Medical ethics in Israel—bridging religious and secular values

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Introduction

Peter Berger, a sociologist of religion, once stated that “the theme of individual autonomy is perhaps the most important theme in the worldview of modernity”. Although modern bioethics was relatively late in accepting the value of personal autonomy in medical decision making, this autonomy is now universally recognised as the core value of western medical ethics. Principilism, as proposed by Beauchamp and Childress, lists autonomy along with beneficence, non-maleficence, and justice as the four cardinal principles of bioethics.

A large number of western medical organisations have ratified the Charter on Medical Professionalism, which states as one of its cardinal principles that “physicians must be honest with their patients and empower them to make informed decisions about their treatment”. However, some theologians would challenge a bioethics framework that is based on personal autonomy and human rights. Writing from a Jewish perspective, the legal scholar Robert Cover explains: “Every legal culture has its fundamental words. [...] The word ‘rights’ is a highly evocative one for those of us who have grown up in the post-enlightenment secular society of the West. [...] Judaism is, itself, a legal culture of great antiquity. [...] When I am asked to reflect upon Judaism and human rights, therefore, the first thought that comes to mind is that the categories are wrong. I do not mean, of course, that basic ideas of human dignity and worth are not powerfully expressed in the Jewish legal and literary traditions. Rather, I mean that because it is a legal tradition, Judaism has its own categories for expressing through law the worth and dignity of each human being. [...] The principal word in Jewish law, which occupies a place equivalent in evocative force to the American legal system’s ‘rights’, is the word ‘mitzvah’ which literally means commandment but has a general meaning closer to ‘incumbent obligation’.

This duty-based ethic, which differs fundamentally from an ethic that is based on human rights, has obvious implications for bioethics and is highly relevant to controversial issues such as abortion and euthanasia. An ethical framework that is based on human rights and unlimited personal autonomy naturally values highly full disclosure to all patients, a practice that is scrupulously avoided in many traditional societies. Many religious traditions also maintain a healthy scepticism towards the limits of scientific progress and are hesitant about human beings interfering with what they view as God’s exclusive purview. Israel, in its short history, has experienced all of these conflicts. In this Essay, we explore how a multicultural, modern society steeped in monotheistic tradition has navigated through most of these conflicts to create a mostly satisfactory and pragmatic consensus on contemporary bioethical dilemmas. In reaching this consensus, Israeli bioethics had to accommodate both Jewish and Muslim traditions as well as the secular perspective on human rights and dignity.

History

Conflicts between religious and secular groups have had a profound effect on the bioethics discourse in Israel. For example, the opening of the country’s first medical school, Hadassah Medical School, was delayed because of a disagreement about how pathology would be taught in the school and whether autopsies would be permitted, given that both Judaism and Islam have an unfavourable view of this procedure. Doctors who were primarily secular maintained that the information obtained from autopsies made them medically necessary, whereas the clergy objected to this argument—an early example of the tension between scientific progress and religious practice in Israeli bioethics discourse. Eventually, the conflict was resolved with a signed agreement between the hospital staff and the Chief Rabbinate about the circumstances under which autopsies would be permitted, but the acrimonious negotiations led to an atmosphere of mutual distrust between doctors and clergy that lasted decades.

Abortion was prohibited under the British Mandate for Palestine (1922–48), and although this law was adopted when Israel was founded, the policy was to not prosecute and many abortions were performed. In the 1970s, Israel’s Parliament passed a law legalising abortion under the following five conditions: (1) the pregnancy had occurred out of wedlock; (2) the mother was unsuitably young or old; (3) the pregnancy posed potential danger to the mother’s life or health (including potential psychiatric morbidity); (4) the child had suspected congenital fetal abnormalities; or (5) continuing the pregnancy would have negative socioeconomic consequences. Furthermore, every abortion had to be approved by a committee of two doctors and a social worker. In practice, more than 95% of applications are approved by these committees, but many women are still uncomfortable with the interference of a committee with what they feel should be their personal decision. With the appropriate approvals, even third trimester abortions are permitted in Israel. In response to religious and political pressure arising in 1977, the Parliament overturned the fifth clause (negative socioeconomic consequences of continuing the pregnancy), yet the rate of abortion has not fallen, which is perhaps somewhat surprising. Abortions that had previously been allowed under the socioeconomic clause were reclassified as permitted due to potential damage to the mother’s health should the pregnancy continue. Since the change in the law, the issue has been relatively non-contentious, and no major disagreements about abortion have erupted in Israel. A substantial number of illegal abortions are also performed and ignored by the...
legal authorities. The dispute over abortion highlights the conflict between personal autonomy, a fundamental principle of secular bioethics, and religious obligation, which is at the core of many disputes in modern bioethics.

The development of an end-of-life law was driven by cooperation between religious and secular opinion leaders. A 59-member committee was appointed by the Israeli Parliament to draft a law on the care of people who are terminally ill. The committee was chaired by Avraham Steinberg, a highly respected rabbi and academic doctor, and its members included both religious and secular experts who met privately and in secrecy during a 2 year period to formulate a law that was acceptable to all parties. The committee was successful in its work and drafted a law that was eventually passed in the Parliament without marked acrimony. Notwithstanding the committee’s success, many secular bioethicists are still perturbed that the law does not address the ethical dilemmas that arise from the use of some new medical advances to improve fertility. Both religions value childbearing highly in the context of marriage, possibly to in-vitro fertilisation and all citizens are entitled to in-vitro fertilisation for up to two children, despite the high costs, as discussed by Granek and colleagues in this Series. The Israeli Ministry of Health recently formed a committee that was given the task of addressing ethical issues relating to artificial reproduction. The decimation of the European Jewish population as a result of the Holocaust probably also influences this pro-natalist approach. Israel is one of the most liberal countries in its approach to in-vitro fertilisation, and all citizens are entitled to in-vitro fertilisation for up to two children, despite the high costs, as discussed by Granek and colleagues in this Series. The Israeli Ministry of Health recently formed a committee that was given the task of addressing ethical issues relating to artificial reproduction. The committee recommended that paid maternal surrogacy be allowed for those who, for religious reasons, might be unwilling to do so. The committee was successful in its work and drafted a law that was eventually passed in the Parliament without marked acrimony. Notwithstanding the committee’s success, many secular bioethicists are still perturbed that the law does not allow withdrawal of care (e.g. mechanical ventilation) for religious reasons and that the law is fairly restricted in its application to patients who are near the end of life. These concerns reflect the belief, in many religions, in the principle of the sanctity of life, even at the expense of human dignity (despite the fact that many religious authorities maintain that human life is always dignified). The secular opponents strongly argue that personal freedom and autonomy should be the guiding principles in the discussion and that even doctor-assisted suicide is not morally problematic.

Current issues
Unlike the laws of the Catholic Church, Jewish and Muslim religions have very little theological opposition to the use of medical advances to improve fertility. Both religions value childbearing highly in the context of marriage, possibly to in-vitro fertilisation and all citizens are entitled to in-vitro fertilisation for up to two children, despite the high costs, as discussed by Granek and colleagues in this Series. The Israeli Ministry of Health recently formed a committee that was given the task of addressing ethical issues relating to artificial reproduction. The committee recommended that paid maternal surrogacy be allowed for those who, for religious reasons, might be unwilling to do so. The committee was successful in its work and drafted a law that was eventually passed in the Parliament without marked acrimony. Notwithstanding the committee’s success, many secular bioethicists are still perturbed that the law does not allow withdrawal of care (e.g. mechanical ventilation) for religious reasons and that the law is fairly restricted in its application to patients who are near the end of life. These concerns reflect the belief, in many religions, in the principle of the sanctity of life, even at the expense of human dignity (despite the fact that many religious authorities maintain that human life is always dignified). The secular opponents strongly argue that personal freedom and autonomy should be the guiding principles in the discussion and that even doctor-assisted suicide is not morally problematic.

Social responsibilities
The long Jewish and Muslim traditions of mutual assistance and the supreme value of human life led, in the early part of the 20th century, to the creation of various workers’ sick funds, which provided health-care services for workers and served most citizens. The services were funded by dues paid on a regular basis and generally did not require out-of-pocket expenses at times of treatment. In 1994, a law for universal health insurance for all of Israel’s citizens was passed. The preamble to the law stated that the basis for the law was a commitment to justice, equality, and mutual assistance. The universal health insurance programme was based on progressive, income-based contributions collected by the Israeli Government, but the care was to be delivered via one of several sick funds chosen by the citizen. Hospital care is also provided without any out-of-pocket contributions by the patient. Similarly, outpatient care was provided without payment per visit for most types of care. The costs of preventive medicine services, such as immunisations and maternal and child health services, are also covered by the government without patient payment. A government committee representing physicians, ethicists, religious leaders, economists, lawyers, and patient representatives meets yearly to decide which new drugs and technologies will be covered in the basic universal policy. A core task of the committee is deciding how much money from a fixed health-care budget should be spent for treatment versus prevention, and this question is addressed from both secular and religious perspectives.

In 1996, a Patient’s Rights Law gave all patients the right to receive care and emphasised values such as autonomy, confidentiality, and human dignity in
accordance with the highest ethical standards, much in line with those used in most modern western societies. However, the law outlines several unique exceptions that are based on local ethical traditions. For example, the law explicitly specifies the type of information that must be given to a patient before treatment and places great emphasis on informed consent. Nevertheless, the law also permits actual coercion of life-saving treatment upon an otherwise competent patient if the institutional ethics committee, after careful consideration, agrees that the patient would give his or her consent retroactively after treatment. Several court cases have now taken place to impose treatment on a non-consenting individual. In one case, the court mandated force-feeding a hunger-striking prisoner on the basis that in Israeli culture, human life takes precedence over human dignity. The ethics committee of the Israel Medical Association, by contrast, is opposed to force-feeding a hunger-striker because they consider it affront to autonomy and human freedom.

The Patient’s Rights Law also permits the withholding of information from a patient if the ethics committee agrees that such information might harm the patient. The specific details of the law are striking examples of the conflicts between secular bioethics and religious jurisprudence that have become hallmarks of the Israeli discourse. Both aspects of the Patient’s Rights Law reflect a somewhat different level of importance assigned to the now classic four principles of bioethics, which is in contrast to other western societies, where beneficence carries greater importance than personal autonomy.

In 1996, the Parliament passed a law entitled Do not stand idly by your fellow man’s blood, named after a direct quotation of the Biblical admonition. This law mandates that bystanders must render assistance, in so far as they are able, to individuals who are in serious danger. The law thus goes much further than the so-called Good Samaritan laws that are common in the USA and Europe, which protect, but do not mandate, provision of assistance to individuals in distress. Again, this law reflects a culture of mutual assistance and a high value on human life, consistent with some of the ideals of communitarianism.

An interesting and vital societalethical issue, yet one that is discussed too little in the bioethics literature, is the ethics of strikes of health workers. With more than 40 doctor strikes during Israel’s relatively short history, strikes are a frequent phenomenon. Many strikes last only one day or so, but several strikes have lasted weeks and even months. Although emergency care, dialysis, cancer treatment, and other urgent care services are almost invariably provided during doctor strikes, considerable suffering and inconvenience on the part of patients is unavoidable. The overall mortality rates have been shown to decrease during doctor strikes, probably because of the cancellation of elective surgery. The ethics of such strikes has been questioned only minimally, and the strikes have had the overwhelming support of doctors who felt underpaid, with some justification, compared with colleagues in western countries and to other professions in Israeli society. Religiously observant doctors who have consulted rabbinical authorities have generally been advised that such strikes are inconsistent with doctors’ ethical obligations. Doctors at one Israeli hospital that is operated by a religious administration have, on the instruction of their religious leader, not joined any of these strikes. On one occasion, the doctors agreed to arbitration and to refrain from any strike actions for a decade, but because they felt that the employers did not negotiate in good faith, the union reverted to the usual pattern of strikes. One unique event took place several decades ago: after a prolonged, unsuccessful strike, one doctor declared a hunger strike that spread rapidly and eventually included thousands of doctors across the country, serving as a catalyst that brought the labour dispute to a settlement.

Conclusions

Israel is not new to the potential conflicts between secular and religious values. The most effective way to reach consensus on many of the most contentious bioethical issues has been through quiet dialogue between the relevant stakeholders without the attention of the public and media. This experience is relevant to many countries struggling with similar issues. A bioethics framework based on both a secular worldview and a monotheistic tradition assumes that people not only have a basic right to health care but also have responsibilities and obligations towards their fellow citizens.

Declaration of interests

We declare no competing interests.

References