

# CONFLICT PREVENTION AND MEDIATION IN THE JEWISH TRADITION

Gerald M. Steinberg

*Specific cultural factors are important in framing the approaches to conflict and dispute resolution in particular societies. In the traditional Jewish framework, examples and principles related to conflict resolution are found in biblical sources, the Talmud, and other texts, as well as in commentaries. In particular, the Talmudic emphasis on compromise in the context of monetary disputes, the praise of judges who were able to mediate resolutions instead of issuing legal judgments, and the admonishment to preserve the peace in the community are frequently cited. Leaders, including rabbis, are enjoined to act cautiously and accept compromise in order to prevent conflict and to preserve the peace and welfare of the community.*

*In this essay, Jewish approaches to mediation and conflict resolution will be analyzed using existing academic frameworks, where applicable, in order to identify the key elements. On this basis, the application of these approaches to conflict resolution in Israel and the Jewish world is considered.*

While the practice of mediation and compromise is far from new, the systematic analysis of negotiation, conflict prevention and resolution is relatively new. In the past two decades, the academic study and application of mediation, arbitration and a wide

*Jewish Political Studies Review 12:3-4 (Fall 2000)*

variety of alternative dispute resolution (ADR) techniques have increased significantly. Books and journal articles in the fields of psychology, sociology, political studies, social work and law, (as well as interdisciplinary sources, such as the *Negotiation Journal*), have extended the analytic framework considerably.

In many countries, including Israel, the courts and social welfare systems are attempting to reduce the burden of litigation and the level of conflict in society by expanding the use of mediation and other forms of ADR. Similarly, in international negotiations and ethno-national conflicts, the use of mediation, conflict prevention techniques, single-negotiating texts, etc. is also growing, albeit with uncertain results.

Although some of the theories and techniques are universal, practitioners and theorists also note that particular cultural, social and historical elements are of major importance in conflict resolution processes. Rituals often play a significant role in the transition from confrontation to mutual acceptance, and different societies have developed their own CR (conflict resolution) rituals, techniques and models.<sup>1</sup> In this context, for example, a number of analysts have used Islamic frameworks as the basis for conflict resolution in these communities.<sup>2</sup>

Similarly, mediation and conflict prevention are important elements in the Jewish tradition. The long and rich history of the Jewish people, as reflected in the Bible, Talmud, commentaries, and other sources, as well as religious practice in the *halakhah* (Jewish law), provide the basis for presenting a Jewish approach to conflict prevention and resolution. While the requirements to fear God and fulfill the commandments are absolute, interpretations vary widely, and the principle of “the golden mean” is stressed repeatedly. Extreme views are discouraged, and those who sit in judgment are urged to be moderate (*m’tunim*) in their decisions (Pirkei Avot). Under Jewish law, there are a number of infractions for which the death penalty is prescribed, but in reality, this penalty was rarely invoked. Similarly, the biblical prescription of “an eye for eye” is not taken literally, but rather it is translated into a system of compensation for injuries that result from deliberate violence. The “cities of refuge” that are mandated in the Bible were created as means of preventing blood feuds and the cycle of violence resulting from manslaughter and accidental death.<sup>3</sup>

The striving for “peace” (*shalom*, based on the root *shalem*, meaning complete) is a central element, and the importance of this goal is repeated in daily prayers. Leaders are enjoined to seek and pursue peace (“*bakesh shalom v’rodfehu*”).<sup>4</sup> The injunction to

preserve human lives (“*pikuah nefesh*”) is one of the highest priorities, and takes precedence over almost all other commandments. In addition, the principles of “*mipnei darchei shalom*” (special and often extraordinary practices authorized in order to avoid conflict in the community) and “*shalom bayit*” are given prominent consideration according to the norms of Jewish law.<sup>5</sup> In this context, there are numerous references to the example of Abraham, who, following a conflict over grazing areas involving his relative Lot, chose separation in order to avoid further friction, declaring “if you take the left direction, I will take the right; and if you chose right, I will go left.”<sup>6</sup>

Peaceful debate and the concept of “*mahkloket le’shem shamayim*” (literally, argument in the name of heaven, and, in practice, disagreement for the sake of a worthy cause) are also integral components of Jewish tradition. Pirkei Avot makes the distinction between such disputes, as in the case of the Schools of Hillel and Shammai, who debated the proper interpretation of the Law, and destructive disputes, as in the case of Korakh and his followers, who rebelled against Moses in the desert, and, according to the Midrash, also fought among themselves.<sup>7</sup> The evolution of the Talmud and *halakhah*, as well as subsequent developments was essentially based on this process of constructive, if often intense, dispute.

However, Jewish history has also been characterized by a great deal of destructive and bitter conflict, both domestic and involving other peoples, nations and religions. The biblical text recalls the rebellions in the Sinai desert shortly after the Exodus from Egypt; during the period of the Judges following the conquest of the Land of Israel under Joshua; and after the rule of King Solomon, when the nation split into the Kingdoms of Judea and Israel. The destruction of the Second Temple two thousand years ago, following a Jewish revolt against the rule of Rome and civil war, is often attributed to “*sinat chinam*” — senseless hatred.

During the two thousand years of exile that followed, internal conflict and division continued. In the splits between the Rabinites and Karaites, Maimonidians and their opponents, Hasidim and Mitnagdim, Ashkenazim and Sephardim, rabbis and lay leaders, and in countless other ways, Jews fought other Jews.<sup>8</sup> In many cases, the issues were cast in terms of disputes over religious practice or tradition, but some conflicts were also or primarily the result of power struggles between individuals and particular interests. Not infrequently, factions would appeal for assistance from

outside powers and authorities in the struggle against their internal enemies.<sup>9</sup>

At the same time, and in part precisely as a result of this tendency towards internal conflict, Jewish tradition developed a complex approach to conflict amelioration and negotiation. The section of the Talmud in which the foundations of Jewish legal procedure are expounded and debated (Tractate Sanhedrin) considers the advantages and limitations of mediation over a legal decision finding for one or the other of the parties. Since biblical times, Jewish commentators and legal scholars have debated the implications of the “compromise” decision of Aaron, the High Priest, during the incident of the Golden Calf. In this case, Aaron accepted the popular demand to produce this idol, in order to avoid a greater calamity, in the form of a mass rebellion.<sup>10</sup> While some commentators are critical of this action, Jewish sources often cite this incident as an illustration of the merits of compromise, even when fundamental principles are at stake.<sup>11</sup>

The nature and properties of communal conflict resolution, and of mediation in the context of a civil legal procedure, differ widely across contexts, both in general and in the particular Jewish context, but there are also some important common threads. In the case of Aaron cited above, and in other instances, leaders are enjoined to act cautiously and to accept compromise in order to prevent conflict and to preserve the peace and welfare of the community. Similar themes can be found in the *halakhic* (legal) discussions on the role of compromise (mediation or arbitration) in civil disputes (Talmud, Tractate Sanhedrin, p. 5B).

As will be discussed in greater detail below, judges in civil disputes are encouraged to seek a mediated agreement, in order to prevent a situation in which one of the parties emerges from the process victorious, while the other is defeated. Maimonides and other Jewish legal experts and philosophers note that such processes perpetuate conflict, while compromise and mediation form the basis for reconciliation.<sup>12</sup> This approach, which is linked to the broader principles that reject extremism and urge moderation in all parts of life, can be seen as the essence of the Jewish approach to conflict resolution, both with respect to civil disputes and broader communal conflict.

In this article, Jewish approaches to mediation and conflict resolution will be analyzed using existing academic frameworks, where applicable, in order to identify the key elements. After considering the function of mediation in civil disputes, and the ways in which the Jewish tradition views the role of the leader in preventing communal disputes, we will examine the application of

these techniques in dealing with conflicts in Israel and in the Jewish world.

### Mediation in Civil Legal Procedures

One of the central themes of modern approaches to conflict resolution and the development of alternative dispute resolution techniques is the use of mediation in the context of civil legal procedures. In order to lower the level of conflict in the society (as well reducing the extent of litigation), the legal systems in a number of countries, including Israel, have encouraged the use of mediation, arbitration, and similar procedures.

In Jewish tradition and practice, compromise, based on mediation (in which a third party facilitates agreement between the parties) and arbitration (in which a third party proposes a settlement), is seen as an important means of adjudicating civil disputes involving monetary issues (*dinei mamonot*). The legal code was developed on the core provided in the Torah (the Bible), expanded and developed in the Oral Tradition over many centuries. This legal framework was carried into the diaspora, and was developed further in the many Jewish communities that had largely autonomous systems of civil law.

Tractate Sanhedrin (5b-6a) explores the advantages, as well as limitations of compromise (*p'shara* in Hebrew, and based on the word "*poshram*," for a liquid that is neither hot nor cold) "based on the exercise of the judges' discretion."<sup>13</sup> (This process is translated variously and inconsistently as mediation and/or arbitration,<sup>14</sup> reflecting the fact that these procedures were considered to be very similar). While compromise is generally considered to be preferable to a legal ruling, "embodying righteousness and justice,"<sup>15</sup> some participants in this discussion, as well as later commentators, argue that a court decision is seen to embody "pure justice." From this perspective, mediation is perceived as a deviation.<sup>16</sup>

Those who argue that mediation and compromise is preferable to a full-scale trial also note that strict legal processes in which a court must decide in favor of one of the litigants, and against the others, contributes to bitterness and expansion of the conflict.<sup>17</sup> This is the antithesis of the commandment to seek peace in the community and avoid conflict, as cited above. Indeed, the Jewish sages noted that when the demands of pure justice are met, there is no peace (and when peace is the exclusive consideration, there is no justice).<sup>18</sup> In contrast, compromise is seen as the basis for

preserving the peace of the community.<sup>19</sup> The authoritative code of Jewish Law (the *Shulchan Aruch*, compiled by Rabbi Yosef Karo in the sixteenth century) states that judges are required to open all civil proceedings by proposing a compromise to the litigants for consideration.<sup>20</sup> 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.<sup>21</sup> However, once a judgment has been rendered, mediation is no longer an option.<sup>22</sup>

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.<sup>23</sup> 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).<sup>24</sup> 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.<sup>25</sup> (In a sense this can be compared to the technique of re-balancing power in an uneven mediation process, as found in the modern mediation literature.)<sup>26</sup> In addition, Judge Bazak notes that the emphasis on mediation was also recognized as a means of reducing the burden on the judges and on the litigants, particularly those with limited means.<sup>27</sup>

Despite the emphasis on the desirability of mediation and compromise in civil disputes, the Jewish tradition and sources do not provide much direction regarding the process of mediation.<sup>28</sup> Under Jewish law, adjudication of civil cases (*dinei mamonot*) does not require professional judges, but rather, any three individuals accepted by the litigants and familiar with the law, can sit in judgment. (*Halakhah* places some limits on eligible judges, including relatives, criminals, professional gamblers, and other “undesirables.”) 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.<sup>29</sup>

Jewish tradition also does not provide guidance for mediation parties with different norms or cultural backgrounds. Modern “Western” or “European” mediation techniques focusing on interpersonal communications, or separating interests from positions, are essentially unknown in this context. Legal processes, including mediation, are assumed to take place in a culturally (or religiously) homogenous framework, in which the norms are univer-



sally accepted. These norms may differ to a relatively minor degree from community to community, but, as noted above, in the absence of a common foundation, such as in conflicts between different sects, mediation is not applicable.

### **The Role of Leaders in Conflict Prevention in the Community**

The principle of compromise and the preference for a mediated solution in legal proceedings involving individuals are not directly applicable to societal or communal conflicts. In communal situations, in which sects or groups form around or adopt different interpretations, rituals, leaders, or calendars, compromise and conflict avoidance are often anathema. To make the point bluntly, in a general sense, within the traditional Jewish context, there is no room for heresy or heretics, and rebellion against “the yoke of the commandments” is unacceptable. 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 the face of this blatant assault on the leadership, no compromise or mediated solution was possible. In addition, when dealing with external enemies whose behavior is irreparably immoral and whose hostility is uncompromising, mediation and dialogue are inappropriate, and are considered dangerous.<sup>30</sup>

In other eras and communities, rabbis have excommunicated members of sects that deviate from the normative models of the times and communities. In Eastern Europe, Hasidim and Mitnagdim excommunicated each other, and involved the Gentile authorities in these conflicts.<sup>31</sup>

Nevertheless, in some circumstances, the Jewish tradition does provide for conflict resolution in the context of societal divisions involving religious practice. As will be discussed below, in such circumstances, responsibility for responding to communal conflict, and limiting its impacts resides primarily with the elite leadership. Although the Jewish political tradition includes some democratic principles and processes,<sup>32</sup> particularly with respect to the requirement for popular approval of leaders,<sup>33</sup> until recently,

the community was structured on a highly hierarchical basis, and the guiding role of the leadership was very strong. When leaders of different camps or groups made peace between themselves, or reached a *modus vivendi*, they were usually able to bring along their followers to accept this agreement.

### **Analysis Using Rational Decision Models**

In elite theories of conflict resolution, the first concrete steps are taken by the leaders of a society, who recognize the high costs of continuing and escalating a conflict, both to their own positions, and to the communities that they lead. In some cases, pressures from external events or from internal sources, force opposing leaders of factions, parties, sects, and social groups to seek an end to the conflict, or at least enact measures to contain its costs.

In the academic models, elite decision-makers are considered to be unitary rational actors, at least in conditions of conflict and crisis, meaning that their actions are based on the consideration of different options, and comparison of costs and benefits. In such analyses, the impact of narrow political factors and emotional issues is relatively small, and decisions are made on the basis of rational choice.

In the general conflict resolution literature, game theory is one of the major models for systematic analysis of actions taken by elite decision-makers. Game theory provides a matrix for analyzing relative utilities, scenarios, decisions and outcomes in a conflict situation. For example, the "chicken" model, is based on a zero-sum scenario in which two opponents speed toward each other, either leading to a catastrophic crash (lose-lose), or victory for one and defeat for the other party (win-lose). In a "prisoners' dilemma" game, the actors can choose between defection, in the hope that they will emerge with a better payoff, while risking mutual defection (lose-lose), or can accept a lower payoff, while also reducing the risks of defeat, via a strategy based on cooperation, thereby creating a non-zero-sum or win-win situation.<sup>34</sup>

Game theoretic approaches, in their various forms, are based on the assumption that decisions are made by rational actors, on the basis of clearly defined interests and goals (utilities). Conflict resolution is based on the actors' analyses of interests, costs, and benefits, and their resulting decisions. They develop negotiation strategies and tactics designed to increase the possibilities of a positive outcome, and diminish the potential for a negative result.<sup>35</sup> In this framework, personal and psychological aspects of



conflict resolution, including the development of personal contacts, mutual understanding, empathy, etc. do not play a significant role.

### **Leadership Models of Conflict Resolution in the Jewish Tradition**

As noted, Jewish religious and political leaders, at the national and community level, were vested with the legitimacy and authority to make decisions, and these were then binding on the general public. Rebellion against authority was considered to be rebellion against God, as illustrated in the incidents of the golden calf and Korakh. In both cases, the leaders of the rebellion, as well as their followers, were punished severely.

Ironically, the incident of the golden calf also provides one of the major models of conflict resolution in the Jewish tradition. Jewish commentators have devoted considerable attention to analyzing and debating the case of Aaron, the High Priest, and the temporary leader while his brother Moses was on Mt. Sinai receiving the Torah. This discussion has focused on the ways that Aaron, as a leader, responded to the turmoil and the popular demands for forming a golden calf to serve as an object of worship following the apparent disappearance of Moses. Instead of confronting the rebellion, and preventing this gross violation of the cardinal prohibition against idolatry, Aaron went along and formed the golden calf from the gold that the people had brought.

According to some commentators, Aaron acted wisely, under the circumstances, choosing to avoid a head-on collision, in which he would have probably been killed. According to the commentaries (Midrash), Hur, another leader, did attempt to block the rebellion, and was killed.<sup>36</sup> This would have left the people who had recently left Egypt without a leader, and could have resulted in a civil war, ending the possibility for the eventual fulfillment of the promise of safe arrival in the Land of Israel.

Aaron's response is often cited in Jewish tradition as an example of conflict prevention, and he is remembered, not always approvingly, as someone who generally pursued peace (*"rodef shalom"*). This incident and the role of Aaron are cited in support of calls for compromise and concession over zealotry and divisiveness. (After Moses returned, the perpetrators were punished, but the death of 3,000 individuals was far less costly than an all-out civil war in Moses' absence.)

In analyzing Aaron's decision, or at least the reconstruction of the events according to the commentators, we can discern the clear considerations of a rational actor, weighing and ordering utilities and outcomes. His choices were: 1) confrontation with the group demanding the fabrication of the idol, or 2) acceptance of their demands. Confrontation would be a catastrophe, from which there was no recovery, and is ranked as the most costly and least desirable outcome. The cost of compromise, meaning, in this case, sanctioning idol worship, while considerable, is ranked as "the lesser of the two evils," and on this basis, Aaron makes his decision.

Yuval Cherlow goes beyond this relatively standard reading of the text, arguing that it provides religious or political leaders with a precedent for viewing issues through a complex lens, rather than a simple dichotomy between good and evil, or right and wrong. Rather than formulating a choice between two extreme paths, neither of which was desirable, Aaron sought to navigate between them, recognizing that there was no "good choice." After making his decision, Aaron, setting the standard for a leader acting in the spirit of mediation and compromise, worked to offset the negative impacts of this decision. "For this reason, his task is not completed by ending the conflict and restoring peace. Now, he must act with strength to repair the damage at both ends of the spectrum."<sup>37</sup> After accepting the building of the golden calf, under duress, when the emergency ended, he focused on correcting the conditions that led to this incident in the first place.

The framework provided by elite decision making models and game theory is also applicable, to some degree, in considering the traditional Jewish analysis of the conflicts that led to the destruction of the Second Temple, the loss of sovereignty, and the exile that followed. The Second Temple was destroyed during the revolt against Rome in 70 AD, following a long and bitter sectarian conflict. During this period, radically different religious and ideological sects battled for supremacy in Jerusalem. Rather than reaching a set of compromises that would have allowed the members of these groups to cooperate in preventing the defeat by the Roman army (or in avoiding the hopeless challenge in the first place), the leaders of these sects fought each other in a totally zero-sum situation.<sup>38</sup> The Talmud and later commentators repeatedly emphasize the bitter nature of this all-out conflict, in which compromise and cooperation was impossible, and stress the lessons of this experience. For example:

Rabbi Yehoshuah the son of Levi said, "God said to Israel, you caused the destruction of my house and the exile of my sons.

Ask for peace and I will forgive you...and he who loves peace and chases peace, and greets with peace and answers peace, God gives him an inheritance in the life of this world and the next world.<sup>39</sup>

In the analysis of this tragedy, the emphasis, both in the narrative Talmudic texts and in the interpretative traditions (Midrash), is on the failure of the leadership.<sup>40</sup> The rabbis and members of the social and political elite are criticized not only for their failure to provide leadership towards conflict amelioration, but also for their contribution to its exacerbation. The narrative of the buildup to and actions during the siege of Jerusalem stresses the intense mutual hostility among the leaders of the various factions. The story of "Kamza and Bar Kamza," involving two feuding members of the aristocracy, is frequently used to illustrate the extreme degree of hatred, on a personal level, that led to civil conflict and thus, to the destruction of Jerusalem.<sup>41</sup>

Applying the framework of conflict resolution and game theory in this case, the conclusion is that the leaders did not act rationally in terms of maximizing the self-interests of the groups for which they were responsible. Instead of extending sufficient cooperation necessary to overcome the common enemy, the zero sum approach led to the destruction of the actors. Rather than making rational decisions to maximize the utilities of the people for which they were responsible, the narrow ideologies and political interests of the leaders overwhelmed the interests of the wider society.

This theme of the failure of the leadership during different periods in preventing civil conflict and internal violence, and the catastrophic results of these failures, is repeated and stressed in subsequent Jewish tradition. Most recently, many analysts and leaders warned that the violent disagreements regarding negotiations with the Palestinians and Arab states (the "peace process"), culminating in the assassination of Prime Minister Rabin in 1995, could lead to divisions and civil conflict which would again result in the end of Jewish sovereignty and renewed exile.

### **The Role of the Rabbi in Setting Community Standards and Preventing Conflict**

The special responsibility of the elite and community leaders in preventing communal conflict, and the importance of rational decision-making based on comparing the costs and benefits of a particular course of action, is also stressed in the literature dealing with the role of rabbinical authority. As community leaders

and religious authorities, the rabbis are responsible for interpreting and enforcing the *halakhah*. At the same time, they also have the obligation to prevent divisions and conflict within the community. These two functions are often contradictory, as in cases when a rabbi must consider the problem of “reproaching the community.”

Religious commandments and prohibitions are taken very seriously in the Jewish tradition, and violators are punished. In addition, there is an unambiguous biblical injunction to “rebuke thy neighbor, and not suffer sin on his account” (Leviticus 19:17). For generations, the Rabbis have wrestled with the implications of this requirement, recognizing that strict interpretation would be a source of continuous and intense conflict within the community.

Tropper notes that in many cases, the Jewish tradition permits, and even encourages, restraint in such circumstances. Fundamental texts, such as *Perkei Avot* (“The Ethics of the Fathers”) advise silence, rather than causing or adding to religious or social conflict.<sup>42</sup> In his analysis, Tropper presents a number of cases in which important rabbis, including Rabbi Moshe Feinstein (U.S., twentieth century), Rabbi Isaac Bar Sheshet, (the Ribash North Africa, 1326-1408), Rabbi Yoash Bar Yosef Pinto (Damascus, 1565-1648), and R. Yehezkel Landau and his son R. Shmuel (Eastern Europe, eighteenth century), cited this principle in their decisions in favor of restraint.

In the cases cited by Tropper, while the strict interpretation of Jewish law would have required a change in community practice, the religious leadership decided against a confrontation, since “to cause a dispute because of [a particular forbidden practice] is forbidden.”<sup>43</sup> Rabbi Feinstein rejected a decision by members of an existing community to break away and form a new community free from a particular “unfit” or undesirable practice. “Those who wish to establish for this reason a Minyan [a prayer quorum of ten men] in another place, and think that they have done in this a great deed, are not behaving properly.”<sup>44</sup> In another case dealing with the divisive issue of conversion, Rabbi Feinstein wrote that while he totally rejected the particular form of the conversion in question, “there are many Rabbis in New York who accept such converts, and therefore it does not behoove me to say this is forbidden....I will not declare it prohibited, and the writer shall do as he sees fit, according to his understanding, and according to the pressures.”<sup>45</sup> In similar circumstances, the Rashba (Rabbi Shlomo Ben Aderet, Spain, thirteenth-fourteenth century) cautioned the rabbinical leadership to exercise caution, “lest the fire of his zeal-

ousness for God burn in him and prevent him from seeing the correct and just path.”<sup>46</sup>

To translate these examples and other decisions into the language and framework of modern academic conflict resolution, the rabbinical leadership is enjoined to avoid situations of direct confrontation (lose-lose). Rabbis and other leaders must be able to anticipate the conflict that might result from the decisions, and to act in order to ameliorate or prevent such an outcome. The decisions in such circumstances should be based on rational evaluation of the alternative outcomes, with an emphasis on the avoidance of conflictual outcomes.

### **Coping with Increasing Conflict**

It is difficult to assess the level of conflict in any given period, and therefore, efforts to compare the situation at different times in Jewish history are likely to be quite speculative and subjective. However, the last 100 years have been particularly unstable and conflictual, reflecting the pressures and changes resulting from modernity, emancipation, secularization, anti-Semitism, and Zionism. The divisions and conflict that characterized the end of the Second Temple period two thousand years ago, as analyzed by Baumgarten<sup>47</sup> and others, seem to have many of the characteristics of the modern period, and this comparison is not particularly encouraging. There are a few positive counter-examples, such as the peaceful and even cooperative coexistence of Orthodox and Liberal Jewish communities in Hamburg during the nineteenth and early twentieth centuries,<sup>48</sup> but these are exceptions.

Today, Jewish society, both in Israel and in the diaspora, is divided across many dimensions. In some areas, such as relations between the secular and religious communities, and their leaders, and on questions of war, peace, and territory in the Land of Israel, the divisions in Israel are reinforced and exacerbated by similar divisions in the diaspora. In addition of the impact of modernity, which restricted the role of religion, the rapid growth of secular society, encouraged by an anti-rabbinical Israeli leadership that used the power of the state to promote and impose this ideology, has severely eroded the binding authority of rabbinical leadership. (In the Haredi community, the rabbinical leadership remains dominant, but their authority is limited to their own constituencies. Between leaders of different groups, the levels of competition and conflict are often intense.) Secular and religious Jews lack a common language and are unable to define shared interests.

In the past, as Bacon and Kaplan have noted, the balance of power that had existed between rabbinical and lay leaders encouraged compromise and moderation in terms of religious practice.<sup>49</sup> However, during the past century, the weakening of the lay leadership allowed the religious leaders and, in particular, those whose lives are immersed in religious institutions (*yeshivot*) and who do not serve as community rabbis, to dominate. Under the doctrine of "*daat Torah*," these rabbis contend that by pure study of Torah, with no other worldly interests, they are able to "penetrate to the essence of any issue," including complex political decisions. This has also contributed significantly to polarization, and rejection of moderation and compromise regarding different interpretations of Jewish law and practice. In addition, as Stern notes, the scope of rabbinical authority has been expanded to encompass claims of universal competence and exclusivity.<sup>50</sup>

This combination, accompanied by a similar expansion of the scope and claims of the secular court system in Israel, has led to a fundamental clash over jurisdiction. Within the religious hierarchy, both in Israel and in the diaspora, advocates of compromise and of pluralistic approaches to Jewish law (*halakhah*) represent a minor voice. Differences over ideology and life style, and power struggles between religious and secular communities and their leaders have escalated, and are being described as battles for the future of the Jewish nation and soul. In this context, according to the participants, there is no room for compromise.

Intense conflicts have erupted over issues such as the role of the religious bureaucracy in determining personal status, Sabbath observance in public and of publicly owned and government services. (I.e., should El Al, the state-owned air carrier, be allowed to operate on the Sabbath? Should roads in Jerusalem that are located in religious neighborhoods or other areas be closed on the Sabbath? Should non-kosher meat be displayed in public, when it is considered to be an abomination to religious Jews? Should the state adopt and enforce a prohibition on the sale of leavened bread during the Passover holiday?)

Other areas of intense controversy include the blanket exemptions from military service given to thousands of Haredi citizens, qualifications for conversion to the Jewish religion, and secular memorial rituals that are considered to be based on non-Jewish traditions. In many of these controversies, decisions of the secular court system have often exacerbated conflict.

In this environment, elite-based conflict resolution through rational choice and avoidance of head-on collisions has, in general, not been successful. Internal political pressures within many of



the groups involved, both secular and religious, often increase the level of extremism and rejection of compromise and mediation. There are a few important exceptions, such as the joint efforts of representatives from the conflicting communities in the case of the Bar-Ilan road controversy, the conversion issue (the Neeman Commission), and the question of military service for Haredi students (the Tal Commission) demonstrate some success.

However, these examples of agreement are very narrow in scope, and seem at this stage to be exceptions. In themselves, they demonstrate that compromise and cooperation for the common good is possible, without requiring any of the participants to relinquish their strongly held views.

In a broader sense, very few Israeli leaders, either secular or religious, have emerged that have the stature and authority to bring the participants in a dispute to discuss and develop compromise and mutual acceptance. In his discussion of Aaron and the golden calf, Yuval Cherlow argues that community leaders (rabbis) have a responsibility to play a mediating role in community conflicts. He notes three requirements — that the mediator has a reputation for acting “for the sake of God,” rather than from any personal motive, in order to gain the trust of the participants; that the mediator has a deep link and sympathy with both sides involved in a dispute;<sup>51</sup> and that the mediator is capable, in terms of resources available, of bringing the process to fruition. These qualities seem to be sorely absent in the Israeli environment.

Finally, the combination of changes in the nature of the society and the high level of conflict also highlight the need for new approaches to conflict resolution that do not depend entirely on accommodation between leaders, but involve broader popular participation. In dealing with the major conflicts that characterize the Israeli Jewish polity today, particularly in the realm of secular-religious relations, people-to-people processes are of major importance. The middle level of conflict resolution, involving the molders of public opinion, such as educators and journalists, are a central aspect of this conflict resolution effort. In this context, the principles of conflict resolution and moderation that have been central to the Jewish tradition need to be adapted for use by the other levels, beyond the elite leadership. A number of such dialogues have begun, but the impacts are difficult to discern.

A combined long-term approach is required, based on the principles of moderation and compromise in civil disputes; the concept embodied in the “cities of refuge” where conflict is the result of accidental strife; the leadership exercised by Aaron in the incident of the golden calf; understanding the lessons from the

civil conflict that led to the destruction of the Second Temple; and a realization that the common interest in Jewish survival requires limits on the scope of the ideological conflicts.

## Notes

1. William Zartman, ed., *Traditional Cures for Modern Conflicts: African Conflict Medicine*, (Boulder, CO: Lynne Rienner Publisher, 1999); D.A. Daldin and J.A. Wall, "Third Parties and Culture," *Negotiation Journal*, 14 (1999):381-388; A.E. Barsky, D. Este, D. and D. Collins, "Cultural Competence in Family Mediation," *Mediation Quarterly*, 13 (1996):167-178; see also Allan E. Barsky, "Cross-Cultural Issues in Community Mediation: Perspectives for Israel," in this issue.
2. See, for example, Muhammad Abu-Nimer, "Conflict Resolution in an Islamic Context: Some Conceptual Questions," *Peace and Change*, vol. 21, no. 1 (January 1996):22-40; George E. Irani, "Islamic Mediation Techniques for Middle East Conflicts," *Middle East Review of International Affairs (MERIA) Journal*, 3:2 (June 1999).
3. Numbers, 35; Joshua, 21.
4. Psalms 34:15.
5. Masechet Derech Eretz Zutah, Perek Hashalom.
6. Genesis, Chapter 13, 5-9.
7. "Any dispute which is for the sake of heaven, shall in the end be of lasting worth; but that which is not for the sake of heaven, shall not in the end be of lasting worth. Which dispute was for the sake of heaven? That of Hillel and Shammai. And which was not for the sake of Heaven? That of Korah and his company." *Chapters of the Fathers, With a Commentary by Rabbi Pinhas Kehati*, translated from Hebrew by Rabbi Abraham J. Ehrlich and Avner Tomaschoff (Jerusalem: Department for Torah Education and Culture in the Diaspora, World Zionist Organization, 1984), ch. 5, Mishnah 17, p. 260.
8. See Rosman in this issue.
9. See Rosman and Harel in this issue.
10. According to the commentators, Hur, the son of Miriam, whom Moses appointed as joint leader with Aaron while Moses was on Mount Sinai, confronted the rebellious mob, and was killed. The magnitude of this crime was compounded by Hur's status as a prophet. Aaron was the High Priest, and had he also been killed, the combination of murder of the High Priest and the murder of a prophet (Hur) would have been unforgivable. Louis Ginzberg, *The Legends of the Jews, Vol. III, Moses in the Wilderness*, 5th ed.

- (Philadelphia: Jewish Publication Society of America, 1968), p. 121.
11. *The Talmud, The Steinsaltz Edition*, Volume XV, Tractate Sanhedrin, Part 1 (English translation) (New York: Random House, 1996).
  12. Cited by Yuval Sherlow in this issue.
  13. Steinsaltz, p. 50.
  14. *Ibid.*, p. 47.
  15. Based on the biblical verse: "And David executed judgment and charity to all his people" (II Samuel 8:15).
  16. Rabbi Eliezer, the son of Rabbi Yosi HaG'lilee, Tosefta, Sanhedrin, Chapter 1:6b, cited by Yaakov Bazak, "Yishuv Sichsuchim Baderch shel P'shara B'mishpat Haevri" (Conflict Resolution through Compromise in Jewish Law), in *Sinai*, vol. 71 (Nisan 5732; Spring 1972):4, n. 18 (Hebrew); Steinsaltz, p. 52. For a critical view of this approach, see Menachem Elon, "HaDin, HaEmet, Hashalom, V'haPshara: Al Shlosa V'Arbah Amudei HaMishpat V'haChevra," (Law, Truth, Peace, and Compromise: On Three and Four Pillars of Law and Society) *Michkari Mishpat*, vol. 14, no. 2 (1998):269-342 (Bar-Ilan University School of Law; special volume on "Peace: Legal and Other Aspects," in Memory of Yitzhak Rabin). An earlier version was published as "Law, Truth and Peace: Three Pillars of the World," *New York University Journal of International Law and Politics*, 29:4 (Summer 1997):439-472.
  17. Bazak, p. 1.
  18. Bazak, p. 1-2, citing Tosefta Sanhedrin, 1:3.
  19. Bazak, p. 1-2, citing the commentary of Maimonides on the Mishna Ketubot, 10:5.
  20. Elon, n. 207; Bazak, n. 13.
  21. Choshen Mishpat, Hilchot Dayanim, Section 12, Halakhah 20.
  22. Even in this case, there are exceptions, and the Shulchan Aruch states that an independent mediator (not one of judges in the case) can provide a compromise between the litigants, even after the judgment is rendered. Shulchan Aruch, Hilchot Dayanim, Section 12.
  23. Hilchot Sanhedrin, ch. 22, cited by Elon, n. 203; see also Bazak, n. 17.
  24. Bazak, n. 41.
  25. Bazak, p. 11, notes 46-50.
  26. A.M. Davis and R.A. Salem, "Dealing with Power Imbalances in the Mediation of Interpersonal Disputes," *Mediation Quarterly* (1984): 17-26.
  27. Bazak, n. 9.
  28. Menacham Elon, "Compromise," in *The Principles of Jewish Law*, (Jerusalem: Keter, 1975), pp. 570-573.
  29. 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.

30. Commentators disagree regarding the commandment to obliterate Amalek in post-biblical times. Many assert that Amalek, per se, no longer exists, and this commandment is no longer relevant. Others, however, argue that the requirement is valid with respect to groups that act with the same characteristics of the Amalekites, who attacked the weak stragglers at the end of the camp following the Exodus from Egypt (Deuteronomy 25).
31. Rosman, in this issue.
32. There is a vast literature on Judaism and democracy, reflecting the centrality of this issue in Israel and the Jewish community. See, for example, *Jewish Political Studies Review*, vol. 2, nos. 3-4 (special issue on "Communal Democracy and Liberal Democracy in the Jewish Political Tradition"); and vol. 5, nos. 1-2 (special issue on "Israel as a Jewish State"); Eliezer Schweid, *Democracy and Halakhah* (Lanham: University Press of America, 1994); Shlomo Dov Goitein, "Political Conflict and the Use of Power in the World of the Geniza," in *Kinship and Consent: The Jewish Political Tradition and its Contemporary Uses*, Daniel J. Elazar, ed. (Ramat Gan: Transaction Publishers, 1997), pp. 281-283; Eli Clark, "'After the Majority Shall You Incline': Democratic Theory and Voting Rights in Jewish Law," *The Torah U-Madda Journal* (1999):97-133 (New York, Yeshiva University); Charles Liebman, *Religion, Democracy and Israeli Society* (Reading, PA: Harwood Academic Publishers, 1997).
33. Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity: Jewish Political Organizations from Biblical Times to the Present* (Bloomington: Indiana University Press, 1985).
34. Steven J. Brams and Alan D. Taylor, *The Win-Win Solution: Guaranteeing Fair Shares to Everyone*, (New York: W.W. Norton, 1999); Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).
35. Thomas Schelling, *The Strategy of Conflict* (Cambridge: Harvard University Press, 1960).
36. Sanhedrin 7:A, cited by Cherlow in this issue.
37. Cherlow in this issue.
38. Schwartz in this issue; see also Albert I. Baumgarten, "Ancient Jewish Sectarianism," *Judaism*, no. 188, 47:4 (Fall 1998):387-404.
39. Masechet Derech Eretz Zutah, Perek Hashalom.
40. Similarly, the murder of Gedalliah ben Ahikam after the destruction of the First Temple is also cited as an example of tragic self-destruction that could have been avoided. The Prophet Jeremiah records that after the Babylonian forces breached the walls and destroyed the Temple, a Jewish presence remained, under Gedalliah, who was appointed governor. Gedalliah was assassinated by another faction, and many of his followers were killed. As a result, the exile became complete, and the reconstruction delayed. Uriel Simon, "The Murder of Gedalliah — Anatomy of Self Destruction" (Jeremiah, chs. 40-41), Daf Shavui, Hozaah Meyuchad Litzion Yom

- Hashloshim l'moto shel Rosh HaMemshalah Yitzhak Rabin, z'l (December 1995) (Hebrew) .
41. Masechet Gittin, 55B.
  42. Pirkei Avot, 1:17.
  43. Rabbi Moshe Feinstein, *Letters of Moshe*, Orech Chaim 1:46 (see Tropper in this issue).
  44. *Ibid.*
  45. *Ibid.*
  46. *Ibid.*
  47. Baumgarten, pp. 387-404.
  48. Gillis-Carlebach in this issue.
  49. Gershon Bacon, "Daat Torah v'Chevli Hamashiach: LeSheyalat Ha'ideologiya Shel 'Agudat Yisrael' BiPolin," in *Between Authority and Autonomy in Jewish Tradition*, Avi Sagi and Zeev Safrai, eds. (Tel Aviv: HaKibbutz HaMeuchad, 1997) (Hebrew), reprinted from *Tarbiz*, 52 (5743; 1983):497-508; see also Lawrence Kaplan, "'Daas Torah' A Modern Conception of Rabbinic Authority," in *Rabbinic Authority and Personal Autonomy*, Moshe Sokol, ed. (Northvale, N.J.: Aronson, 1992).
  50. Stern in this issue.
  51. Cherlow (in this issue) posits an example of a mediator between supporters of settlement in the Land of Israel and supporters of peace, arguing that such a person should have a demonstrated commitment to both causes and objectives.