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ADR and the Jewish tradition

Mediation in Judaism — thoughts from a *ba'al teshuvah*

Kath Andersen

There is a well known story from the Talmud which tells how a heathen once came to Shammai and said, 'I will become a proselyte on the condition that you teach me the entire Torah while I stand on one foot.' Shammai chased him away with a builder's measuring stick. When he appeared before Hillel with the same request, Hillel said, 'Whatever is hateful to you, do not do to your neighbour. That is the entire Torah. The rest is commentary; go and learn it.'[1]

I define myself as a religious Jew but do not make any claim to be especially learned. The comments that follow reflect how I have understood certain aspects of Judaism and, more specifically, how Judaism informs and encourages me to use consensual processes as a means of solving disputes.

What I mean by consensual processes are those appropriate dispute resolution processes which have as their core aim the sharing of information and beliefs with a view to facilitate a better understanding of different views and through that derive a creative and consensual solution to an issue. I would put in this category of ADR processes interest based negotiation and mediation. I would go so far as to say that the impact of these processes (if not their aim) is peaceful solutions and that is consistent with the tenements of faith.

Whenever I am asked to define how I understand Judaism I respond that it is a faith built on teaching one how to live a life of holiness. This is interpreted as a life based on respect for oneself, respect for others and respect for everything that G-d has created in our world. The laws of *kashruth* (dietary laws), the laws of *Shabbat* (the Sabbath), and the laws of *loshon hora* (proper speech or rules against gossip) all help an observant Jew to live a more meaningful life, while respecting others by minimising the hurt and destruction that as human beings we both purposefully and inadvertently afflict on others.

The famous story about Hillel quoted above reflects the fundamental belief that we have an obligation to 'get along with others'. And although orthodox Judaism is sometimes seen from the outside as old fashioned, rigid and irrelevant to modern life, much of day to day religious observance is focused on building a heightened awareness of how we interact with others. In doing so it helps one develop a mindset predisposed to interest based problem solving when a conflict arises as well as providing clear guidelines for how to settle a conflict if one is unfortunate to find oneself involved in such circumstances.

At the core of interest based problem solving is the need to understand your own interests and those of another. The tenement of the Rabbi quoted above begins earlier: conflict prevention. The lesson of thinking what is hateful can lead to avoidance of disputes. A well known commentary *(midrash)* states:

> the word dispute is an acronym for plague; wrath; affliction; curse; conclusion; for ultimately, strife brings destruction upon man.[2]

To prolong conflict for personal reasons of ego, greed or revenge is recognised as one of the most abhorrent ways in which a person can behave. While there are many examples of how such behaviour will be punished, for most of us subjugating our inclinations and pride to behave otherwise requires a great deal of discipline and assistance. To that end the detailed instruction that can be found in various volumes of Jewish law and meditation provide extensive discussion on the most appropriate way, both as an individual and as a community, that conflict can be mastered.

In Judaism, interest based processes do not get flagged using the same language as those used by ADR practitioners, but the concept is similar. In the same way as ➢

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conflict management looks to devise strategies for promoting and avoiding conflict, so does the religion. A basic principle of Judaism which parallels this is that one should always look for ways in which one can bring additional peace into the world. As King David said, 'Seek peace and pursue it.' This permeates life in different ways.

There is the idea of *shalom ha'beit* (peace in the home) which focuses on marital and familial harmony. This includes the requirement to consider what will bring peace and harmony within the context of pursuing an individual right or argument. It is extended to give time out, as recommended in the practice of mediation. In the context of *shalom ha' beit*, an example involves the particular conscious efforts one makes to put disputes to one side over Shabbat so that the peace of the day is not disturbed.

There are also numerous other teachings which develop the idea of tolerance and understanding of others and their circumstances — in ADR language, understanding the interests that lie beneath their positions. Similarly, one of the hardest paradigms to shift in a dispute is the temptation to ascribe a negative intention to an action of the other. Practitioners suggest separating impact and intent. The impact on you may be negative but the intention of the other may have been innocent. Judaism mirrors this in a slightly different way. We are encouraged to look always for ways to think well of others rather than focus on reasons to justify their actions in a bad light: 'With righteousness shall you judge your fellow' (Vayikra 19:15), and 'The purpose of what we are commanded in the Torah is to advance compassion, loving-kindness and peace in the world' (Maimonides).

'There are also numerous other teachings which develop the idea of tolerance and understanding of others and their circumstances — in ADR language, understanding the interests that lie beneath their positions.'

While we are encouraged to avoid unnecessary disputes there is an understanding that there are occasions when using formalised legal processes are the only way to right injustice. This is similar to a recognition in dispute resolution that there are a number of processes available, ranging from consensual to determinative processes. The general rule of using processes is to start with the low impact ones, those which are consensual and maintain relationships, before using determinative processes where the control moves to the decision-maker. This is the basis also of the negotiate-mediate-arbitrate paradigm that is used in many courts and tribunals. Similarly, in Judaism if both

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parties in a dispute are aware and consciously strive to create peace then a foundation for identifying common interests is already established. A focus on creating a platform of mutual understanding and outcomes that will bring peace between the disputants is a promising starting point for any interest based process — no matter how complex the matter.

It is understood that while it is sometimes better for the parties involved to resolve a conflict on their own, there are times when it also appropriate to seek the advice of a neutral party, either as an external evaluator to give a neutral non-binding view or as a decision-maker. Dispute resolvers are held in extremely high regard — partly because of the qualities of wisdom, impartiality and determination that the role requires but also because bringing peace is equated to one of holiest acts a person can perform.[3]

Irrespective of who the dispute resolver may be — lawyer, rabbi or even friend — this can have several interesting consequences. The resolver as mediator (like in the civil context) first encourages the parties to look beyond the repetition of the facts as each side understands them to the search for acceptable outcomes and, second, forces each party to acknowledge that their interpretation of events is only one of several possible conclusions and that an objective perspective may indeed be the most appropriate for finding common ground and rebuilding a battered relationship. This process does not undermine the emotions and perspectives of anyone involved while nevertheless creating a practical framework for moving forward.

In those instances where resolving a dispute has escalated to the point where legal recourse appears the only solution, Jewish law refers the matter to a *beit din*, or panel of Jewish rabbis, who act as independent experts or arbitrators. More often than not, these disputes will be of a commercial or monetary nature, although this is not exclusively the case. Certainly the judges have the authority to make a decision binding on both parties but the purely legal function is completely intertwined with a responsibility to find a solution that, wherever possible, will be accepted with equanimity by both parties. It is recognised that the best judgments must not only be correct according to Jewish law but also fit the particular circumstances of the complainants and create a basis for future reconciliation. The skill of a *beit din* lies in the ability of the rabbis involved to allow all parties to be heard, to articulate clearly the position of Jewish law and to shape a solution that has the support of all concerned.

In the words of our sages we are instructed to:

> [s]eek peace for your loved ones and pursue it for your enemies; seek peace where you live and pursue it elsewhere; seek peace with your body and pursue it with your resources; seek peace for yourself and pursue it for others; seek peace today and pursue it tomorrow.[4]

One can see peace as a goal in itself. To achieve this there is the need to create inner balance within the individual and harmony between individuals. This is done within the context of achieving harmony with the laws and teachings of the religion. As with the secular world, the resolution of conflicts is intrinsic to this goal. Similarly, there is also an intellectual framework which seeks to encourage avoidance of conflict through understanding, and then interventions which maximise the role and control of the parties themselves. This makes consensually based ADR interventions congruent with the teachings of Judaism. ●

Kath Anderson is director of Marketing and Special Projects at Resolve Advisors, Sydney. She is currently on a sabbatical working with Medecins Sons Frontiers for a country mission.

Endnotes

1. Extracted from *Judaism*, edited and interpreted by Hertzberg A Simon & Schuster / Touchstone New York 1991 p 167, Talmud Bavli — Shabbat 31A.
2. Extracted from Rabbi Finkelman and Rabbi Berlowitz (eds) *Chofetz Chaim, A Lesson a Day* Mersorah Publications New York 1999 p 193.
3. Talmud Bavli — Sanhedrin 6B.
4. Finkelman and Berlowitz (eds) above note 2 *Vayikra Rabbah* 9:9 p 217.

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