

Viewpoints

Are Jewish and Muslim Aspirations for the Land Compatible?

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Despair regarding the Israeli/Palestinian conflict is now so commonplace that even politicians promise only containment or forced separation, and few hope for peace inside a generation. The grievances that each community – Jews and Muslims – bear the other are deep seated, and grow daily more bitter. These grievances provide a powerful motor for retaliatory violence.

However, I wish to focus first not on the grievances but on the question of the compatibility of Jewish and Muslim aspirations for the Land. This is not because the grievances are without justice or importance. Rather because it may be that neither community can stomach the concessions necessary to redress grievances in the absence of the spur that a vision of peaceful coexistence might provide. In order to play this role, the vision must be credible as a durable resting point from the perspectives of both communities. Therefore it must take account of deeply felt aspirations regarding the Land, including particularly those underpinned by religious lore. Only such a vision is likely to inspire the inter-community trust needed even for a sustained truce, let alone to underpin the wrenching concessions that might yield an eventual true peace.

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A vision that embodies the possibility of lasting peace is so crucially important precisely because it appears so difficult to achieve; existing formulations of the aims of each community are blatantly inconsistent with each other; and despair of a just peace is the consequence. Even to contemplate compromise appears to invite a move towards the other community's goal – which appears incompatible with one's own. It is time to unearth and to reformulate the conflicting conceptual foundations upon which the current insecurity and despair are built, and to attempt to characterise the just and religiously authentic goals of each community in ways that are compatible one with the other.

Aspirations for the Land amongst both communities are fourfold: there are political, religious and personal requirements for the constitutional settlement governing the Land, and there is an historically particular demand for justice. I suggest (in Sections I and II) that the difficulty of formulating a vision of coexistence may be rooted in a failure to recognise the importance of the religious and personal dimensions. If these issues are given appropriate pre-eminence over jejune political concerns, coexistence becomes conceivable. In Section III, I outline a tiered constitutional settlement that could address legitimate personal, communal and religious aspirations of both groups, requiring only political imagination. Finally, in Section IV, I propose research and negotiation towards a framework for adjudicating myriad particular grievances and competing claims for particular plots of land. A framework for justice is a religious requirement and a practical first step towards peaceful coexistence.

I

Increasingly over the last two decades the most passionate advocates of both the Palestinian and the Israeli positions have been fired by religious fervour for the Land, whereas secular Arab/Palestinian nationalism and secular Zionism are both in retreat. This shift signifies a change in the nature of the claims to the land; it has rendered the political deals proposed by the secular authorities increasingly hard to sell to those who care most about the outcome and who are therefore resisting compromise. Understanding what it is about these conventional political proposals that is offensive to the religious and personal perspectives is a first step to developing a more credible vision.

The political conception of the dispute portrays it as between two nationalisms, each claiming an exclusive state extending from the Mediterranean Sea to the River Jordan (if not beyond).

Recall the story of the two women who appeared before Solomon with a newborn, each claiming the child as her own (1 Kings 3). Neither could concede any legitimacy to the claim of the other without undermining her own claim. Thus the Palestinians and Zionists have been treating their claims to the Land: the claim of each is exclusive, and cannot tolerate a rival. The Zionists cannot recognise the deep injustices perpetrated against the Palestinian people – without implicitly endorsing Palestinian claims that Israel has no legitimacy. Palestinians cannot express understanding of the dire suffering and the ancient religious inspiration that drove Jewry back to the Land – without appearing to condone their own displacement.

And so out of despair comes Solomon's solution: to sever the child in two. Yet, whilst Solomon's proposal brought truth and reconciliation, the prospect of division of the Land and separation of the communities only serves to inflame religious and personal passion and violence. For a great number of those who care for the Land, any territorial compromise is anathema, a betrayal of their religion or of their birthright, of settlers who would be displaced or refugees who already are. Even amongst those who would be prepared for territorial compromise to stop the violence, many fear that concessions would only encourage the expansionists of the other camp.¹

Nor is it surprising that the partition solutions proposed are acceptable to neither camp. For the territorial claims of each community are indeed indivisible in two respects. First, as I will discuss further in section II, the historic and religious ties of each community are to all of the Land. Whatever its status in international law, neither the Green Line nor any other ceasefire line has religious or cultural significance. Second, and more powerful for many, the tie of each family is to a particular piece of land – their home or their village. These claims cannot readily be exchanged for those for another plot or a different village, even one elsewhere in the Land. Rendering the Land in two would thus do violence to the deepest religious and personal loyalties of both communities.

Furthermore, the wound from partition would fester. Both communities would be deprived of free (or perhaps any) access to a part of the Land. Those caught on the wrong side of the separating wall would

either be uprooted from their homes or left beleaguered as a distrusted and probably disadvantaged minority. Both would fear the anger of those denied their full claim. And hatred and fear would grow without being tempered (as it has been) by the personal contact occasioned by economic and cultural exchange.²

The prospect of division and separation, which many politicians see as the obvious solution, has failed to provide either community with the hope that alone can inspire compromise and peace. Competing nationalisms have been compromised in the past – in the age when the leaders of the most powerful states could gather in Vienna or Berlin or Versailles or Yalta and determine the citizenship of millions without consultation. However, such arrogance has often betrayed the wishes of the people, and led eventually to bloodshed. Territorial compromises are the product of claims springing from a nationalism that measures success by dynamically-acquired rather than by the satisfaction of people's legitimate aspirations. In any case, to date no formula has proposed a sharing of the Land with which even the Palestinian and Zionist political leadership is satisfied, perhaps because they are too wary of betraying their people.

What is wanted is a vision of co-existence that slays the anger of the violent. To do so, such a vision must recognise rather than ignoring the religious and personal roots of each community's ties to the Land.

II

Nationalism seeks exclusive sovereignty and the power of statehood. Its claim is exclusive like a mother's claim to the motherhood of her child. But it is in principle divisible – territorial compromise leaves each side with a nation state it can call its own a bit of extra land here can compensate for land ceded somewhere else.

By contrast, I suggest that the Jewish and Islamic communities' religious ties to the Land are better compared to a sibling's just claim upon her parents. A sibling's claim is indivisible; one parent is not enough. Yet siblings should also recognise each other as such, each should recognise that all are entitled to access to both parents; no child should claim exclusive access even to one parent. Such too should be the attachment of individuals to their motherland (a notion that pre-dates nationalism): indivisible but not exclusive. No part of the land can be ceded without

trauma; yet so long as it is not partitioned, the religious of both cultures should be prepared to share the Land, as children share their parents.

Is such sharing consistent with Islamic and Jewish aspirations for the Land? I wish to argue that it is, both with respect to the religions' respective attitudes to the Land as a whole (which I discuss in this Section), and with respect to the envisaged rights and obligations of individual Muslims and Jews and their communities (see Section III).

For Islam the objective for the Land is that it should be accepted as an Islamic *waqf*, a part of the territory that should eventually be governed by the revived *khilāfa* (Caliphate).

How the ideal of the *khilāfa* should best be realised in practice is the subject of debate within the Islamic community. Some might hope that a deeper Islamic collective can emerge from the Organisation of Islamic Countries. This might involve supra-national institutions addressing issues of religious law, and social justice. Others reject the current structure of states created by colonial powers, and strive for the establishment of a unified regime under an explicitly Islamic constitution embracing the whole of *Dār al-Islām*. Nevertheless, even this idea must be consistent with the central Islamic principle of *shura* (consultation): government must be sensitive to the wishes of the people.³ In practice, given the area and the population to be governed, a federal structure would surely be required in order to respect this democratic strand of Islamic political thought. Significant powers would have to be reserved for lower tiers of government directly accountable (under the constitution) to the local population.

What should be the Islamic objective, under such a *khilāfa*, for the large Jewish population currently enjoying democratic self-government in historic Palestine? Assume for the moment that issues of the legal entitlement of these people to the land upon which they individually reside have been resolved (see Section IV). Then there would seem no reason in Islamic law why such a group could not participate as an independent community within the broader Islamic structure: Islam explicitly allows for the creation of a contract (a *dhimma*) with a community of fellow monotheists. This constitutional contract would establish the relationship of the Jewish community with the Islamic superstructure of the Caliphate and with the Islamic (and perhaps other) communities within it. Whilst the terms of earlier *dhimma* contracts look unbalanced to modern eyes, a more even-handed contract with a self-governing Jewish community in

the Land could be written. (I return to the contents of such a contract in the next section.)

For Jews, the nature of any current requirement to keep faith with the religious significance of the Land is contested. There is a Talmudic text (*Ketuboth* IIIa) that suggests that a mass resettling of the Land should not be forced; that it should await the coming of the Messiah. Others assert that this restriction was ended when the nations of the world flouted the parallel injunction upon them to limit their oppression of the exiled Jews. The latter interpretation is now in the ascendant. It does not put a positive obligation upon the Jews collectively to return to the Land, but it underpins the obligation upon individuals whose circumstances allow to participate in the richer religious life possible only in the Land.

However, to understand the depth of Jewish attachment to the settlement of the Land (and it is difficult to over-state it), one must turn not to Jewish legal requirements (*halachah*), but to Jewish eschatology. There are today few observant Jews who do not see the hand of G-d in the ingathering following the holocaust, as well as in the associated revival of the Hebrew language and latterly of Jewish learning in the Holy Land, especially Jerusalem. That is not to say that there is any resurgence of Messianism; certainly the vast majority of Jews do not see the ingathering as any licence to attempt to implement the full Messianic vision in advance of the advent of the Messiah. Yet the extraordinary events of the last century strike many Jews as partial fulfilment of the prophecies at the end of Deuteronomy (which foretell that the direst suffering in exile will be followed by a return). Hence, there is visceral resilience against the thought that the Jews should go again into exile. This would seem profound ingratitude. It would also – after the Nazi holocaust – appear to be taking an existential risk.

Nevertheless, to attribute historic significance or even divine purpose to the renewal of Jewish life in the Land is not to endorse either the justice of every step on the Zionist path nor current political structures. It is only to insist on the preservation of a Jewish community in the Land that is both culturally and religiously vibrant and a secure refuge against persecution. It is possible that what Jews properly want is achievable compatibly with the tangible acknowledgement of the significance of the Land to Islam to which Muslims properly aspire.

I have suggested that for the Islamist there should be nothing intrinsically objectionable in the notion of a Jewish community in

Palestine exercising extensive self-government. What is required of such a community is that they should be bound contractually in a satisfactory way to the broader Islamic community. Such a contract might be adequate to Islamic ideals if it comprised three elements:

- a constitution defining the obligations of the temporal administration to citizens and communities of different faiths (see Section III)
- the framing of a judicial system of sufficient power to deliver social and natural justice to individuals within the Palestinian and Jewish communities who have suffered at each others' hands (see Section IV)
- the institution of a supra-national body founded upon principles consistent with Islamic law to monitor the implementation of the constitution. This body, perhaps along the lines of a Supreme Court, could be seen as *khilafa* in embryo – and its remit could be extended to cover relations between citizen and government across *Dār al-Islām*, with membership likewise international.

It is the notion of being bound by a supra-national Supreme Court that is likely to be most problematic, even shocking, for many Zionists. To bring themselves to the conclusion that such an arrangement is tolerably consistent with their aspirations, they might consider four points.

First, the State of Israel is not fully autonomous; it is strategically dependent upon the support of the United States, which in turn is uncomfortably vulnerable to any change to the balance of forces within Washington.

Second, the historical dependence of Israel upon the Western powers, and specifically the United States, was primarily a matter of pragmatism. Had the Ottoman Empire survived, the Jewish settlement in Palestine (the *yishuv*) would have continued to negotiate with it.⁴ This history should not inhibit the Jewish community from now developing a vision of a future of integration into the broader Middle East community just as if the persecuted Jewish community of a century ago had turned to and been welcomed back into the Semitic fold. (Nor need a vision of rapprochement with the Islamic community involve a break with the West; on the contrary, a Judaeo-Islamic accord could help to tame Western Islamophobia.)

Third, the semantics of a pact or *dhimma* should not inhibit agreement. No Jew would object to a peace treaty as such. A contract with the Muslim people is simply a deeper treaty, one that covers not only external

relations but also aspects of internal governance. There are plenty of precedents for treaties covering such issues and for institutions to govern their implementation, notably within the European Union. Note that (and here too there is an EU parallel) the Jewish and Islamic perspective of the nature of the contract, the extent of sovereignty ceded, and the relative status of the signatories might differ harmlessly.

Fourth, common ground between Islam and Judaism is extensive especially in the sphere of social justice. And these common values also find expression in the ethical principles to which secular Israelis and Palestinians also largely subscribe. Following the dictates of their own faiths, religious leaders should be able to take the lead in establishing common principles by which relations between the communities should be governed.

Such an arrangement would only be acceptable to the Jewish community if it could yield security. It would be essential that security remained at least initially as the responsibility of the middle tier of authority, i.e. with the national authorities bound by constitutional contract to the supranational implementation body. Again there is a parallel with the European Union, in which the main military forces are accountable to the national governments, but this fact does not detract from the higher legal authority of the common institutions of the EU.

III

What might be the content of a constitutional contract, a modern *dhimma*, between the Jewish community and Islam? The religious aspirations of both communities with regard to the Land extend to the personal domain. Members of each community aspire to access to all of the Land, not just to visit the holy places, but also to visit public sites in any part of the Land and to settle upon any land legally purchased. This raises two types of issue that would have to be addressed in the envisaged constitutional contract: first, the settlement rights and treatment of Jews by the Islamic community (in the Land and elsewhere) and of Muslims by the Jewish community; and, second, the maintenance of the specific (Jewish, Muslim, or other) character of each community.

There are resources within the religious texts of Islam and of Judaism upon which to build legal safeguards for individuals and communities of other faiths. In particular, both Jewish and Islamic religious texts prescribe

respect under the law and material support for strangers.⁵ (Jews and Muslims in the Land may each represent the other as a "Stranger", but this divergence in perspective need not lead to practical conflict so long as they also accept that they are obligated to respect and support each other personally and by fostering their communal institutions.)

Hence the constitutional contract should incorporate a commitment that would bind each tier of administration to show that respect and concern for individuals that is fundamental to Islam and Judaism alike, and which in turn could bind individuals to the wider community. The rights of Jews in Cairo or Baghdad (if the contract could be extended so far) would be secured alongside those of Muslims in Tel Aviv or Nablus. This approach might also address possible concern that Muslims within *Dār al-Islām* should not be under non-Muslim jurisdiction – for any Muslim living within a Jewish area would be protected by the constitutional contract judicable at a higher tier (by the body that oversees the implementation of the contract).

However, the constitutional contract must balance individual freedom against the legitimate concerns of both the Jewish and Palestinian communities to safeguard their religious and cultural character. Such claims can have merit – but they need to be evaluated dispassionately against an understanding of the nature of the cultural or religious community being preserved. Wherein lies the Jewishness of the Jewish community and what is necessary to its preservation? What is the nature of Palestinian and Islamic identity and what is required to re-enforce and sustain it?

To minimise conflict of aspirations, it is essential to distinguish two levels of communal life: national and local.

There are proper aspirations for a cultural and religious dimension that transcends the local community, currently embodied respectively in the notions of a Jewish or a Palestinian State. It is at this national level that the demand for partition is pressing – to create an entity with an overwhelming majority of one religious or cultural identity. But then the problems arise: how can either state maintain its respective Jewish or Palestinian character without prejudicing the position of the non-Jewish/non-Palestinian communities within it?

Yet it is not obvious that aspirations for a Jewish or Palestinian national life have to be realised in a geographic region that is physically contiguous. An Arab town near Tel Aviv might wish to participate in the cultural and national life of the Palestinian community, just as a Jewish

town near Nablus might wish to be part of national Israeli life. Why not allow the bodies overseeing this cultural life (respectively the Israeli and Palestinian parliaments) to take representatives from member communities across the whole of the Land? Why not give the respective governments jurisdiction only of their own communities and citizens, all across the Land, for matters determinative of cultural character and continuity, including education and the arts, welfare, taxation and planning? Those matters, such as the construction and maintenance of the communications infrastructure, that must practically be administered across a contiguous territorial domain could be administered by cross-communal organisations. (The model might be the cross border institutions already administering various common services of North and South Ireland.)

Ideally security too would be addressed cross-communally. (Again, the cross-communal Northern Ireland Police Service is a precedent.) But until trust is dramatically increased, geographical definition of borders for at least this one purpose will no doubt have to be maintained. The security forces of each government would be obligated (under the *dhimma*) to safeguard both communities and individuals of either national affiliation within their borders.

The general principle of freedom of settlement across the Land for members of either community could thus be established. But such a principle might jeopardise the maintenance of a local cultural or religious identity. The identity of some towns and city districts is enriched by homogeneity of cultural or religious practice – only a culturally homogeneous community can participate in a festival as a group. Hence, some restrictions on local residence might be negotiated in the *dhimma* (perhaps symmetrically). Yet even at the local level, restriction of entry should be justified against the hurt to excluded individuals. If the cultural identity of a part of Jerusalem is characterised by observance of the Sabbath, then it is reasonable for the members of that community to limit entry of those who are unobservant, or at least to insist on its public observance as a condition of entry. However, it would be much harder to justify such simple settlement restriction to a culturally diverse suburb of Tel Aviv.

If such a localised approach is taken to any limitation of settlement rights, two vexed issues can be defused: – the boundary between “Israel” and “Palestine”; and the right of return for both Jews and Palestinians. If the boundary does not determine rights of settlement, its importance to individual Israelis and Palestinians is clearly reduced.

The right of return for Jews and for Palestinians has twofold significance. There are Palestinians and Jews who have particular claims to particular plots from which they have been excluded. This is a matter of natural justice – to be discussed in Section IV. However, refugees and their descendants also partake in the universal claim to a right to settle anywhere in the Land of their forefathers. There is a tension between this right and the aspiration to create and to maintain communities of a distinctive cultural character. But if communal character inheres in particular small communities, and such communities are given authority within limits to control entry to maintain their character, then the maintenance of the character of communities within the Land would be compatible with a global right of return for both Jewish and Palestinian diaspora.

IV

There is one religious requirement that is prior to the achievement of any of the arrangements limned above. It is justice. Without justice the Palestinian community will always represent a threat that the Jewish community can only withstand with force. Yet both Judaism and Islam require the pursuit of justice, and it ought to be central to the religious conception of the Land of both Islamic and Jewish teachers.

The injustice perpetrated by the Jewish community on the Muslim community – by expropriations, by collective punishments, by economic sanctions – is substantial. These injustices are certainly recognised as such by Jewish law. One part of the constitutional contract that might initiate a peace might be the institution of joint Jewish/Islamic courts to address claims for restitution and compensation. Again, there are resources within halacha and sharia to help to pin down the appropriate response to different legal problems. For instance, what should be the claim of a family that left its home under duress, was prevented from returning, and now finds another family has occupied or redeveloped the site? In what circumstances is restitution and in what circumstances is compensation appropriate? Is it relevant that the new family was itself displaced from a home elsewhere in the Middle East (or elsewhere in the World)? In what circumstances is violence and damage to people and property justified by the threat of violence – and where such violence is justified, from whom can harmed bystanders claim compensation? Both the principles and the

process for addressing these disputes would require extensive legal research and intricate negotiation. But there seems no reason why solutions should not be forthcoming if there is a will.

It may be doubted whether Rabbinic leadership would have enthusiasm for this project. After all, the Rabbis have mostly been silent regarding the wrongs done to the Palestinian people. It might be thought that this indicates indifference in Jewish thought to the hurt of others. However, such an attitude would be clearly at odds with the express rulings of Jewish legal authorities since the Middle Ages with respect to the rights and property of law-abiding non-Jews.⁶

The explanation of the silence of the Rabbis must lie elsewhere. First the Rabbinic authorities' ambivalent relationship with the secular Israeli government may have distanced it from taking responsibility for the actions of the latter. Second, it is not long that Jews have had the power to inflict harm, and not long since the religious voice in Israeli society has been strong enough to do good. Religious leadership is inherently conservative and may only now be beginning to understand its power and responsibilities in the changed circumstances. Finally, the violence of the Palestinian campaign and the perception that its aim is the destruction of the Jewish community in the Land has generated concern that any expression of sympathy for the Palestinian cause might encourage militancy.

Yet failure to focus upon the distress of the Palestinian people may now pose the greater threat by feeding the stereotyping of the Jews as heartless oppressors. Certainly courageous Jewish religious leadership, echoing the prophets in their criticism of the injustices perpetrated by secular society, could now bring dramatic change. It would find an ally in a great swathe of Israeli secular society that is already imbued with this part of their religious inheritance, and who would be delighted to find concern for justice for Muslims articulated by their more observant fellow Jews.

However, Muslim religious leadership is also needed. For above all else what inhibits vocal Jewish pursuit of justice for Palestinians are the reports of anti-Jewish propaganda circulating in the Muslim world and embedded in educational texts; and the consequent impression that Muslims intend the expulsion of all Jews from the whole of the Land. Whatever the justice of their claims against the Jewish state, Muslims must explicitly recognise that there is now a community of five million Jews

in the Land. Only when the Jewish community forms an explicit part of the Islamic vision for a just peace are the Jews likely collectively to adopt the cause of justice for the Palestinian people. Hence religious Islamic leadership is needed to clarify the goal of legitimate Muslim protest. Clarity of ultimate vision would also make the terms for a truce (a *hudna*) much easier to negotiate. For the hope that such a truce could lead on to a real peace would become credible.

Here then is a twin starting point for religious leadership to turn the current despair into constructive dialogue. Both communities must renounce the exclusivity of their claim to the Land, whilst continuing to assert the rights of free movement and legal settlement across the whole Land (with restrictions only where justified by local communal requirements) for their people. That should be the common basis for the construction of political institutions that recognise the deeper religious significance of the Land particular to each religion, and the individual rights of all Jews and Palestinians, including those in their respective Diaspora.

And both communities, assured that the very existence of the Jewish and Islamic community within the Land is not under attack, can commit themselves unreservedly to campaigning for justice and to constructing processes and institutions that can deliver it. In particular, the Muslim community can purge itself of the anti-Jewish propaganda and rhetoric that fan the hatred that inspires mutual violence. Whilst the Jewish community can commit itself to right the many wrongs perpetrated by Jews against Muslims in setting up their refuge from oppression.

NOTES

1. Cf. "We acknowledge the fear of communities that there will never be open acceptance by the other of their right to be present in the Holy Land ..." Final communiqué from the meeting of the Permanent Committee for the Implementation of the Alexandria Declaration, Lambeth Palace, 25th October 2002
2. The many reports of both Jews and Muslims renouncing violence upon recognition of the individuality of their potential victims is heartening reassurance that demonisation of the other is still incomplete. They offer confirmation of Emanuel Levinas' dictum: "To be in relation with the other (autrui) face to face is to be unable to kill." ["Is Ontology Fundamental" 1951 reprinted in Emanuel Levinas: *Basic Philosophical Writings*, Ed. Peperzak et al, p.9] But, as Levinas there implies, relationship requires discourse, which separation impedes.

3. See "Democracy in Islamic Political Thought", Azzam Tamimi, <http://www.iipt.com/webpapers/democracy.htm>
4. Of course, it is arguable that the failure of relations between the growing Jewish settlement and the indigenous and neighbouring Muslim populations was a product as much of the resistance of the latter groups as of any pragmatic Jewish decision to rely upon the West. Jewish efforts in the 1920s to build constructive relations with the Palestinian community found little response. Arguably, however, displacement of Arab tenant farmers in deals with absentee landlords had already bred resentment of the immigrants. There were undoubtedly missed opportunities on both sides.
5. Jewish law gives a privileged position amongst strangers to "Gerei Toshav" who abide by the seven Noachide laws (proscribing murder, theft, sexual immorality, idolatry, blasphemy and eating the limb from a live animal, and prescribing the rule of justice) – all of which are incorporated into Islam. There is also a more general duty to deal charitably with all for the sake of peace (Talmud Gittin 60a). There may nevertheless be a case in religious law for granting communal rights within the Land only to the former group.
6. See Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times*. Oxford: Oxford University Press, 1961.