

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.