

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”**.¹

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

¹ 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 Jew² *per se*, by virtue of his spiritual and religious level, not observance of the Torah and the commandments³ (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.⁴
- 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.

⁴ 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 forbidden⁵ 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

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.⁶

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.⁷

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

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.⁸

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.

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

⁸ 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.⁹

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.

⁹ 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:¹⁰ 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.

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.