Jewish Sources on Conflict Management: Realism and Human Nature

Gerald M. Steinberg[*]
Department of Political Studies and Program on Conflict Management
Bar Ilan University, Ramat Gan, Israel
steing@mail.biu.ac.il

Moslems have Sulha[1]; Christians have forgiveness and confession; Buddhists speaks of "mindful mediation"[2], and other culturally specific approaches to managing internal social conflict are used in many other societies. But as yet, there is no systematic and recognized Jewish approach to mediation and conflict resolution. And this is not surprising, given both the Jewish emphasis on *machloket* (disputes and strife), and the long and diverse social and political contexts in which Jewish communities have found themselves during the past 4000 years. Thus, the concept of a coherent and specifically Jewish approach to dispute resolution and mediation, or at least conflict management, is an admittedly difficult concept to consider, much less to define.

Given these frameworks for containing or preventing social conflict,[3] it is logical to look for a parallel Jewish tradition, derived

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from behavior and not only based on idealistic hopes and norms. And given the importance of managing the intense conflicts that mark the modern Jewish condition, both within Israel and in the Diaspora, such a behavioral framework is also necessary. With restored Jewish national sovereignty and the accompanying responsibilities, the costs of allowing conflicts to expand until communities break up is too great -- internal disputes and power-struggles cannot be allowed to escalate and expand into "senseless hatred". (Intra-community conflict and therefore also dispute resolution is very different from the framework governing conflict with outsiders – the following analysis is focused only on the internal conflict dimension.)

As in most other areas of Jewish life, the search for this pragmatic and behavioral, as distinct from normative or theoretical, approach to conflict resolution (what Michael Walzer calls "the concrete life of the Jews"[4]) begins with a review of Jewish texts from the Bible, Talmud, early and modern commentators and philosophers.[5] These sources provide numerous quotes, examples, analyses and legal rulings, which, as will be argued in this essay, form the components of a coherent and different approach. The overarching framework, I argue, differs fundamentally from the idealist and altruistic foundation of the standard Christian prescriptions for dealing with conflict,[6] but rather is anchored in a hard-headed "realist" understanding of human nature and social interaction, including the inherent role of conflict.

The realist approach to conflict is based on the political theory espoused by Hobbes, rediscovered by Morgenthau[7] and E. H. Carr after World War II, developed further through game theory, and applied to negotiation theory by Fisher and Ury ("Getting to Yes"), Schelling, and others. Realism, in various forms, views interests, power and rational calculation of costs and benefits, and, when necessary, coercion from a legitimate authority, as the keys to successful conflict management.

This approach stands in contrast to the predominant idealist perceptions and prescriptions for relationship or personality transformation and social harmony in much of the conflict resolution and ADR ("alternative dispute resolution") literature. The process of transformation, as delineated in the publications of Bush and Folger[8], and of Riskin[9] and many others, are based on changing human behavior. These idealistic prescriptions are very difficult to implement, and the evidence of success in broad social contexts is sparse.

Before elaborating the evidence for realism in Jewish sources, it is necessary to acknowledge that numerous texts exist on social conflict that reflect an idealist and altruistic approach. But justice (*zedek or din*) and peace (*shalom*), as demanded by the Jewish prophets in their sharp condemnations of official corruption and exploitation of the widow and orphan, are distinct from the daily events of ordinary life and society. And the overall theological

objective of human perfection and peace, based on creation in God's image (*B'zelem elokim*), divine revelation, and fulfillment of the commandments (*mitzvoth*) generally operates in an entirely different dimension. There are some tzadikim (saintly individuals) who are able to combine the two realms of idealism and realism, but these are rare exceptions. While striving for perfection, in day-to-day interaction, even the archetypal tzadikim – Abraham and Moses –were engaged in familiar human interaction and sometimes mundane interpersonal conflict.

This is also the approach taken by many respected Jewish philosophers. Rabbi Eliezer Berkowitz, for example, emphasizes concepts such as *darchei noam* ("gentle pathways"), and the many *halachic* rulings that are not consistent with the strict letter of the law, but are the result of the importance of actions that are permitted and even encouraged for *shalom bayit* – "peace in the home", and *mipnei darchei shalom* -- "for the sake of peace". [10] Similarly, leaders are enjoined to seek and pursue peace *("bakesh shalom v'rodfehu")*.[11]

But such emphases are philosophical and normative, in contrast to the descriptive behavioral emphasis in my analysis. As noted above, in practice, Jewish history is highly confrontational, and the sensitivity required for *darchei noam* on a daily basis is quite rare.

While generalizations are dangerous and contradictory evidence can always be found, the following analysis presents the claim that, in

a practical sense, the Jewish approach to social disagreement does not require perfecting or changing human nature. Indeed, in *Leviathan*, the founding text of political realism, Hobbes' description of the state of nature and conflict, and the need for centralized authority and law based on social covenants echoes and quotes from the Jewish biblical texts.[12]

The emphasis on realism in conflict – not as a distant ideal but as a description of and guide to actual behavior -- is clear and abundant from the beginning in Genesis, in which the Jewish tradition presents human beings as far from perfect ("man's heart is evil from his youth" – יצר לב האדם רע מנעריו ").[13] This framework does not seek to discover and impose a formula for the elimination of interpersonal disputes.

Rather, the behavioralist Jewish approach to social and interpersonal conflict is based on managing the often harsh reality and curtailing the impact of the inevitable power struggles and other quarrels that are part of any society. Instead of demanding a different form of human nature to prevent or resolve conflict, the goal is to contain the negative impact of the inevitable quarrels within Jewish communities, and to prevent a process that escalates and deteriorates into bitter personal discord, destructive behavior, and *Sinat Hinam* – unfounded hatred.

Pragmatic conflict management, as distinct from resolution, is a frequent theme. Abraham – the founding father – opted to part ways

from his nephew Lot in the wake of growing tension between their camps; he did not attempt to resolve this dispute, or to fight for principle or interest – this would be counterproductive "because we are brothers". (In contrast, in conflicts outside the family and against external enemies, Abraham did not hesitate to use force when necessary. Texts and rules of engagement related to war and relations with outsiders are fundamentally different from the conditions of domestic conflict, not only in the Jewish framework but in general.[14]) Similarly, Yaakov and Lavan, and then Yaakov and his brother Esau also agree to disagree, rather than engaging in violent conflict.

Later, the biblical text devotes a relatively high level of attention to the establishment of "Cities of Refuge" (Numbers, 35; Joshua, 21) where the perpetrators of accidental deaths (manslaughter) can be safe from the blood avengers common in many Middle Eastern societies. The immediate objective here is not to perfect human behavior by condemning and uprooting the practice of revenge killing in response to accidental death, as this practice is apparently too deeply rooted in human nature and social mores of the time in order to change by fiat. Rather, by taking a realist approach and making revenge and vendettas all but impossible, while also isolating and imposing a limited punishment on the perpetrator, the escalation chain of violence is broken and communal peace is fostered.

At the same time, in Jewish tradition, for offenses such as heresy and rebellion against "the yoke of the commandments", conflict management and compromise are simply not on the table. When *Korakh* led a rebellion against Moses in the wilderness (Numbers, Chapter 17), he and his followers were punished by death. Similarly, after the incident of the golden calf, Moses ordered his supporters from the tribe of Levi (Aaron's tribe) to take their swords and go from "gate to gate" in the camp, to punish "each man his brother, each man his neighbor, and each man his relative". In this punitive action, 3,000 men were killed "And the Lord smote the people, because of the calf that Aaron made." (Exodus, Chapter 32). In other eras and communities, rabbis have excommunicated members of sects that deviated from normative behavior or challenged their power and authority. In Eastern Europe, *Hasidim* and *Mitnagdim* excommunicated each other, and involved the Gentile authorities in these conflicts.[15]

The realist approach to conflict also emerges in the Talmudic discussions on the tension between truth (*emmet*) and justice (*mishpat*). Talmud (*Sanhedrin*) includes a detailed discussion of mediation in civil disputes, including instructions on the choosing of mediators, and concluding that an agreed resolution is preferable to a legal judgment. But, through the process of *machloket*, other sages argue that mediation avoids the legal process, and obstructs justice

and truth. However, the social benefits of mediation compensate for the legal detours.

This point is also emphasized in the extensive Talmudic and midrashic discussion of conflict prevention between Joseph and his brothers following the death of their father Jacob (Israel) the Patriarch. As is generally the case in these sources, the goal is not only academic, in the sense of understanding the text, but is also a reflection of the day-to-day issues that were of concern to the community leaders, including internal conflict and violence. This family saga had many episodes of violence involving the twelve sons (the founders of the 12 tribes), including the kidnapping and sale of Joseph. But in the final scene, when the brothers fear that Joseph would exact his revenge, the brothers invent a story, claiming that from his deathbed, their father had commanded reconciliation. In this case, the ends – conflict prevention in the family – justified the distortion of the truth.

Taken together, these texts, commentaries, examples and explanations form a foundation for a Jewish approach to communal and interpersonal conflict based on a realist perception of society and the human condition.

Machloket – Constructive Conflict "for the sake of Heaven"

The realist approach to conflict is reflected in and amplified in the Talmud – both the Mishna (written in the Land of Israel in the two centuries before and after the Roman destruction) and the Gemarra

(developed in parallel in Babylonia and the remnant of the Jewish community in the Land of Israel after the redaction of the Mishna). Indeed, in the Talmud, the emphasis on *Machloket* (disputation and conflict) as an essential value in Jewish tradition emerges. The process of *Machloket* is a central mechanism for discerning the meaning of texts and their implications, as well as for renewal and adaptation in response to a changing environment. Through the continuous process of explication and *machloket,* the law (*halacha*) and meaning of revealed texts are in constant revision – the canon of interpretation is never closed. In these debates, which continue in the Responsa, in the yeshivot (schools of Jewish learning), and among commentators, rabbis discussed specific instances of community strife covering a very wide range of issues. As a result, *Machloket*, in the form of constructive conflict[16], is viewed as a part of community life, the Torah learning center interaction and family relationships.

As these texts demonstrate, however, what may have started as "constructive" conflicts often led to splits in the Jewish communities – *kehilot* and *minyanim* (prayer quorums) divided on the basis of disputes on doctrine, practice, and other issues. As is often the case, principled disputes on relatively minor issues escalated and became personal disputes, with the protagonists becoming bitter enemies. This type of "senseless hatred" (sinat chinam) is said to have led to the destruction of the Second Temple.

But the 2000-year exile that followed served to increase the process of dispute and separation, since there was little penalty for such divisions. *Shalom Bayit* – literally, "peace in the home", is more of an abstract goal than a practical approach. For generations, conflict has divided communities, synagogues and schools of learning. In effect, this process of division in the face of conflict has been a survival mechanism. When a dispute led to a split and the groups broke away from each other, they began to function again independently, each evolving and developing in its own way. In the Diaspora, the possibility of division with a very limited cost was generally available, and *machloket* was not only acceptable, but in addition, the social and political environment served to encourage groups to split. Without the need for political and social unity, the costs of such divisions appeared to lower than the risks of a violent explosion.

The distinction between constructive *machloket* which encourages growth, development and renewal, and dangerous disputes that lead to *sinat chinam*, is a familiar theme in Jewish texts. P*irkei Avot*, (often translated as the Ethics of our Fathers) distinguishes between conflicts "for the sake of heaven", and those that are not "for the sake of heaven" (Chapter 2, Mishna 17)

"כל מחלוקת שהיא לשם שמים סופה להתקיים ושאינה לשם שמים אין סופה להתקיים איזו היא מחלוקת שהוא לשם שמים זו מחלוקת הלל ושמאי ושאינה לשם שמים זו מחלוקת קרח וכל עדתו."

"Every controversy that is in the name of heaven, the end thereof is [destined] to result in something permanent; but one that is not in the name of heaven, the end thereof is not [destined] to result in something permanent. Which is the [kind of] controversy that is in the name of heaven? Such as was the controversy between Hillel and Shammai; and which is the [kind of] controversy that is not in the name of heaven? Such as was the controversy of Korah and all his congregation."

Korach (a priest of stature during the period in the Sinai desert following the Exodus) presents the archetype of an individual who seeks fame and power. He is presented as self-centered who, instead of focusing on the greater good of society, sought self-promotion. In stark contrast, the goal of the many disputes between Hillel and Shammai – sages during the early Mishnaic period -- was to discover the law and its truth. This is the positive archetype of "machloket" -- dispute for the sake of heaven. The conflict does not prevent open communication and mutual respect, with the goal of serving a higher purpose, and without emotion, violence or the rhetoric of incitement, it is encouraged and even welcomed.

Although the disciples of Hillel and Shammai, which formed into different schools of thought with different traditions, quarreled sharply over basic interpretations of the law, and over 300 such differences are recorded, their relationship was also marked by mutual respect, at least until the final decades of the Second Temple

period. In one famous dispute recorded in the Talmud (Eruvin) which went on for three years, a heavenly voice ("*bat kol*") finally declared that while the law is based on the majority that supported Beit Hillel's interpretation. "*Eilu v'eilu divrei elohim chayim*" ("both of these are the words of the living God.") In other words, both views are legitimate, and the majority of rabbis (from *Beit Hillel*) did not discard or demonize the minority position.

Indeed, according to even these two groups disputed the details of the laws of yibum, levirate marriage, they continued to intermarry with each other. (Tractate Yebamot, 14b)

"אף על פי שנחלקו בית שמאי ובית הלל בצרות, ובאחיות, בגט ישן, ובספק אשת איש, ובמגרש את אשתו ולנה עמו בפונדק ,בכסף ובשוה כסף, בפרוטה ובשוה פרוטה ,לא נמנעו בית שמאי מלישא נשים מבית הלל ,ולא בית הלל מבית שמאי, ללמדך, שחיבה וריעות נוהגים זה בזה, לקיים מה שנאמר :זכריה ח:יט (האמת והשלום אהבו ."

"Although Beth Shammai and Beth Hillel are in disagreement on the questions of rivals..........., Beth Shammai did not, nevertheless, abstain from marrying women of the families of Beth Hillel, nor did Beth Hillel refrain from marrying those of Beth Shammai. This is to teach you that they showed love and friendship towards one another, thus putting into practice the Scriptural text, Love ye truth and peace."

The Jewish perspective on constructive conflict, as illustrated in the central example of the schools of Hillel and Shammai, separates the substantive issues from personalities and emotions. In other words, they respected the other's opinions, and agreed to disagree. This principle is also important to modern Jewish leaders and philosophers. In his book, *Arguments for the Sake of Heaven,* Rabbi Jonathan Sacks emphasizes the difference between the positive process of constructive conflict, which promotes debate and does not end with a decision or labeling of "winner and loser", with destructive conflict which seeks to gain power, property, or control for one of the participants. In another analysis using this theme, he wrote: *When two sides fight, not with weapons but with ideas, they recognize that their very disagreement presupposes an agreement: about the value of argument itself. Two chess players may be bitter adversaries, but they agree on the rules of chess and their love of the game.*"[17]

Conflict Management: The Examples of Abraham and Joseph

The core Jewish texts contain numerous examples of living with and managing conflict, rather than the more ambitious and often unattainable goal of *shalom bayit*. Indeed, the foundations of the human society and the Jewish people as depicted in the archetypal events described in the Book of Genesis, reflect continuous conflict situations.[18] Some of these are resolved peacefully, while others end in intense violence.

The example of Lot and Abraham (Genesis 13:7-9) illustrates the conflict management theme within the family.

"ויאמר אברם אל לוט אל נא תהי מריבה ביני ובינֶיך ובין רעי ובין רעיך כי אנשים אחים אנחנו: הלא כל הארץ לפניך **הפרד נא מעלי אם השמאל ואימנה ואם הימין ואשמאילה:**"

"And Abram said to Lot, Let there be no strife, I beg you, between me and you, and between my herdsmen and your herdsmen; for we are brothers. Is not the whole land before you? **Separate yourself, I beg you, from me; if you will take the left hand, then I will go to the right; or if you depart to the right hand, then I will go to the left."**

The relationship between Abraham and his nephew Lot was very complex; Lot was like a junior partner who accompanied Abraham on his journeys, but did not contribute much, and often got into trouble. But when this happened, Abraham was always ready to go to great lengths and enormous costs in order to rescue Lot, whether from kidnappers, or from the murderous mob in Sodom. (Lot's wife, it will be recalled, disobeyed the command not to look at the destruction and was turned into a pillar of salt. Lot was more prudent, and survived.) And after each such episode, Abraham was ready to forgive and forget, because Lot was family and at the core of Abraham's interests.

When the conflict between their respective herdsmen broke out, Abraham understood that if left untreated, it would escalate and threaten the unity of the family -- emotions would overcome interests.[19] His response was not to seek a resolution or to find a mediator; the conflict was part of the human condition -- the Hobbesian "state of nature". Justice was also not a factor – in the narrative, there is no mention of the source of the conflict, or which side was misbehaving. Instead, the conflict suddenly erupted, and Abraham chose to separate and end the friction, while accepting the costs. He gave Lot the option of choosing the best land (in the Jordan Valley) – what modern conflict resolution theorists refer to as "cutting the cake". By addressing the effects of the conflict and the friction, rather than taking the highly doubtful path of attempting to resolve the core causes, Abraham and Lot were able to manage or deescalate the conflict.

Two generations later, the resolution of the intense conflict between Jacob and his kinsman Lavan has many of the same elements. They ended their relationship through a covenant ("brit") based primarily on separation.

And we find similar approaches to interpersonal conflict much later in the Bible, after the Israelites had left Egypt and the revelation at Sinai. The commandments to be implemented upon entry and conquering the Land of Israel hundreds of years later included the seemingly obscure requirement to establish cities of refuge, *arei*

miklat. Six such cities were designed to protect accidental killers from the vengeance of the victim' family – the blood avenger.

Although we know little about the actual operation of cities of refuge, the text regarding the intricacies covers many pages in the Talmud and commentaries. The commandment to build cities of refuge recognized the human need to preserve honor and the interests of the family group while preventing the escalation of large scale violence between the groups. Blood vengeance, even for accidental killing, was (and in some societies still is) common in Middle East cultures, and often led to a cycle of escalating violence. But cities of refuge break this cycle, following the example of separation set by Abraham and Lot.

The Talmud discusses whether the Torah requires the family of the victim to take revenge or this is simply a recognition of the practice. (Mishne Makot 5:7)

"רוצח שיצא חוץ לתחום ומצאו גואל הדם רבי יוסי הגלילי אומר **מצוה ביד גואל הדם** ורשות ביד כל אדם רבי עקיבא אומר **רשות ביד גואל הדם וכל אדם אין חייבין עליו**."

"If a slayer went beyond the bounds and the blood [and the] avenger fell in with him, R. Jose the Galilean says that for the avenger it is a matter of obligation [to strike]; for everyone else, a matter of option. R. Akiva says that for the avenger it is a matter of option and anyone [else] is [not] responsible for him."

The differences between R. Akiva and R. Jose, as well as their shared views, are instructive. According to R. Akiva, even though revenge was allowed, it was not a commandment. Allowing the family to exact revenge on the murderer is recognition of this theoretical right, but this perspective rejects the common view that failure to exact revenge undermines a family's honor. R. Jose the Galilean views the vengeance of the murder as an obligation, but only for the family and both views emphasize the importance of cities of refuge, which stop the cycle of violence in the conflict.

Truth. Justice, Compromise, and Shalom Bayit

In Judaism, peace (shalom) is the ultimate aspiration in human relations. And because peace is so highly valued, Judaism sometimes justifies false statements and 'white lies' to serve a higher cause, and to maintain the peace, particularly in family relations.

The sources bring two far-reaching examples. (Derech Eretz Zuta, Perek Hashalom).

"רבי שמעון בן גמליאל אומר **גדול הוא השלום שמצינו שדברו השבטים דברי בדאות כדי הטיל שלום בין יוסף לאחיו** שנאמר (בראשית נ) ויצוו אל יוסף לאמר אביך צוה וגו' אין אנו מוצאין שצוה להם כלום רבי שמעון בן גמליאל אומר גדול הוא השלום שהרי אהרן הכהן לא נשתבח אלא בשביל השלום שהיה אוהב שלום ורודף שלום ומקדים שלום ומשיב שלום שנאמר (מלאכי ב (בשלום ובמישור הלך אתי (מה כתיב בתריה ורבים השיב מעון אלא (**מלמד כשהיה רואה שני בני אדם שונאין זה את זה הולך אצל אחד מהן ואמר לו למה שונא אתה את פלוני כבר**

בא אלי לביתי ונשתטח לפני ואמר לי חטאתי לפלוני לך ופייס עליו ומניח לזה

והולך אצל השני ואומר לו כראשון והיה משים שלום ואהבה וריעות בין אדם

לחבירו ורבים השיב מעון:"

"Rabban Simeon b. Gamliel said: Great is peace, for we find that the tribes reported an untrue statement in order to maintain peace between Joseph and his brethren; as it is stated, 'And they sent a message unto Joseph, saying: thy father did command before he died, saying: So shall ye say unto Joseph: Forgive, I pray thee now, the transgression of thy brethren and their sin.' But we do not find that [Jacob] had given them any such command.'

Rabban Simeon b. Gamliel said: Great is peace, for Aaron the [High]Priest was praised only for peace; for he loved peace , pursued peace, greeted with the salutation of peace and responded with it, as it is stated, 'He walked with Me in peace and uprightness.' It teaches that when he noticed two persons at enmity one with the other, he used to go first to one of them and say to him, 'Why do you hate So-and-so? He has already come to my house, prostrated himself before me and said to me, "I sinned against So-and-so.' Go and pacify.' When he left this one, he went to the other and spoke to him similarly, and so made peace, love and friendship between a man and his fellow. What is written subsequently? 'For he is the messenger of the Lord of hosts.' "

In another example, the problematic relationship between Joseph and his brothers is given extensive treatment in the

commentaries. Based on the Biblical text, the rabbis noted that as long as Jacob the Patriarch was alive, both Joseph and his brothers avoided open warfare – Joseph was not going to exact revenge and undermine the fragile family reconciliation. But following Jacob's death, the brothers feared, the revenge would begin. The brothers therefore invented a story that their father had asked him not to hurt them for what they had done to him in the past. Rabbi Shimon ben Gamliel explicitly notes that there is no evidence of this request in the Scripture. He understands their lie to be evidence of their understanding of the importance of maintaining peace and avoiding revenge between the brothers following their father's death. The prevention of conflict and pragmatic *shalom bayit* takes precedence over the truth (*emet*), overriding (in this instance) the clear Biblical commandment "Keep thyself far from falsehood" (Exodus 23:7).

The precedence of social harmony over truth is reflected in the emphasis placed on the role of Aaron the High Priest, who toiled to make amends between people and couples in order to maintain the peace. According to the *midrash*, Aaron would approach people he knew were in conflict in order to attempt to restore their relations. It is told how often he would fabricate a conversation of one side's regret in order to bring two disputing sides to resolve their conflict.

Similarly, the Jewish tradition also recognizes the inherent tension between the strict requirements of the law (justice) and need for compromise for the sake of peace.[20] The attempts to reconcile

these two values, concluding that only decisions which are based on compromise can encompass the fusion of both peace and justice. (Tractate Sanhedrin 6b).

"רבי יהושע בן קרחה אומר: מצוה לבצוע, שנאמר: (זכריה ח) אמת ומשפט שלום שפטו בשעריכם. והלא במקום שיש משפט - אין שלום, ובמקום שיש שלום - אין משפט. אלא איזהו משפט שיש בו שלום - הוי אומר: זה ביצוע."

"R. Joshua b. Korha says: Settlement by compromise is a meritorious act, for it is written, 'Execute the judgment of truth and peace in your gates (and let none of you devise evil in your hearts against his neighbor) [Zecharia 8:16].' Surely where there is strict justice there is no peace, and where there is peace, there is no strict justice! But what is that kind of justice with which peace abides? We must say: Arbitration.[21]

On this basis, Maimonides urges judges to promote voluntary mediation, praising any judge who does not have to make a legal ruling in his lifetime, and is able to mediate a compromise between the rival litigants.[22] In a practical sense, compromise is described as the basis for preserving the peace of the community,[23] and the *Shulchan Aruch*, (the authoritative code of Jewish Law compiled by Rabbi Yosef Karo in the 16th century) states that judges are required to open all civil proceedings by proposing a compromise to the litigants for consideration.[24] A judge may also offer to mediate a solution ("to speak to their hearts"), even after the evidence has been heard, in order to encourage a peaceful settlement. [25] In some

cases, such as when the evidence is unclear or cannot be discovered, judges are advised or even required to impose a compromise (a form of binding mediation).[26] In rare cases, involving litigants with different economic means, the wealthier party may be asked to accept a compromise and less than would be due according to the strict interpretation of the law, for the sake of peace.[27] (This can be compared to the technique of re-balancing power, as found in the modern mediation literature.)[28]

However, despite the emphasis on the desirability of mediation and compromise in civil disputes, there is little in these texts that provide guidance on the process of mediation itself, and few references to actual practice.[29] In contrast to the very detailed instructions on legal procedure, regarding witnesses, evidence, and other aspects, there is essentially no instruction regarding the mediation process, and few cases are presented as examples. Judges are simply told to seek a compromise solution. Thus, the overall impression, particularly with respect to the practice of mediation and compromise, is that while the ideal is important and valued, implementation was very limited.

Win-win models in the Jewish tradition

The terms and analyses derived from game theory that examine rational interest-based conflict resolution based the transformation from zero-sum to win-win models are modern inventions. But the concept, as noted by Brams,[30] is rooted in Jewish

tradition and sources, and provides further evidence in support of identifying a realist approach.

In his many books and articles on conflict in modern society, Rabbi Jonathan Sacks has expanded on these themes and applied them to conflict situations. In *The Politics of Hope* [London, Random House, 1997], he devotes a full chapter to game theory in exploring social harmony through the concept of "the common good".[31] In a related way, Jewish sources emphasize compromise based on "splitting the difference", as expressed for example in the concept of "one person benefits and the other does not lose".

"שמא מינה: זה נהנה וזה לא חסר - פטור! "

"The defendant derived a benefit and the plaintiff sustained no loss – he is exempt" (Tractate Baba Kama 20b)

In this situation were a squatter to be found living in a lodging that was not for rent – technically and legally, he is required to pay rent to the owner. However, since the room was unused and there was expectation of rent, the squatter did not cause any harm or loss to the landlord. The judge may then conclude that because there was no loss, no compensation is required.

Forgiveness and its limitations

In the modern academic literature on conflict resolution, forgiveness and reconciliation are given a great deal of attention, in large part reflecting the Christian model.[32] In the Jewish tradition, forgiveness and reconciliation between the disputing parties are

encouraged, but, again following the realist framework, the inherent difficulties are recognized. Yom Kippur, the holiest day of the year, does not atone for sins committed between people and this forgiveness must be achieved through personal interaction -- the process is not automatic, and the difficulties are recognized.

The sources teach that the process must work in both directions, and the offended party is encouraged to forgive and reconcile a dispute. (Rambam, Hilchot Teshuva 5:10).

"ואסור לנחבל להיות אכזרי ולא ימחול לו ואין זו דרך זרע ישראל אלא כיון שבקש ממנו החובל ונתחנן לו פעם ראשונה ושניה וידע שהוא שב מחטאו וניחם על רעתו ימחול לו, וכל הממהר למחול הרי הוא משובח ורוח חכמים נוחה הימנו ".

"The injured person, however, is forbidden to be harsh and to withhold forgiveness, for such behavior does not become a descendant of Israel. But once the offender has asked forgiveness and has entreated him a first and a second time, and he knows that the offender has repented of his sin and regrets his evil deed, he should forgive him. Whoever forgives quickly is praiseworthy and his behavior meets with the approval of the Sages."

An individual responsible for causing offense or injury is required to ask forgiveness and seek reconciliation three times. If, after three attempts, the offended party does not forgive, no further attempts are necessary. Here again, we see the acceptance of the darker sides of human nature and the recognition that it is not possible to force or command individuals to reconcile. Jewish law

also lists situations where one is not required to forgive due to the irreparable damage caused. (Code of Law, Orach Haim 706:1)

"עבירות שבין אדם לחבירו אין יום הכיפורים מכפר עד שיפייסנו; אפילו לא הקניטו אלא בדברים, צריך לפייסו; ואם אינו מתפייס בראשונה, יחזור וילך פעם שנייה ושלישית, ובכל פעם יקח עמו שלשה אנשים, ואם אינו מתפייס בשלשה פעמים אינו זקוק לו. מיהו יאמר אחר כך לפני עשרה שבקש ממנו מחילה ; (ואם הוא רבו, צריך לילך לו כמה פעמים עד שיתפייס. הגה: והמוחל לא יהיה אכזרי מלמחול אם לא שמכוון לטובת המבקש מחילה; ואם הוציא עליו שם רע, אינו צריך למחול לו ."

Transgressions between man and G-d. the Day of Atonement does not atone for, until he conciliates his neighbor; even if he only antagonized his friend through words, he must appease him; And if he does not appease him the first time, he must return to him a second and third time. And each time, he must take with him three people. And if he does not appease him by the third time, he does not have to. *(Some would say that after that he must ask for forgiveness before ten people)*. And if it is his teacher, then he must try to appease him as many times as is needed to conciliate. *Note: The injured person should not be harsh and not forgive if the offender sincerely asks for forgiveness; and if he ruined his reputation, he does not have to forgive him.*

The complexities of forgiveness and reconciliation in the Jewish tradition, and the theological and cultural differences in comparison

with Christianity, were highlighted by Simon Weisenthal in his book *The Sunflower.*[33] While Christians speak of forgiveness, even in extreme cases such as the Holocaust, Weisenthal vividly portrays the difficulties for Jewish victims of Nazi atrocities to contemplate this measure. For many of Weisenthal's Jewish correspondents, forgiveness for these crimes would be immoral. Similarly, Schimmel recalls a discussion of forgiveness and reconciliation in South Africa at the end of the apartheid era, quoting a rabbi who declared: ".. you can't sadistically murder 12 innocent people by burning them alive and just say 'I'm sorry!'. One Christian participant in the forum immediately attacked the rabbi for his comment, saying 'That's because you Jews don't know how to forgive.' From the rabbi's perspective, the officer, having ordered the murder of innocents, was beyond human forgiveness."[34]

Conclusion

This "realist" analysis of Jewish approaches to conflict management presentation is far from exhaustive, and for every source cited in this essay, a contradictory source can probably be found. The rich Jewish texts are known to present a multitude of approaches

'שבעים פנים לתורה' there are seventy facets to Torah" [במדבר רבה פר' י"ג, ט"ז] .

The purpose of this essay is to start and to stimulate a wider discussion of Jewish approaches to intercommunal and interpersonal

conflict. The Exile is over, for at least half of the Jewish population, and it is no longer possible to allow conflicts to expand and lead to divisions, without exacting a significant cost to the Jewish people. In Israel, as a sovereign state, as well as in the remaining Diaspora communities, internal disputes and power-struggles that escalate and expand into "senseless hatred" are extremely dangerous. The time for a broadly accepted system of conflict management and resolution is overdue.

At the same time, many of the interpretations, legal rulings and ethical maxims cited in this essay are rarely implemented, both in the religious and secular frameworks. In Israel, while the number of trained mediators is growing and there is a great deal of public discussion regarding conflict management and alternative dispute resolution (ADR), and many organizations offer related service, in practice, applications in real disputes are very limited. The courts have adopted a limited approach, encouraging but rarely requiring mediation in civil disputes, and most Israelis appear to prefer their day in court and demand justice, rather than compromise.

In the modern State of Israel, the danger of fragmentation is clear, and to avoid this situation, there is a need for pragmatic mechanisms for dispute resolution and conflict management, that do not attempt to ignore the very deep social, religious and other conflicts. With a majority culture based on Jewish sources, the

application of a specifically Jewish approach to conflict management would be useful in dealing with societal and interpersonal disputes.

Many sources are available for this purpose, as shown in this essay. From the example of Abraham and Lot, and extending through the Talmud and to modern rabbinical sources, there are numerous examples and detailed justifications for the realist model, based on an understanding of the limitations resulting from human nature, and the long journey necessary for perfection. *Machloket* is a necessary and valuable part of the Jewish tradition, and in dealing with communal conflict, the tradition of dispute *"lishem shamayim"* should not be and cannot be discarded.

The principles of *darchei noam* and the praise for mediation stand in sharp contrast to the history of the Jewish people and of sometimes very difficult dispute. In the realist approach, there is no expectation for the elimination of conflict, but rather the emphasis is on containing its most damaging impacts, and blocking the tendency towards *sinat chinam* – senseless hatred. These goals are complex enough, and any progress in this direction will be welcome.

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[1] George Irani and Nathan Funk 'Rituals of Reconciliation: Arab-Islamic Perspectives', KROC Occasional Paper, # 12, Notre Dame University, Indiana, August 2000; Muhammad Abu-Nimer, "Conflict Resolution in an Islamic Context: Some Conceptual Questions," *Peace and Change*, Vol. 21, No.1 (January 1996), pp. 22-40; George E. Irani. "Islamic Mediation Techniques For Middle East Conflicts", *Middle East Review of International Affairs (MERIA) Journal*, 3:2 (June 1999)

[2] McConnell, J. 1995: *Mindful Mediation: A Handbook for Buddhist Peacemakers*. Bangkok: Buddhist Research Institute

[3] Kevin Avruch and P. Black, "The Culture Question and Conflict Resolution", *Peace and*

Change, Vol. 16, No. 1, January 1991

[4] Michael Walzer. "Universalism and Jewish Values", The Carnegie Council on Ethics and Foreign Policy: New York, 2001.
http://www.cceia.org/resources/publications/morgenthau/114.html

[5] See Gerald Steinberg, "Conflict Prevention and Mediation in the Jewish Tradition", in *Jewish Political Studies Review (*Special Volume on "Jewish Approaches to Conflict Resolution"), Fall 2000 12:1 & 2 Conceptually, this approach is based on the application of core Jewish texts to a modern Jewish political philosophy applicable to the era of restored sovereignty, as developed by Daniel Elazar, Shmuel Sandler, Stuart Cohen and others.

[6] Solomon Schimmel, *Wounds Not Healed by Time*, Oxford U. Press, 2002

[7] Hans Morgenthau, who is considered the father of modern political realism, was heavily influenced by his Jewish background. M. Benjamin Mollov, *Power and Transcendence: Hans J. Morgenthau and the Jewish Experience*, Rowman & Littlefield, 2002

[8] Baruch Bush and Joseph Folger, The Promise of Mediation (Jossey-Bass, 1994)

[9] Leonard L. Riskin, The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students and Lawyers and their Clients, 7 *Harvard Negotiation Law Review* 1-66 (June 2002)

[10] Eliezer Berkowits, "Essential Essays on Judaism", edited by David Hazony, Shalem Press, Jerusalem, 2002; See also Marc Gopin. *Between Eden and Armageddon: The Future of World Religions, Violence, and Peacemaking.* (New York: Oxford University Press, 2000).

[11] Psalms 34:15

[12] See Daniel J. Elazar, "Hobbes Confronts Scripture", Jewish Political Studies Review, special volume on Thomas Hobbes Confronts the Bible", Volume 4, number 2, Fall 1992

[13] Aviezer Ravitzky, "Degamim shel shalom be-hagut ha-yehudit" [Models of Peace in Jewish Thought], in Al Ha'daat v'al hamakom , Keter, Jerusalem, 1991

[14] There is an extensive literature on Jewish approaches to war, and peace and conflict with other peoples and nations. See for example, Aviezer Ravitzky, "Degamim shel shalom be-hagut ha-yehudit" [Models of Peace in Jewish Thought], in Al Ha'daat v'al hamakom , Keter, Jerusalem, 1991; Michael Walzer. "Universalism and Jewish Values", The Carnegie Council on Ethics and Foreign Policy: New York, 2001, Marc Gopin, *Holy War, Holy Peace*, (New York: Oxford University Press, 2002); Joseph E. David and Dr. Avinoam Rosenak, "Judaism and Peace: Between Responsibility and Identity", in *The Role of Religious and Philosophical Traditions in Promoting World Peace: An Asian Perspective*, edited by Imtiyaz Yusuf, The Konrad Adenauer Stiftung, Singapore 2007

[15] Moshe Rosman, "The Role of Non-Jewish Authorities in Resolving Conflicts within Jewish Communities in the Early Modern Period", *Jewish Political Studies Review*, 12: 3-4, 2000

[16] Lewis Kriesberg, Constructive Conflicts (Lanthan, MD: Rowan and Littlefield, 1998); Marc Gopin. *Between Eden and Armageddon: The Future of World Religions, Violence, and Peacemaking.* (New York: Oxford University Press, 2000)

[17] Rabbi Jonathan Sacks, The Torah of Conflict Resolution, Chukat 8th July 2006, 12th Tammuz 5766 (weekly commentary)

[18] Steven John Brams, *Biblical Games : Game Theory and the Hebrew Bible,* Cambridge: MIT Press, 2003

[19] Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, New York: Penguin Books, 1981

[20] For detailed analysis of the contradictions of peace and justice see Rabbi Soloveitchik: Reflections of the Rav vol I. The Torah Way of Justice p.55-57; also Menachem Elon, "Law, Truth and Peace: Three Pillars of the World", *New York University: Journal of International Law and Politics*, Summer 1997, 29:4, pp. 439-472; Menachem Elon "HaDin, HaEmet, Hashalom, V'haPshara: Al Shlosha v'arbah Amudei HaMishpat V'haChevra", (Law, Truth, Peace, and Compromise: On Three and Four Pillars of Law and Society) *Michkari Mishpat*, School of Law, Bar Ilan University, Vol. 14, No. 2, 1998 (special volume on *Peace: Legal and other Aspects, in memory of Yitzchak Rabin*), pp. 269-342.

[21] The Talmud also uses the term "bitzuah", which may refer to a procedure like "splitting the difference". However, the precise meaning of this term remains obscure. Sanhedrin 6b; Steinsaltz, 6b, p. 50)

[22] Hilchot Sanhedrin, Chap 22, cited by Elon, fn. 203; see also Bazak, fn. 17

[23] Bazak, p. 1-2, citing the commentary of Maimonides on the Mishna Ketubot, 10:5

[24] Elon, ftnt. 207; Bazak, fn. 13

[25] Choshen Mishpat, Hilchot Dayanim, Section 12, Halakha 20.

[26] Bazak, ftnt. 41

[27] Bazak, p. 11, ftnts 46-50

[28] A. M. Davis and R. A. Salem, "Dealing with Power Imbalances in the Mediation of Interpersonal Disputes", *Mediation Quarterly*, 1984, pp. 17-26

[29] Menacham Elon, "Compromise", in *The Principles of Jewish Law*, (Jerusalem: Keter, 1975), p. 570-573

[30] Steven John Brams, *Biblical Games : Game Theory and the Hebrew Bible,* Cambridge: MIT Press, 2003

[31] Jonathan Sacks, *The Politics of Hope* London, Random House, 1997, pp. 198-209

[32] Solomon Schimmel, *Wounds Not Healed by Time*, Oxford U. Press, 2002

[33] Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness*, New York: Schocken Books, 1998

[34] Schimmel, p. 8, citing Boteach, pp. 42-3