How To Build Consensus on Divisive Issues:

Four Lessons from the Terminally Ill Patient Law

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Suppose you were given the following task: First, pick a highly contentious ethical topic that divides people across the globe, including Israeli society. Then draw up a large, diverse committee empowered to develop a legislative proposal on the controversial subject for the Jewish state. Finally, create a plan to pass the bill with a strong majority in the Knesset.

The very idea sounds preposterous. Given the significant fractions in Israeli society, the necessary consensus building seems impossible to achieve.

Yet this is precisely what happened when the Knesset passed Israel's Terminally Ill Patient Law in 2005. The law was passed after a 59-person (!) committee, headed by Rabbi Professor Avraham Steinberg, debated its provisions for over two years. The committee was composed of rabbis, lawyers, philosophers, and doctors from all streams of Jewish Israeli society along with a few representatives from the Muslim, Christian, and Druze communities. Despite their different worldviews, the committee members were able to bridge these gaps and come to an agreement that they could live with. The success of the Steinberg Committee gives hope for the possibility of reaching agreements on other contentious matters that divide Israeli society. By examining their achievements and failures, we can learn four key lessons on how to address divisive issues.

1. Elected representatives, not the courts, should determine contentious debates

The Steinberg Committee was created in 2000 after a series of high-profile judicial rulings that invoked competing values and trends. In the *Ben Ikar* case, the Supreme Court ruled that doctors must continue to perform invasive procedures on an 8-year-old boy suffering from cerebral palsy and acute kidney failure. Hospitals should err on the side of treatment. The boy died two years later after another 14 surgeries.

Yet in two cases involving adult patients suffering from Lou Gehrig's Disease (ALS), the judges allowed doctors to stop treatment and withdraw the ventilators. One of the patients, former IDF fighter pilot Itai Arad, still had to switch hospitals to find a doctor willing to "pull the plug," an act not clearly permitted under Israeli law. This drew increased public attention as it highlighted the divergence between Israeli hospitals and the practices observed in most Western countries, where ventilators are typically withdrawn.

The *Shefer* case addressed an infant suffering from Tay Sachs disease. Supreme Court Justice Menachem Elon, the chief proponent of integrating Jewish law (*mishpat ha-ivri*) into Israeli law, cited *halachic* sources that permit passive euthanasia but prohibit active mercy-killing. Yet no clear guidelines were provided regarding which types of decisions fall into each category. Elon followed the *psak halacha* of Rabbi Chaim David Halevi, Tel Aviv's Sephardic chief rabbi, to assert that removing a ventilator is a permissible form of passive euthanasia, even if it will lead to the immediate death of the patient. Most Orthodox *poskim*, however, believe that extubation is forbidden if the patient will die quickly afterward.

Finally, in the *Lubetzky* case, involving a 91-year-old woman with severe dementia, the Supreme Court ruled against the woman's son who wanted to remove a feeding tube that had been inserted without his knowledge. He claimed that his mother would never have wanted it; the court, however, argued that there was insufficient proof of her wishes. The judges wisely called upon the Knesset to create clearer legislation regarding the withholding and withdrawal of care as well as protocols for establishing advance directives and health care proxies. The court recognized that judges alone could not resolve these questions. It thus prodded the Knesset to act, understanding that divisive matters should ideally be settled by the democratically elected representatives of the citizens.

2. Build a genuinely representative committee and facilitate open discourse

That said, coalition parties can frequently pass legislation without deep dialogue and conversation. There are backroom deals that prioritize political interests over the genuine needs and values of the entire citizenry. In this circumstance, however, a committee of genuine experts was formed to examine every aspect of the complex issue.

Rabbi Professor Steinberg, the committee chair, is a skilled physician and *talmid chacham* who is highly regarded in both medical and *halachic* circles (full disclosure: Rabbi Steinberg is a member of Ematai's rabbinic advisory committee). He created 4 sub-committees – medical/scientific, legal, ethical/philosophical, and *halachic* – to ensure comprehensive discourse among many of Israel's greatest minds. Some feel the committee could have been better represented with more women and minorities.

Ideologically, however, the full range of opinions were expressed. Committee discussions were kept confidential to reduce outside pressures and ensure a free exchange of ideas. After two years of meetings, the committee was able to draft a proposal.

3. Not everything is an absolute clash between Jewish and democratic values

One of the presumptions in many of the judicial writings was that end-of-life dilemmas presented a clash between Jewish values and liberal democratic values. Judaism, the argument went, promotes the "sanctity of life," which demands that we try to extend life as long as possible with little regard for the wishes of the patient or family. Democracies, by contrast, promote liberty, including the right to make autonomous choices about how to live and die.

This is the type of superficial thinking that unnecessarily magnifies culture clashes. It's true that liberal democracy promotes liberty. But as many of the committee's ethicists recognize, democracies also place limits on liberties when they clash with other values, including the obligation to preserve life. In the case of medical care, most Western countries still place limits on what doctors are forced to provide, such as helping someone die. Liberties are not absolute.

Halacha certainly places a premium on saving lives, even when it entails violating many *mitzvot*. Yet as the committee's rabbis noted, *halacha* also recognizes that we have an obligation to alleviate pain and suffering. Health care is meant to extend living, not to prolong suffering. As the Steipler Gaon taught, the common myth that "whatever one can do to prolong a person's life, even only for *chayei sha'ah* (a short amount of time), must always be done," is not supported in *halachic* literature. Sometimes it is appropriate to forego interventions that will only prolong a life of suffering, and *halacha* recognizes that a patient or their family can make such decisions.

With that nuanced perspective, the committee was able to develop a way for patients to provide advance directives to express their preferences regarding end-of-life care, including the option to decline treatments such as surgeries and radiation. It further asserted that a patient may forgo continuing non-continuous or intermittent treatments when they provide minimal or no benefit. This includes dialysis, chemotherapy, and many IV interventions which, by their nature, are administered in cycles with interruptions between treatments. By not restarting these treatments, we allow for the natural dying process while providing the patient with palliative care to alleviate pain and suffering.

4. Legislation must be updated

The last lesson from the Terminally Ill Law is that no legislative overhaul is going to get everything right on its first try. The law has many accomplishments but did not sufficiently address cases of terminally ill children or circumstances when a person has a terminal diagnosis but is expected to live more than 6 months. The advance directives that were created are helpful but remain overly cumbersome and under-utilized. Most significantly, the law mandated for ventilators to be placed on timers (like Shabbat clocks) so that the central lines would stop providing continuous ventilation unless the timer was reset. This would allow ventilation to fall into the category of "intermittent" treatments which wouldn't require restarting if it was deemed medically unwarranted. While this proposal gained rabbinic endorsement, it has not been implemented because of problems in administering clinical trials for these machines. These are significant shortcomings which must be addressed by the Knesset.

Overall, however, the Steinberg Committee was a genuine success and shows how Israeli society can address disputes that touch upon core Jewish and democratic values. It provides hope that Israelis of all stripes can cooperate and build a better society together.

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