles and believes in the integrity of his approach, if we accept the assumption that his approach also contains a point of truth, and if we recall that our achievements are also partial and deficient, we will be able to view ourselves and the other as two individuals bearing a single burden, neither of whom can attain perfection on his own. In this manner the partnership can be viewed as a **true partnership**

**of equals, rather than as one between a representative of perfection and a person who sins out of ignorance.** All this is without conceding one iota of our faith and our aspirations to achieve everything that God demands from us in His Torah.

I now turn to the subject of secular Zionism. I wish to stress that my remarks pertain to secularism as an idea, and not to any individual or collective, which may surpass me in many areas.

There is no place in my heart, not so much as the circumference of the tip of a needle, for legitimizing heresy against God and His Torah.

**But from the teachings of Rabbi Avraham Yitzhak HaCohen Kook I have learned two precepts connected with our topic:**

**One: The ability to distinguish between a belief and the deed that follows it.** Admittedly, members of the first generation of secular Zionism, Rabbi Kook's generation, did not accept the yoke of the Torah and the commandments that were given at Sinai. Yet to a large extent they accepted upon themselves principles that were similar to three fundamental tenets dictated to us by the Book of Genesis with regard to the Jewish people:

- 1. The fact that the children of the three patriarchs are a single people with a single fate and a single destiny, a people whose descendants are obligated by a mutual responsibility towards one another,** a people that maintains its uniqueness by establishing families and marrying only within itself.<sup>4</sup>
- 2. Longing for the Land of Israel** – Despite famine and privation, danger and loneliness, as Abraham did; cleaving to its soil and settling it in the face of all obstacles, as Isaac did; and the return to it after exile, like Jacob's return after exile in Haran.
- 3. Practicing righteousness and justice:** Abraham inherits the land after teaching his sons the ways of God – the practice of righteousness and justice – in contrast with the ways of the Canaanite peoples of Sodom and Gomorrah.

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<sup>4</sup> The mutual responsibility is expressed through Avraham's war against the kings on behalf of his nephew Lot (independent of the latter's spiritual level), and through the rescue of Dina from captivity in the house of Schem by her brothers Simeon and Levy.

As noted, members of the first generation of secular Zionism took upon themselves similar principles without linking them directly to the patriarchal period and the Book of Genesis. However, they rejected everything connected with the Torah and the commandments and the revelation of the Holy One to His people. The chief virtues of the secular public in that era were the yearning for Zion, the aspiration for political liberty and basic justice, the love of the land and the Jewish labor and Jewish heroism that went with these. Preceding the Zionist movement by a generation was the “Kol Yisrael Haverim” movement, which had a fundamentally secular worldview and championed a comprehensive Jewish responsibility, including that of Western European Jews for their compatriots in Muslim lands, following the Damascus blood libel of 1840.

**The second precept that I learned from Rabbi Kook is that there are areas connected with holiness in which the Judaism that adheres to the Torah and the commandments is liable to lag behind secular ideology in time, force and quantity.** Torah Judaism may in some cases make use of secular ideology in order to “appropriate” its values or to reinforce them in its awareness. Secular ideology may therefore take the lead in certain areas which are connected with holiness. This was the case to a certain extent with the longing for Zion, Jewish labor and the love of the land and its redemption, as well as the readiness in time of need to mobilize for war on behalf of the Jewish people’s existence in its land. All these virtues flanked the merits of faithful Judaism and its connection to holiness, and the two paths sustained one another. Secular ideology has metamorphosed to a large degree since that time, yet it still upholds the important values of humanism and democracy (both of which are connected with the liberal idea that Rabbi Kook also discusses in his work “The Lights

of Revival”). The principle of mutual sustenance can without a doubt be applied to these values as well: as long as the two paths – the path of holiness of observant Judaism and the path of the liberal idea – are able to sustain one another, they can treat each other as equal partners. Every other approach is liable to push the adherents of the liberal-secular idea into total denial of their Jewish roots, to a path of no return. And who would want to encourage such a development? Consequently, I believe we must do everything in our power to reveal the true values inherent in secular Zionism, and I hope we find them. Only then will we be able to turn to the entire public with clean hands and declare our aspiration for a genuine partnership, one in which both sides will draw on the forces of good and values of truth in anticipation of a joint movement towards the goals that we all share. We will not be able to carry this out sincerely without requiring that the secular-Zionist leaders conduct an honest and courageous soul-searching of their culture, and ask themselves honestly where they are leading their community.

### Is There a Limit to Our Responsibility for the Wholeness of the People?

I have taken my arguments to great rabbinic scholars, and have received the impression from many of them, even if it was not explicitly stated, that it is preferable to maintain the *status quo* without being lenient in public matters that are probably forbidden<sup>5</sup> even at the price of a general deterioration, since this deterioration will not issue from our own deeds and instructions. In my view, this approach may at times be justified in the case of a private individual who does not follow the halakha willingly (although with many reservations, and as clarified by rabbinic scholars). Yet when our responsibility for the condition of the

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5 Public matters only! With regard to the halakha itself we are forbidden to be lenient, without a carefully considered judgment that is supported by many rabbis.

nation as a whole is at stake, these things take on an entirely different complexion. The complete covenant includes an extensive halakhic discussion of this weighty question.

### The Legitimation of Transgression Inhering in a “Court Ruling”

I will attempt to address, within this limited framework, the main halakhic arguments raised against me by some of the leading rabbis of religious Zionism, our great teachers.

The central argument, to which the others are tangential, bears a certain resemblance to the “passivity” of the legislature. According to this claim, if people transgress the law when they open businesses on the Sabbath, or are registered as officially married in Israel following civil marriage abroad, there is no official declaration against the Lord’s Torah. This would not be the case were the state to issue official *de jure* recognition of such marriages, or if it were to permit entertainment outfits to operate legally on the Sabbath. This claim relies on the holy teachings of Rabbi Isaac Arameh in his commentary *Akedat Yitzhak*, contending that numerous people have sinned no less gravely than did those in Sodom and Gomorrah. In the view of Rabbi Arameh, Sodom and Gomorrah were punished severely because these cities had anchored their perversity in law, thereby rendering it an official lifestyle. In contrast, the sin of any individual, however weighty, is held to be a personal failure rather than a deliberately chosen lifestyle.

I have addressed this issue extensively in the covenant, presenting considerable evidence from halakhic scholars. According to these sources, without in any way contradicting the words of the author of *Akedat Yitzhak*, legal guidelines have always been evaluated in their own right, in terms of a gain/loss analysis, even in more serious cases than those

addressed in the covenant. Moreover, the covenant does not contain a single instance of a court-sanctioned dispensation for sin.<sup>6</sup>

Despite the profound religious and halakhic significance of the establishment of the State of Israel and its status as an important stage in the redemption, the state's laws and institutions lack religious or halakhic content. Their purpose is confined simply to ordering life in society. Precisely because of the state's religious significance (in contradistinction to its laws), it would seem that the central question regarding any law is the degree to which the Torah will be observed in practice following a modification in the law—more than the question of what is written in the law books, because unfortunately, laws are often no more than empty words.

The debate over the religious cast of the population registry and personal status laws, over the character of the Sabbath in the public domain of the Jewish state and other matters that the covenant addresses, is therefore connected only with the general question of our public domain, our “identity card”. In this situation the significance of the written law pales in comparison to the importance of what takes place in practice.<sup>7</sup>

We are working on the assumption and in the hope that, despite the fact that in certain spheres the covenant does change the law for the worse from a religious standpoint, due to the overall agreement the law will more closely approximate reality. If, as we believe, the “practical” benefit exceeds the “formal” loss

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6 In the full covenant I also addressed the question of whether it is permissible to collaborate with transgressors at all, in matters connected with the very act of their transgression, without resolving the issue of desecration of the Divine Name (as discussed by the author of the **Tzitz Eliezer** in *responsa* 16:18, and by numerous other halakhic scholars). With regard to the question of desecrating the Name, however, in any case these matters need to be considered in every generation and in every instance in their own right, in accordance with profit/loss considerations.

7 Gleaned from a personal conversation with Rabbi Mordechai Eliyahu.



incurred, then the gain is worth the effort and the price it exacts. Skeptics may argue that the “formal” legislative loss is certain, while the “practical” gain is doubtful at best.<sup>8</sup>

It may well be that their fears are justified and my assessment of reality is misguided. This is a different question, however, from the question in principle that I have addressed here. In the present discussion, I began with the assumption that my evaluation of reality is correct. Regarding the issue of reality assessment, I expand upon this issue with regard to every topic in the exposition contained in the chapters of the covenant itself.

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The question therefore arises as to what the religiously observant must do in order to preclude the possibility that the act of signing the covenant might work to undermine the Torah, or even a fraction of the directives of the rabbinic sages and their successors. In my opinion, the appropriate solution would be a **clear and unequivocal declaration** issued by observant persons who support the covenant that contains the following elements:

1. Our intention in this document is to magnify the honor of the Torah and its import among the Jewish people and in the State of Israel, and not to compromise this under any circumstances or at any price.
2. With regard to every opening of an establishment that desecrates the Sabbath and every wedding that is conducted not in accordance with the laws of Moses and Israel, along with other matters that are mentioned in this covenant that

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<sup>8</sup> In my above-mentioned conversation with Rabbi Eliyahu I received the impression that this was his main concern. This was also what I understood from my discussion with one of the leading Torah scholars in our generation, who is affiliated with the ultra-Orthodox public. By way of contrast, from remarks made by Rabbi Dov Lior I understood that he primarily opposes the covenant’s declarations in principle and the legislative changes it would entail.

- completely contradict the Torah and its ways – we protest against them in every possible manner and regret them deeply.
3. Despite that which is stated above we believe that our signature on the covenant honors the Torah, because in the current spiritual climate of the Jewish people and the State of Israel, an attempt to impose Torah values in an indiscriminate fashion by force of law on people who do not believe in them will only intensify alienation from the Torah and its commandments, while our objective is to diminish this alienation.
  4. This declaration constitutes an integral part of the body of the document.<sup>9</sup>

## Summary

**There are three key principles that induce me to support the covenant initiative:**

**First principle:** In the wake of the covenant the courts will cease to intervene in intra-halakhic matters, which will revert to being the exclusive province of halakhic scholars. For instance, the covenant states explicitly that the population registry will be based on the declaration of the person being registered (with regard to his religion). In the realm of personal status, there will be a clear distinction in the population registry between marriage according to the laws of Moses and Israel, and other types of marriage.

**Second principle:** Concerning the Sabbath and similar issues, the dispensation is only with regard to the public realm. It consists of an agreement to revoke a state law that forces people to observe the Sabbath in public. The degree of intervention through state law needs to be adjusted in keeping with the circumstances of every generation. In the last generation circumstances have changed beyond recognition.

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<sup>9</sup> Stated otherwise, this declaration is part of the document that the religiously observant will sign, but not part of the joint proposals of the covenant on assorted topics, brought in the present document.

**Third, and most important, principle:**<sup>10</sup> I believe that in the final analysis Torah observance will be enhanced, not impaired, by the covenant – and my intention is not to breach the “fence”, but to mend it.

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**10** It seems to me that the third principle is largely anchored in the *responsum* of Rabbi Shaul Israeli in his book *The Right Column* at the end of clause 11. Rabbi Israeli discusses the question of whether representatives of the religious parties should vote in favor of the Sabbath law, a law permitting transportation on the Sabbath in a number of locations. His decision was that they should vote in favor of the law! Although a distinction must be drawn between these cases, it is his principles that have guided me.

## Main Principles of Ruth Gavison in the Covenant

### Preface

From my standpoint, the purpose of my personal prologue is to explain how a liberal Zionist secular Israeli Jew, committed to democracy and human rights, believes that the covenant initiative is not merely consistent with these commitments, but is actually dictated by them. I elucidate why, in my view, it is preferable to try to fashion such a covenant with other groups in Israeli civil society, instead of contenting ourselves with the formulation of a Jewish-secular-liberal credo and striving to promote it in its own right, whether by means of a “civil revolution” or in some other way.

In my opinion, the covenant fulfills two key functions. **First**, it promotes the secular lifestyle and creates conditions which will allow it to flourish. **Second**, it promotes the state, which enables both the fulfillment of the first function (conditions that allow the secular lifestyle to flourish) and the flowering of other forms of Jewish existence in general, and of other forms of life. The covenant helps make it possible to maintain a shared political framework among people with conflicting world views. It should, however, be stressed that it is in no way exhaustive in terms of what, in my eyes, is important and desirable.

### Fundamental Premises: Humanism, (Political) Liberalism, Nationalism and Pluralism

In my view, the ultimate principle is the universal one of **humanism**, and the commitment dictated by it to uphold **human rights**. It goes without saying that humanism does not oblige a person to be religious, yet it also fiercely rejects any approach that delegitimizes the religious lifestyle.

Humanism justifies the existence of groups and communities that play a central role in the lives of nations and individuals. As it is a particularly opaque ultimate principle, however, humanism has no organized “communities” that can provide its exponents with stable human support. While admittedly the human rights movement is a first attempt to give humanism an established structure, it should be recalled that by its very nature humanism cannot create a community grounded in a particular culture.

Like humanism, **liberalism** is a rather ambiguous term. A distinction must be drawn between the ethical teachings of liberalism and political liberalism. I support both, but agree with the philosophical school headed by Rawls, who argues that only political liberalism (as opposed to liberalism as an ethical teaching) is a necessary implication of humanism. Political liberalism recognizes as a fundamental fact that in social and political life there are a multiplicity of groups and interests, and that this is an unavoidable and even desirable state of affairs. It follows from this that there is a need for a joint political framework that allows these assorted groups, each of which has its own unique characteristics, to live and thrive side by side. Political liberalism also gives rise to the understanding that it would be unwise for the state to use its monopoly over power and law to defeat or suppress particular groups, religions or lifestyles.

Distinctions can be made between different liberal approaches. **One such distinction is between individual liberalism**, which stresses the individual, **and communitarian liberalism**, which emphasizes that in our world individuals grow, are shaped and act within societies and cultures. I do not believe that communal liberalism is in conflict with the individual variety. To my way of thinking, a commitment to individual liberty can and should go hand in hand with a sensitivity to communal needs and to the importance of the community’s existence to the individual’s

welfare (This view is also maintained by numerous theoreticians such as Kymlicka, Raz, Margalit, Halbertal and Gans).

As noted, the positions I adopt in the covenant, including the choice to engage in dialogue, are not only consistent with liberalism but are actually prescribed by it. Certainly, liberalism must accept liberal religious Judaism. Moreover, even with regard to the illiberal components of the Jewish religion as per some of its interpretations, liberalism must at least exhibit tolerance. There are two clear exceptions to this. **One:** A liberal cannot justify the coercion of nonbelievers to follow a religious command against their wish. Thus, a liberal cannot live with a religious monopoly over marriage and divorce. **Two:** A liberal cannot, in the name of religious tolerance and freedom of religion, justify forcing someone to remain a member of the religious community against that person's will. **A third situation** is harder to deal with: No religion should be allowed to use state power to prevent anyone's exit from the group. Should the state force religious groups to change their norms so that the conceptions of rights held by secular societies will apply within them? It seems to me that when there is a collision between an individual's right to liberty and equality and the group's right to self-preservation, challengers (such as feminists or homosexuals) should seek to change the rules of the group from within. If they fail, they should content themselves, from the standpoint of the liberal state, with the option of effectively exiting from it.

Humanism, human rights and political liberalism must be recognized as having universal validity. By comparison, **nationalism** (like religion) finds itself in an interesting intermediate position. Nationalism is a **particularist** affiliation of an individual or group. Yet the demand that others recognize and honor this affiliation is **universal**, for every person needs such affiliations. I believe that an approach to humanism or

liberalism which posits a “narrow” human being, limited only to oneself and one’s nuclear family, is an empty one. As we have seen, individuals’ affiliations with particular group identities are of cardinal importance in their lives. And indeed, the human rights tradition recognizes freedom of religion and affiliation and a people’s right to self-determination. There is, then, a general universal demand that individuals or groups be permitted to act on behalf of collective particularist goals (within the operative constraints of the general humanistic framework). I therefore reject the claim that there is a built-in contradiction between the Jewish national movement of Zionism and human rights that differs in some essential way from the tension that always informs the relationship between universal values and a particular culture. It is interesting to note that many of the proponents of this claim are enthusiastic supporters of other national movements, including that of the Palestinians... Needless to say, recognition of individuals’ need to retain national (or religious) relationships must be applied not only to Jews, but to other groups living in Israel as well.

Up to this point I have addressed a number of universalistic principles. I will now explain why I support **pluralism**, which fosters a multiplicity of notions of the good and a multiplicity of **particularistic** lifestyles in society, and why within the framework of such pluralism I am specifically interested in bolstering and developing a secular Jewish identity.

I am a secular Jew, who wants to feel fully at liberty to seek inspiration, solutions and elements of identity in every facet of human culture, while remaining aware that my unique culture is the Jewish-Hebrew one, in all its shades and with all its components. A pluralist framework affords me and others like me the freedom to engage in the urgent and vital task of infusing such a Jewish identity with meaning. For me this is part of the

challenge of being a secular Jew. Relinquishing not only the principle of keeping the commandments but also substantial parts of the culture developed by religious Judaism leaves one at a loss, and necessitates the creation of a new culture for oneself. This deficiency can be compensated for within the framework of a pluralistic society that promotes a multiplicity of lifestyles. Through the social covenant initiative I wish to defend my freedom to maintain my lifestyle, because this is my chosen lifestyle. Simultaneously, however, I wish to defend the multiplicity of lifestyles, and also the corresponding liberty of groups with different lifestyles. The success of the covenant initiative will relieve us all from the struggle for liberty and against coercion, freeing us to develop features of the “good life”, in accordance with our respective understanding of what that entails.

### The State of Israel: Democracy, Human Rights and Jewish Self-Determination

The fundamental premises I have elaborated here have repercussions for the political-legal structure of the State of Israel. In my view, Israel must be (and can be) a democracy that upholds human rights, including freedom of religion and conscience and the right to equality, while fulfilling the Jewish people’s right to self-determination (which is also derived from human rights). According to my approach, **democracy** should be understood in the relatively limited sense of participation in political decisions. Democracy is a mechanism that spells out the rules of the game, the methods of making decisions. It generally enables a society to make decisions according to the preferences of the majority (so long as this does not violate the rights of those who do not support these decisions).

There are those who contend that a democracy is not complete



without protection of **human rights**. And there are those who contend – as I do – that protection of human rights is an independent component. In any event, according to both approaches, human rights need to be protected in a well-functioning state, and in certain cases they should override the preference of the majority. One of the acknowledged human rights is **freedom of religion and conscience**. Does freedom of religion and conscience mandate “separation of religion and state”? The answer to this question is no. There are a number of models of possible relations between religion and state, and every society should adopt the model suitable to it. Israeli society is characterized by a range of concepts of Jewish identity, and it is comprised of different cultures and different religious communities. It seems to me, therefore, that of all the models typifying relations between religion and state, the Israeli reality calls for the concept of a **weak separation**, which enables the support of religion while respecting demands for equality.

Freedom of religion and conscience for individuals and for groups can sometimes conflict, and this is highly significant for the social covenant.

The state must choose between “surrendering” to one concept of Judaism or another, or refraining in general from adopting any position on the matter, contenting itself with stipulating the conditions for **civil** recognition of Jewish identity for its own purposes. Once it becomes clear that the state is not presuming to answer the religious question of “Who is a Jew”, its determination does not detract from the religious freedom of any side. This is an **egalitarian** approach to the different streams of Judaism.

In my assessment, only a joint willingness to accept this important distinction between religious tenets and the laws of the state, between the establishment of norms by rabbis and religious leaders and the establishment of norms by government institutions and

their professional agencies, will enable a consensus to be reached. Only this can prevent a situation in which the interactions between religion and state will irreparably distort both freedom of religion and the country's democracy.

Democracy and human rights are easy to justify due to their universal nature, and do not differentiate between individuals and collectives on the basis of religion or nationality or religious stream. Yet universal human rights include the rights of peoples to self-determination. I therefore regard myself as committed to measures that will guarantee the right of the Jewish public to exist in Israel as individuals and as a collective and see this commitment as fully consistent with democracy and human rights. Such measures could include preferring particularistic Jewish interests over general "civil" interests, to the extent that this is required in order to ensure such Jewish existence and does not infringe the basic rights of other groups or individuals. This is how I view the principle of Jewish Return, and this is how I view arrangements that stress the Jewish character of the state on the cultural and symbolic levels (such as the Hebrew language, the Sabbath and Jewish holidays).

It goes without saying that the history of the Jewish presence in Eretz Israel and the Jewish people's ties to this land are of cardinal importance as components of the universal claim.

Nevertheless, I am of the opinion that the ship metaphor Rabbi Medan introduced needs to be modified. I have no shared existential commitment to protect the integrity of the "ship" of religiously observant Jews, simply because I would never have sailed on it from the outset. Naturally, I wish to see observant Jews flourish, and I will fight to ensure that no one harms them. But I myself feel no personal commitment to preserving this

special way of life. From my vantage point, there are three ships: The ship of the Torah, the ship of the entire Jewish people, and the ship of the state. I sail only on the last two, and definitely have a deep personal interest in the latter, which is the instrument that enables me to live a meaningful life here—both as an individual and as a member of a Jewish collective.

### State, Society, Culture, Law and its Limitations

Because I am a jurist, I want to clarify that the legal arrangements of the state as a whole and the arrangements of the covenant that we are specifically addressing are only part of the framework that orders our lives. I was pleased to see that Rabbi Medan also refrained from cloaking these in a halo of holiness...

The law does not begin to exhaust morality or even the precepts of the good life, either according to religion or to the morality of the free-thinker. I do not hold that “all the world is infused with law”. The state is not competent to fully organize the lives of its residents, and it is best that it not attempt to do so. This is particularly true in a multi-cultural and polarized society. Any attempt of this sort is neither good for the state nor for the law. Moreover, it is injurious to the social fortitude of the country’s population, to the fabric of life and to the diverse cultures whose existence and well-being the state is supposed to facilitate.

In addition, judicial decisions or even Knesset laws cannot change reality in the face of strong political, social, religious, cultural or economic forces and interests. Jewish identity (whether religious or secular), like every other component of identity, is primarily the result of education and culture. This is not something that can be inculcated through legislation. There are cultural impulses that the use of force, however strong, or prohibition against the use of force, will not be able to repress. On the other hand, there

are values and commitments that no amount of political, legal or economic incentives will be able to revive. No healthy society can survive if all, or even most of its inhabitants, choose the good solely because it is enforced by law.

Good legal frameworks are nevertheless an effective means of channeling energies. They can create an appropriate institutional structure for addressing questions and resolving disputes. Jewish society has always known how to make creative use of the law, without letting it overtake its existence. It would be a shame if we did not apply it wisely, remaining cognizant of its limitations, for the sake of our vital social needs.

### In Support of the Covenant

#### **A General Statement on Behalf of the Covenant**

Up to this point I have articulated the ethical, conceptual and theoretical teachings that I bring to the covenant initiative. I have argued that the spirit of the covenant and its specific provisions are definitely compatible with these principles, even emanating from them and justified by them. In this section I would like to focus on the social-political reality in Israel and plead directly on behalf of the covenant, its spirit and its provisions.

The covenant aims to resolve a thorny central problem in the life of the Jewish public in Israel: How do we live together? The fact is that of the efforts to furnish a stable and satisfactory answer to this question, none has prevailed. Relations between religiously observant and free-thinking Jews in Israel have had a complex history, including elements of insurrection, alienation, anger, hatred and reciprocal threat and coercion. Each side views the other as “waiting to pounce”. The attempt to reach a consensus is often perceived as a “betrayal” in the worst case, or as a naive form of appeasement.

Accordingly, there are two constituent parts to the covenant, which are distinct from one another yet interconnected.

**One:** Arguing that there is an arrangement that is better for all parties and their future welfare that would eclipse the *status quo*.

**Two:** Attempting to convince the sides to embark on a process of dialogue.

The covenant initiative is predicated on the idea that a comprehensive arrangement of a joint framework constructed through discussion, negotiation and consensus among the main factions within the Knesset and those outside it, is preferable from a practical standpoint to arrangements achieved in other ways, even if they are more consistent or elegant. Consensual coexistence is preferable to perpetual life-and-death struggles. None of the various camps has the power to legislate its own vision, yet they all have sufficient power to prevent a change in the *status quo*. In disputes of this sort it is important that the attempt to reach an agreement be well planned. We must distinguish sharply between those issues on which we are compelled to reach agreement, and those that can remain, and likely will remain, steeped in controversy. A good agreement is not an attempt to promote an abstract general interest while ignoring the interests of various groups, but rather an attempt to identify the groups' common interest. We have agreed only upon the shared political framework, while expressly acknowledging that we do not agree upon the "source of authority" or the vision of the good life. These are questions that will remain in dispute.

When I speak in favor of the covenant it is important to stress that I approach this undertaking (of forging a covenant between Jewish streams on matters of religion and state) as a Jew who seeks to strengthen Israel's chances of continuing to exist in this region as the state in which the Jewish people fulfills its right

to self-determination. **I regard the covenant as an important component in achieving this goal.**

Moreover, it may be that Israel is the only place in the world in which Jews will be able to remain Jews for more than two generations without keeping the commandments or maintaining an institutional Jewish link. Consequently, Jews who desire Jewish continuity and regard this as an important value have a common interest of the highest order in sustaining and fortifying the State of Israel – and they also have the perfect right to do so.

#### **A Special Word to the Secular Public**

In this section I would like to grapple in the most candid manner possible with the positions of the secular public to which I belong concerning the covenant. Rabbi Medan's "camp", the national-religious public, was very vocal in commenting on the covenant, while my "camp" responded largely with silence. I do not know whether to understand this as a blessing, a sign of reservations or sheer indifference. I must therefore "invent" the counter arguments, in order to address them.

One of the first key arguments is likely to be, "Who appointed you"? Naturally, I agree. In fact I do not present the covenant as the product of an agreement between camps, but between its authors, which they are offering to the public. Nevertheless, I do not think that my positions are marginal. I maintain that they "reflect", rather than "represent", a broad public.

A second key claim is likely to be that the covenant imposes a burden on the secular public that it did not seek, a less successful starting point for pursuing its cultural-political struggle. Claims of this sort, it should be noted, are symmetrical, in the sense that the religious can raise them as well. The religious are also suspicious of the secular. The covenant, I hope and believe, can break the cycle of suspicion and sense of threat.

**The covenant has numerous advantages from the standpoint of the secular public;** I will outline the main benefits. The covenant's proposed arrangements **effectively eliminate religious coercion in Israel** and the monopoly of one or another group on overall arrangements. **The covenant recognizes and welcomes the multiplicity of streams.** It distinguishes between the religious position and the position of the state and its laws on the question of "Who is a Jew", so that even persons who are not Jewish according to the Orthodox definition can register themselves as Jews. The covenant revokes the religious-Orthodox monopoly on marriage and the dissolution of marriage. And most importantly, as already noted above, the secular public lacks the power, and even if it did have such power it would not be worth applying it, to "break" the religious public by means of a "civil revolution". The covenant maintains not only that agreement through discourse is preferable to decisions by brute force, but that it is also possible. One person described the covenant project as "delusional". In the dictionary I found that delusional means "steeped in illusion, in a dream state, unrealistic". I would be happy to take part in other delusional schemes of this nature, as opposed to the more "realistic", failed ones.

#### **A Special Word to Other Sectors**

The social covenant creates a state of affairs that is preferable to the *status quo* for other sectors of the Jewish public as well, aside from those with which the authors are identified. **Orthodox Jews** who take issue with some of Rabbi Medan's positions will enjoy heightened religious autonomy, the possibility of upholding their freedom of religion, and primarily the recognition of the important status of religion in all its forms in public life. **Traditional Jews** will enjoy the preservation of a Jewish cultural character in Israel, which does not mean strict observance of

all commandments. **Non-Orthodox streams** will enjoy the revocation of the Orthodox monopoly, for which they have been fighting for a long time.

Most importantly, however, the covenant liberates all of us from the need to affiliate ourselves exclusively with one sector or another, an affiliation that is one of the pernicious results of the intensified confrontation between the sectors. The covenant is designed for the entire Jewish people. Every person is invited to delve into it, and I believe that all will find main points and principles that are to their taste.

### Afterword

Even those who are confident that everything is known in advance and that all depends on the grace of God know that they have permission to act. No one is exempt from doing that which one views as correct and important. It is my hope that this proposal will assist those like us who are willing to organize themselves to think, discuss and take action. I believe that the path of the covenant is the correct path. I will be pleased if the debate between writers and commentators produces other, better means of strengthening the Jewish people in general and its national home in particular. We will try every path, and may our endeavors succeed.