

Abridged Version: A Novel Proposal to Facilitate Negotiations Between Israelis and Palestinians

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September 16, 2011

Negotiations between Palestinians and Israelis have stagnated for the last decade with leadership from both communities seemingly unable to compromise on the most contentious issues. Part of this intransigence is simply posturing. However, it also reflects the radically disparate narratives that Israelis and Palestinians currently embrace describing the origin of the conflict, the historical events that led to the current situation, and their respective connection to the land. Therefore, before any agreement can be achieved, these disparate narratives may need to be reconciled. It may also be necessary to address both the shared fear of becoming a powerless minority under a government dominated by others and the need for any agreement to be viewed as fair, if it is to endure. Because the situation is becoming more precarious daily as Israelis and Palestinians gain access to increasingly lethal weapons, it may be time to try a new approach to negotiation that incorporates all of these considerations.

Considering Fairness During Negotiation. Traditionally, principles of fairness are not explicitly considered during negotiation. Rather, the dynamics of the negotiating process balance the relative value each party assigns to possible outcomes against its perceptions of the respective strength (military, economic, or political) each party enjoys in the current situation; the stronger a party's perceived position, the less they will be forced to compromise and vice versa.

One important limitation to traditional negotiations is that, when the parties to the dispute possess grossly disparate strength, the outcome is seldom viewed as fair. Rather, when the compromises offered by the stronger party are unpalatable, but the status quo is worse, the weaker party may acquiesce even though they will feel coerced. This results in an unresolved undertone that may need to be actively suppressed. In contrast, an enduring peace can be achieved when the vast majority of individuals among both disputing parties view the resolution as fair so that, going forward, the political and social forces in the region serve to stabilize the solution, rather than work against it.

Much about the dynamics of conflict are described by Game Theory and are well understood. Moreover, Behavioral Game Theory suggests that human beings tend to have a strong, innate sense of fairness. Thus, the new approach to negotiation proposed here (which explicitly considers fairness) has a theoretical basis.

Addressing Minority Fears. Israel currently has Palestinian citizens and any new Palestinian State will likely have Jewish citizens. Therefore, the success of any future negotiation may depend heavily on the ability to allay legitimate Israeli and Palestinian fears of either being or becoming a minority.

The fear of being an out group or minority is well founded. Whether a country is ruled by a tyrannical regime or a representative government, out groups and minorities typically fare less

well than their better-connected counterparts. In the case of representative governments, whether this is due to callous or careless disregard for the concerns of minorities, the outcome is frequently the same; minorities become second-class citizens.

Even ignoring the persistent violence, the track records of both the Israelis and the Palestinians suggest lack of adequate consideration of minority concerns heretofore. Unfortunately, examples of successful multicultural societies (in which minorities feel fully enfranchised) are also rare even among the broader community of nations. Although the United States may be among the most successful of multicultural societies, it too has been an evolving process that is unfinished.

Still, conditions for most in the U.S. today illustrate how (at least as an ideal) minorities can be made to feel as equals. It is clear, however, this requires a carefully structured government, unbiased civil codes founded on democratic principles, and active enforcement of laws prohibiting discrimination. It also requires an enlightened citizenry who understand a fundamental principle: *that I can protect my own rights best by protecting those of my neighbor*. Among other things, this means that the practice of religion/culture must ultimately be self-regulating, not a basis for regulating others. For example, the principles of the U.S. Constitution emphasize that ultimate authority should be solely by the consent of the governed, not by the scriptures of any particular "ism", and certainly not by the government.

Given the above, perhaps upfront acknowledgment that such things as the structure of government and civil law, both in the future Israel and in any future Palestinian State, may need to be addressed as part of any agreement.

Reconciling the Disparate Narratives of Israelis and Palestinians. If narratives are to be reconciled, it is important to remember that internal beliefs are not external facts and that (in a functioning society) internal desires need to be tempered by external principles (a legal framework) and available evidence. Thus, unless disputed issues can be made concrete by linking them to external reality, the Israeli-Palestinian conflict will remain a manifestation of an intractable dispute between internal belief systems that, by definition, cannot be reconciled. However, considering fairness as part of negotiations (as proposed) may facilitate externalization of individual judgments about the dispute. This is because, for Israelis and Palestinians to weigh the fairness of any agreement, the legitimacy of land claims may first need to be evaluated against the available evidence within some kind of legal framework.

Unfortunately, the rule of law cannot easily be applied to international disputes because, in contrast to the current situation within many nations, neither a common body of law for adjudicating disputes between nations nor a systematic mechanism of enforcement has been established. Nevertheless, given their respective beliefs about claims to the land, it is entirely possible that Israelis and Palestinians might at least agree on something similar to the following two principles by which the legitimacy of land claims may be judged:

1. descendants inherit the right to inhabit and control land that their ancestors inhabited; and
2. taking of land by force from others imparts neither legitimate title nor a heritable right.

Of course such principles need to be applied uniformly, rather than arbitrarily or capriciously. This means, for example, that legitimacy can neither be assumed to begin at an arbitrary point in time nor be applied preferentially to one group or another based simply on the degree with which present-day beliefs conform to those of ancestors from whom inherited legitimacy might otherwise derive.

Assuming common ground on principles can be found, it is likely that the more difficult hurdle would be to get Palestinians and Israelis to agree on interpretation of the relevant, empirical evidence concerning their respective links to the land. Nevertheless, almost any objective analysis of the available information would at least show that all relevant data are somewhat uncertain. As a consequence, if Israelis and Palestinians could at least accept that the most extreme of positions inculcated into many personal narratives among both groups (that the land rightfully belongs solely to the Israelis or solely to the Palestinians) is untenable, this could change the basis for negotiation from one of competing claims for virtually all of Israel-Palestine to one involving negotiation over the relative number and importance of legitimate claims, respectively, among Israelis and Palestinians. Then, incorporating consideration of fairness in future negotiations and addressing the fears of minorities may be sufficient to facilitate progress toward a full resolution of the conflict; acknowledging at least some legitimacy to all claims and then basing negotiations on concrete standards of performance regarding how each community is to treat the other *going forward* may be a better recipe for peace.

A Path Forward. If the majority of Israelis and Palestinians can be convinced to abandon the most extreme of their respective narratives, then the other issues of the conflict can be renegotiated from a new starting position recognizing that both communities may have a legitimate claim to at least part of the land. This would mean that:

- Hamas would need to recognize Israel's right to exist (because Jews have a legitimate claim to at least some of the land) with no preconditions;
- Israeli leaders would need to acknowledge a need to formally address Palestinian rights of return as part of broader negotiations; and
- Palestinian leaders would need to acknowledge that details concerning implementation of the right of return must be fully negotiated and that compromises will be required.

Given consideration of the other concerns and fears previously identified, it may also be helpful if Palestinian and Israeli leaders acknowledge the need to structure their governments, civil laws, and public institutions so as to fully enfranchise minorities within the borders of their respective states. Moreover, during negotiations:

- Israelis might honor the legitimacy of Palestinian claims to land, the hardship of their losses, and the nature of their fears by:
 - being generous when negotiating the magnitude of compensation and the numbers to be compensated as well as providing active logistical assistance with relocation for Palestinians who chose to return to a new State of Palestine; and

- providing assurances of full citizenship rights, freedoms, and protections to current Palestinian citizens and those (limited number of Palestinians to be determined in negotiation) who choose to return to the State of Israel; and
- Palestinians might honor the legitimacy of Israeli claims to land and the valid fears of Israelis of becoming a minority in their own nation by:
 - agreeing to primarily accept compensation and returning to a new Palestinian State with only limited numbers returning to Israel; and
 - providing assurances of full citizenship rights, freedoms, and protections to any Jewish residents who choose to remain within the final borders of a new Palestinian State.

Both communities should then weigh the fairness of any agreement primarily by the degree with which each party works to assure full enfranchisement of the other going forward.

Hopefully, the approach to negotiation proposed here will facilitate creative thinking toward all of the issues that heretofore presented obstacles to peace. At the same time, it needs to be left up to the Israelis and Palestinians themselves to define the details of whatever agreement they ultimately negotiate.

It is well established that reexamining and modifying one's personal narrative is difficult and can be emotionally wrenching. It also requires critical thinking, a skill that must typically be learned. Thus, strong leadership (who themselves recognize the value of peace) may be required to facilitate the reconciliation process. Unfortunately, leaders almost everywhere sometimes further their own aims by pandering to the widespread myths and emotional fears of their constituency. Perhaps more farsighted community leaders may need to step up to the task of facilitating open exchanges of ideas, if an enduring peace is ever to be achieved.

Finally, perhaps the best solution of all would be to encourage all nations of the world to adopt changes to their government structures, civil codes, and public institutions to encourage the full enfranchisement of all of minorities everywhere. Such changes would mitigate (although not entirely resolve) many disputes around the world in addition to the Israeli-Palestinian conflict. However, such a solution is clearly beyond the control of the Israelis and Palestinians and they need to focus first and foremost on themselves.