

# Religion, Ethics and Public Policy in Israel – Confrontation or Dialogue?

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### A. Preface

During the history of mankind innumerable people have been killed in the name of religion, and religious differences often tear societies apart. Even in those societies in which there is officially a separation of church and state, intense battles are often pitched over public policy because of conflicting religious perceptions of how the public domain should be shaped. The ongoing battle over abortion in the United States is a dramatic example of this kind of confrontation.

Israel is a unique country, the only Jewish state in the world, created after a hiatus of several millennia. It is a relatively young country and is still clarifying its governance. This article will discuss the interactions of religion and medicine in Eretz Yisrael over the past sixty years.

Jews and Judaism, on the one hand, and medicine, on the other, have had an intense “romance” over the centuries. The strong affinity between the two has existed in almost every society and era from Talmudic times until today.

Maimonides was obviously the best known of physician-rabbis in the Middle Ages, but he was not unique; many other rabbinic leaders and scholars were also physicians. There were even some yeshivot, where medicine was the only so-called secular subject taught. It is as if medicine had a special holiness attached to it, and Maimonides (5<sup>th</sup> chapter of *Shmoneh Prokim*) indeed describes the uniqueness of medicine as compared to other occupations.

There have been an extraordinary and disproportionate percentage of Jewish Nobel Prize winners in medicine over the past century. In 1938 the Anschluss resulted in the dismissal of all Jewish members of the faculty of medicine in the University of Vienna. Overnight 70% of the academic staff was fired.<sup>1</sup>

There are many reasons for the close and positive relationship between Judaism and medicine. In large part this is due to the great value placed on human life in the Jewish tradition. Thus the very practice of medicine constitutes the observance of many *mitzvot*.

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<sup>1</sup> Ernst E. *A leading medical school seriously damaged, Vienna 1938*, Ann Intern Med 1995;122:189-192.

Yet here in Israel, with the revival of Jewish self-government, major conflict and confrontation have often characterized the relationship between the medical and rabbinic establishments.

It is instructive to examine several areas of controversy in Israeli public life and some lessons to be learned from the manner in which these controversies were handled.

Hopefully these lessons can help us return to the more positive and constructive interaction between medicine and Judaism and guide the functioning of pluralistic societies.

Most Western societies today are pluralistic, as is Israel. Pluralistic societies must learn how to deal civilly and constructively with strong differences of opinion and values without damaging themselves.

Israel provides a fascinating and perhaps unique experiment in building a new society, trying to adapt an ancient and glorious tradition to modern times – and perhaps the lessons learned may assist other societies as well.

### **B. The Controversy over Autopsies – Abuse of Power**

The first major issue that exploded in Israel was the controversy over autopsies.

Jewish tradition has great regard for human life; the sanctity of human life is valued probably more than in any other religion. But in our tradition respect for the human body after death is of utmost importance as well. Having been the repository of the soul (*tzelem Elohim*) during life, the body must be treated with great respect.

One of the highest acts of *chesed* (loving-kindness) in Judaism is the burial of the *met mitzva*, one who dies without family or friends. Even the high priest – who may not defile himself by contact with a corpse, even when the deceased is a member of his closest family – must bury a *met mitzva*. The exploitation of such a corpse for anatomy dissection (as is customary in many countries) is totally unacceptable in Judaism. Even an executed criminal's body must be treated with utmost respect; indeed the principle of respect for the dead is derived from the biblical admonition to treat the executed criminal's body with dignity. Therefore the idea of dissecting any human body is regarded as a grave sin from several standpoints.

As Jewish society developed in pre-Israeli Palestine, Hadassah Hospital undertook to build the first Jewish medical school. The planners faced the problem of teaching pathology and medicine, for which autopsies were deemed essential. The hospital approached the chief rabbinate to attempt to resolve the dilemma in accord with Jewish law, or Halacha.

After lengthy negotiations, an agreement was reached between Hadassah and the chief rabbinate. Rabbi Isaac Herzog, of blessed memory, was one of the signatories. The agreement, signed January 12, 1944, stated that the rabbis would not oppose autopsies performed under four circumstances:

1. Where the law of the land required it, as in forensic cases.
2. In order to save the life of another patient with a similar condition. This was in accord with the landmark decision of Rabbi Yechezkel Landau (*Noda BiYehudah*).

3. In the case of hereditary diseases, where surviving relatives might benefit.
4. If the cause of death could not be determined without autopsy. Any such difficulty in diagnosis would have to be confirmed by three physicians: the department head, the director of the hospital, and the chairman of the pathology department.

There were also specific guidelines about the respectful treatment of the body and the disposal of the remains by early burial after autopsy.

The rabbis, in essence, granted all the decision-making power to the physicians. Unlike the United States and many other Western countries, where autopsy without consent is a criminal offense and grounds for civil suit, Israel totally disenfranchised the family, the patient, and religious authorities. In the spirit of the reigning Middle European medical paternalism, only the physician's opinion counted.

As a medical student visiting from the U.S. in 1954, I remember how shocked I was by the one-sidedness of the agreement and by physicians' daily violation thereof.

Why did the rabbis consent to this arrangement? They simply were incredibly naïve, trusting doctors to perform autopsies only in truly exceptional cases, in which the rabbis could find some halachic justification.

In 1953 the Knesset, enacted the Anatomy and Pathology Act, which basically incorporated the 1944 agreement into Israeli law.

What actually happened as a result of the law?

Autopsies were performed almost routinely in Israeli hospitals – in some reaching over 90% of deaths. The three required signatures became a mere formality, pre-signed forms were often used, and autopsies were performed over the express and occasionally violent objections of families.

Over the next two decades, the issue of autopsies figured prominently in Israeli life – in hospitals, in the media, in the Knesset, and on the streets. Violence against pathologists and other physicians was not unusual, nor were deathbed vigils and body snatching immediately upon death, and tens of thousands demonstrated in Israel and all over the world.

The rhetoric on both sides of the controversy was hysterical and exaggerated. Hospitals were accused of exporting organs to other countries, and physicians of beginning autopsies even before patients were dead. The medical establishment countered that any change in the law would destroy Israeli medicine.

The controversy escalated over the years. After one particularly violent episode, the Ministry of Health made agreement to autopsy a prerequisite of hospitalization. This totally unreasonable and unethical policy was quickly rescinded, but it indicates the atmosphere then.

At about the same time, some 400 rabbis (including almost every leading rabbinic figure in the country) signed a declaration forbidding autopsies under virtually all circumstances. Rabbi Isser Unterman, then the chief rabbi of Israel, wrote me that "I, too, was forced to sign the declaration."

In 1962 a Ministry of Health commission examined the issue. The commission, composed mainly of physicians, recommended "assumed

consent" but with acquiescence to family or patient objection. Autopsies would not require formal family consent. This compromise, which would have at least given the family some voice in the decision, was rejected outright by the medical establishment. The physicians had the legal power and were not about to relinquish it.

Decades of attempts to negotiate a compromise failed.

In 1977, however, after three decades in power, the Labor Party was replaced by a coalition government. The support of the religious parties was essential for the formation of this coalition.

These parties demanded that the Anatomy and Pathology Law mandate family consent, as in the U.S. and other Western countries. But they also added a few more stringent requirements (a five-hour wait after death, and potential veto power for relatives less close than the consenting one), which made autopsies more difficult than in the U.S. and infinitely more difficult than under the compromise the physicians had rejected several years earlier.

Thus we have an example of what I call abuse of power by one side to create policy in an area of controversy. This abuse backfired, resulting in a much worse situation for the abusers.

### **C. The Controversy over Abortions – Failure of Coercion**

The second relevant controversy is that over abortions. For those familiar with the situation in the U.S., there is little need to describe the polarized views on the subject and the bitter, often violent disputes.

Under the British Mandate prior to the creation of the State of Israel, abortions were prohibited as in most Western countries at the time. Israel inherited the British laws.

But in the initial years of the state, the laws against abortion were rarely enforced. The attorney general's policy was not to prosecute violators, and many abortions were performed.

In the 1970s, the Knesset passed a law that essentially continued the British ban but allowed abortion, if approved by a hospital committee, on one of five conditions:

1. Pregnancy out of wedlock or resulting from incestuous relationships.
2. Age of mother – under 18 or over 40.
3. Danger to the life or health of the mother.
4. To prevent the birth of an infant with serious disability.
5. "Social clause" – familial, economic, or social deprivation.

The religious parties battled vigorously against what they considered a liberal abortion policy, focusing most of their efforts on the so-called social clause. In what was considered a great triumph for their constituency, the clause was abolished.

Yet the number of legal abortions performed did not change significantly. Those previously falling under the social clause were reclassified under the maternal medical clause.

Just under 20,000 legal abortions continue to be performed each year in Israel, in addition to an estimated 10,000–40,000 illegal ones.

This may be considered another example of the failure of coercion to resolve such a sensitive controversy. Had the religious establishment expended its energies in education, more abortions might have been prevented than had been by legislative coercion. Similarly had the physicians been willing to compromise and concentrate on educating the public about the importance of autopsies, there might be many more autopsies performed today than there are as a result of their abuse of power.

Unfortunately politicians and the media in Israel, as in other countries, thrive much more on confrontation than on quiet diplomacy and dialogue.

Here, then, are two examples of abuse of power and/or coercion – by the medical and religious establishments, respectively – and both failed in achieving their aims.

#### **D. Mutual Distrust between Rabbis and Physicians**

But the fallout from these failures extended well beyond the specific issues involved. In the course of the controversies – particularly the first, about autopsies – rabbis and physicians developed a mutual distrust that carried over into other areas, with considerable collateral damage.

For example: All too commonly, members of the ultra-Orthodox community traveled out of the country for the kinds of surgical procedures that could just as well been performed in Israel. They simply did not trust the physicians here – neither their recommendations nor their skills.

Another consequence of the distrust is the low percentage of Israeli citizens who have signed organ donor cards. Israel's percentage is consistently and considerably lower than in most Western countries, in part because of a fear that physicians might cut corners and harvest organs before the donor is really dead. Knowledgeable observers add that some rabbis forbid organ transplantation from brain-dead donors because they mistrust physicians' honesty in determining brain death.

Since the breach between the medical and religious establishments is clearly perceived as damaging and dysfunctional, considerable efforts have been made in recent years to heal the wounds, largely by meetings between leaders of both camps. These efforts have been aided by the numerous voluntary medical organizations in the ultra-Orthodox community. Many leaders of both groups have realized that dialogue is much more constructive than confrontation.

#### **E. Legislation regarding End-of Life-Therapy – Constructive Dialogue**

In contrast to these two areas of confrontation, one potentially explosive issue has been handled in an exemplary manner. I refer to legislation regarding end-of-life therapy.

Medical advances have led to the widespread prolonging of life – and often suffering – far beyond what was once possible. Pressure to legalize active euthanasia has mounted, and succeeded, in several European countries. In Israel too there have been increasing demands in this direction.

After some public debate, Israel's minister of health appointed Rabbi Prof. Avraham Steinberg to head a committee to make legislative recommendations in this sensitive area. The work of this committee stands as a shining example of what can be achieved by respectful dialogue and interaction.

The committee ultimately consisted of fifty-nine members in four subcommittees – medical, philosophic, legal, and halachic. Each subcommittee was headed by an unquestioned authority in its area. The committee represented the broadest spectrum of opinion, encompassing all religious and ethical persuasions. No voices were excluded. The subcommittees met regularly over several years. There were clear ground rules, which included genuine respect for opposing views, civil discourse, and non-involvement of politicians and the media. Perhaps the most important factor in the success of this enterprise was the unusually capable, dedicated, and involved leadership of Prof. Steinberg, who made every effort to reach as much of a consensus as possible.

It was made clear to those who held extreme viewpoints at either end of the spectrum that insistence on imposing their views would result only in a total failure of the group effort, and members learned the value of compromise. Unanimous consent was achieved on almost the entire document, and serious attempts were made to accommodate minority views if they were regarded as critical.

This constructive dialogue hopefully will serve as an example of what can be achieved by mutual respect, even among those with diametrically opposing positions.

In *The Abuse of Casuistry*,<sup>2</sup> Prof. Albert Jonsen, one of America's foremost bioethics scholars, described a similar process that took place between 1975 and 1978 in the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The commission was extraordinarily diverse, and "few onlookers expected [members] to have much basis for agreement either about general moral principles or about the application of these principles to particular problems." Recounting the process by which they reached consensus on most issues, Jonsen falls back on what he calls experience and informed prudence – or what Aristotle called *phronesis*, or practical wisdom – rather than abstract, "universal" principles.

## **F. Reproductive Technology – Cooperation between Rabbis and Physicians**

Another factor that has helped bring the two establishments in Israel closer has been cooperation in reproductive technology. Whereas the Catholic Church and some fundamentalist Protestant groups reject many new reproductive technologies, the prevalent halachic position is much more liberal and quite positive toward them. In addition, Judaism's "pro-life" position also encourages the use of modern medical advances to help infertile couples. It is no accident that Israel has more IVF centers per capita than any country in the world, and this has become fertile ground for rabbinic and medical cooperation. This collaboration has extended as well to the exciting fields of stem cell research and its enormous potential in treating many of the most serious medical illnesses.

Just as confrontation in one area spilled over into others, dialogue in one area has improved the atmosphere in others.

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<sup>2</sup> A. R. Jonsen and S. Toulmin, *The Abuse of Casuistry* (Berkeley: University of California Press, 1988), pp.17–20.

Here in Israel, we hope that the areas of renewed cooperation between rabbis and physicians will continue and expand, until we recover fully from the tragic confrontations that characterized the early days of the state. Hopefully the lessons learned here will apply to other societies as well in dealing with emotionally charged, potentially explosive confrontations between religion and medicine/science. Perhaps here too, led by individuals such as Rabbi Prof. Steinberg, we can fulfill our role as "a light unto the nations" (Isaiah 42:6).