‘PERSPECTIVISM’ IN THE HALAKHIC DEBATE ON ABORTION BETWEEN MOSHE FEINSTEIN AND ELIEZER WALDENBERG – RELATIONS BETWEEN JEWISH MEDICAL ETHICS AND SOCIO-CULTURAL CONTEXTS

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ABSTRACT

The controversy between the Ultra-Orthodox Halakhic decisors Moshe Feinstein (USA) and Eliezer Waldenberg (Israel) is still authoritative for the current debate about abortion in Jewish medical ethics. There are two major ways of explaining the differences: one rather referring to the Halakhic argumentation, the other to the social background of the decisors. This study combines these two approaches to develop a more balanced interpretation: First, the pro-life and pro-choice stances in the general public are described with reference to socio-empirical research. The results of this research hint at the influence of two perspectives, one focusing on the fetus, and the other rather on the woman. The analysis then concentrates on the Halakhic controversy to describe similar differences in this field. Finally, the decisors’ different situations in both states receive closer inspection. This sheds light on how their social situatedness could have affected their decisions. This interdisciplinary approach eventually contributes to a better understanding of both Jewish theology and social research.

I. INTRODUCTION

The question of the moral permissibility of abortion constitutes one of the central and most controversial issues among the modern Halakhic authorities within Jewish medical ethics.¹ Hence, the diametrically opposed positions formulated in the famous dispute between the prominent rabbinical decisors Moshe Feinstein (New York) and Eliezer Waldenberg (Jerusalem), more than thirty years ago, are still authoritative for the Halakhic debate in Ultra-Orthodox Judaism.

In view of the positions on abortion among the general public,² recent socio-empirical research could develop a much deeper understanding of the relevant differences and conflicts. It could particularly show that religion is by far not the only factor influencing views and attitudes towards abortion. The central opposition between “pro-life” and “pro-choice” stances is not simply a direct manifestation of an antagonism between religious and secular...
positions – nor a reflection of some inner-theological controversy. It also points to different perspectives on the issue of abortion, that is, different ways of framing the problem as such and identifying and weighing the morally relevant subjects and aspects.

This paper applies the insights gained from social research to the theological discourse in Ultra-Orthodox Judaism and Jewish medical ethics – and vice versa. Other Jewish groups, which do not consider Halakhic decisions as absolutely binding (like Conservatives, Reform- or Liberal Judaism) are not treated here. Recent literature on the Halakhic debate on abortion generally shows two main directions of analysis: The first one is the more theological direction – an “inner-Halakhic” way of interpreting Ultra-Orthodox responsa, which thoughtfully identifies and seriously deals with the different voices in the Halakhic debate (different poskim/decisors), the Halakhic precedents, and the texts they rely on (responsa as well as other Halakhic texts like the Hebrew Bible, the Mishnah, Talmud, Rashi, Tosafot, and Maimonides “Mishneh Torah.”) Scholars identified with this direction present all the different opinions within the discourse and the ways the Halakhic decisors make their claims based on the texts (e.g. Alan Jotkowitz, David J. Bleich.) The second approach primarily deals with this debate from a social science point of view, rather describing the poskim as social actors influenced by external debates and socio-cultural scripts and forces (e.g. Ronit Irshai) than as representatives of an interpretive school that deals with the inner Halakhic discussion. It is important to note that the distinction between those two directions is merely an analytical one aimed at differentiating between two main tendencies of dealing with the Halakhic text. It does not preclude that both directions exist in one single source.

The aim of this paper is to develop a more comprehensive and balanced understanding of the factors involved in Halakhic decision-making. Following recent approaches, it combines the theological analysis of the Halakhic process of decision-making with the identification of possible external social forces, which may influence this process. To this purpose, this paper will first (1) summarize the state of the art of recent sociological literature on the two main public attitudes towards abortion. Against this background, it will (2) concentrate on the Halakhic discourse in Ultra-Orthodox Judaism itself, in particular on the prominent controversy between Feinstein and Waldenberg. Its analysis will show that the diverging
perspectives implicit in the public positions can also be found in their theological discourse:
There are subtle differences in the ways these Halakhic decisors (poskim) take into account the fetus and women’s needs, and wishes. This claim will be substantiated in three respects: Firstly (a), the main focus of the respective position either rests on the embryo/fetus and its status or on the woman and her status; secondly (b), the reasons the poskim accept for abortion; and, thirdly (c), the different ways the decisors take into account the prenatal conflict as a whole. The final section (3) will formulate hypotheses explaining these findings with reference to the different social situations and discuss the implications for Jewish law and Jewish medical ethics. As the two poskim we refer to, Moshe Feinstein and Eliezer Waldenberg, lived in the U.S. and in Israel while Halakhically discussing the issue of abortion, we will concentrate on the social background in these two countries. The main conclusion will be that in this field, too, not only religious or ideational differences – that is, differences on the level of religious or philosophical doctrine – should be taken into account, but also the influence of different socially situated standpoints and perspectives. On the one hand, this could help to correct oversimplifying notions about the role of religion for public opinion and attitudes in Israeli or US-American society. At the same time, it could also foster a more adequate and profound self-understanding of the religious point of view itself, thus also enriching and advancing the theological expert discourse.

II. SOCIOLOGICAL BACKGROUND: MAIN POSITIONS ON THE ISSUE OF ABORTIONS
Prior to the sociological analysis of the main Halakhic positions, two main stances on the issue of abortion, recognized in the sociological and anthropological literature as well as in the media, have to be distinguished: “pro-life” vs. “pro-choice.” The pro-life position started from the idea of the sanctity of life. Since this position implies that the fetus is a human being – an “unborn-child” that holds the moral status of a person – it claims that abortions are morally equivalent to murder and hence should be criminalized. Consequently, the fetus’ rights are emphasized: the right to be born and to live (even if it suffers from a congenital defect). The Catholic Church supports this approach, for example.

The pro-choice position counters the pro-life argument by asserting women’s rights to control their bodies – women’s rights and autonomy over their fertility and pregnancies (and their
right to abort an unwanted fetus.) This approach is supported, for example, by liberals and parts of the feminist movement according to which pregnancy affects men and women very differently. Thus, (they argue,) it is necessary to provide for safe and legal abortions. From this point of view, legal abortion is perceived as enabling women to control the circumstances under which they have children. As such, the pro-choice approach implies that the embryo/fetus is not an actual person (at least not until viability) but only has the potential of becoming one. Therefore, according to this approach, fetuses do not belong to the same moral category or have the same status as an actual person. As a result, the embryo/fetus should not have rights that override those of the pregnant woman, and hence policy should be aimed at protecting women's rights and ability to control their bodies and pregnancies.

It is important to note, however, that between those two polarized stances, there is a wide spectrum of intermediate positions on the issue of abortion, some of them trying to broaden the definitions of the two positions or even the scope of the abortion debate (as a whole). Faye D. Ginsburg and Kristin Luker, for example, deal with the important role of the abortion conflict in determining women’s position in society, constructing female gender identity, and negotiating the importance and meanings of motherhood and the accepted family type.

Furthermore, prenatal diagnosis (PND) and abortion because of fetal defects represent a unique case, which challenges the conventional pro-life and pro-choice stances: Many of the people who generally relate to the pro-choice position are uneasy with selective abortion because of fetal defects. And many of those who are, in general, members of the pro-life camp nonetheless approve of such abortions. Thus, Erik Parens and Adreinne Asch claim that members of the pro-choice camp agree that a woman's decision to terminate a pregnancy because she does not want to have a baby at a given point in time is morally justified. Such a decision can be morally defended in terms of the woman’s autonomy and rights over her body. However, from a disability critique perspective (according to the “expressivist argument,”) the decision to abort “an otherwise-wanted fetus” because of a fetal defect is “morally different.” Following this argument, while “most abortions reflect a decision not to bring any fetus to term at this time; selective abortions involve a decision not to bring this particular fetus to term because of its traits.” In that sense, PND, which leads to selective
abortions, is “morally suspect because it lets a trait stand in for the whole potential person.” In addition, a variety of scholars have formulated objections against both positions – pro-life and pro-choice. Both have been criticized, for example, for not questioning (or even for both reifying and masking) the capitalist system or white supremacy, as they merely focus on the question of whether or not women should have the choice of abortion, without considering their personal circumstances and the social forces, which shape them. According to this criticism, pregnant women’s positions as well as the choices they make are influenced by economic, political, and social conditions that cannot be ignored.

III. HALAKHICAL BACKGROUND AND ANALYSIS

The analysis now turns to the two major contemporary Halakhic positions in Ultra-Orthodox Judaism regarding the prenatal conflict. It will elucidate how the two tendencies or perspectives underlying the abortion debate can also be identified as influencing Halakhic decisors. In Halakhic questions, Ultra-Orthodox Jews consult Ultra-Orthodox-Jewish decisors (“poskim”), who give binding Halakhic answers. These Halakhic considerations are called “responsa” (“Questions and Answers”, in Hebrew: “She’elot u-Teshuvot”, acronym: “ShuT”). According to Halakhah, it always has to be the Halakhic expert, the posek, who decides according to strict Halakhic rules – and not, for example, the pregnant woman according to her “choice”. That is why there cannot be an official “pro-choice”-stance within the Orthodox worldview. Each decisor (posek) has to examine all relevant sides of the conflict, classify the question, and analyze related normative texts (e.g., the Torah, the Talmudim, and other responsa of preceding decisors). A main rabbinic distinction is made between rules which are based on the scripture (“de-oraita”) and rules set up by rabbis, i.e. mainly by the Sages of the Talmud (“de-rabbanan.”) If a doubtful case falls in the category of a prohibition “de-oraita,” the posek has to decide more strictly in order to avoid transgressing the prohibition; if such a case falls in the category of a prohibition “de-rabbanan,” he might decide more leniently (“sfeka de-oraita le-chumra, sfeka de-rabbanan le-kalla.”) Finally, a decisor is expected to balance all available arguments in order to reach his own decision (“psak halakhah.”)
The dispute focused in this paper involves two of the most prominent contemporary decisors whose decisions regarding abortion are still authoritative for the debate in Jewish medical ethics. Moshe Feinstein (1895-1986) was an Ashkenazi rabbi in Uzda (near Minsk) and Lyuban (former Soviet Union, now Belarus) before he emigrated to the United States in 1936/1937. As the head of a yeshiva in New York, he tried to implant classic Ultra-Orthodox Lithuanian Judaism in the New World.\textsuperscript{18} Eliezer Waldenberg (1915-2006) grew up in a Lithuanian Ashkenazi congregation in Jerusalem and in a Sephardic congregation in Aleppo (Syria). He became an Ashkenazi rabbi and an outstanding posek, especially in the field of medical ethics. He was a judge at the rabbinical court in Tel Aviv/Yafo and – shortly after – in Jerusalem, where he was appointed justice of the rabbinic Supreme Court in 1981.\textsuperscript{19}

Waldenberg defined his position in a basic responsum of 1966/1967, arguing that abortion is not murder and is forbidden only “de-rabbanan.”\textsuperscript{20} The debate with Feinstein began in 1975 when Waldenberg specified in a responsum that in severe cases, like Tay-Sachs disease, abortion might be allowed up to seven months of pregnancy.\textsuperscript{21} In the following year, Feinstein reacted, declaring that abortion is murder, which is strictly forbidden by the scriptures (“de-oraita”), no matter whether the embryo/fetus is legitimate or illegitimate (mamser), healthy or not.\textsuperscript{22} In fact, he had already put forth the main points of his argumentation in a responsum dated May 20, 1935 while he was still living in Lyuban.\textsuperscript{23} Now, he attacked Waldenberg explicitly, stating that he had misunderstood several poskim and criticizing his allegedly non-Halakhic time span of “seven months of pregnancy” for allowing abortions.\textsuperscript{24} Waldenberg then strengthened his position while refuting Feinstein’s assumptions, claiming that Feinstein himself did not deal correctly with Halakhic texts and did not take important responsa into account.\textsuperscript{25} Nevertheless, Feinstein did not depart from his opinion, as can be seen in later texts.\textsuperscript{26}

This article does not provide an in-depth theological analysis of the debate on abortion between Waldenberg and Feinstein.\textsuperscript{27} Pursuing the above mentioned balanced approach to interpreting Halakhic texts, it will rather elucidate one crucial aspect: The different ways in which both decisors are focusing on the woman and/or the embryo/fetus (and/or other family-members) while Halakhically dealing with prenatal conflicts, especially the question of
abortion. These underlying differences might be considered similar to the main demarcation lines between the pro-life and pro-choice movements mentioned above. Of course, the Halakhic system does not revert to these classifications, especially not to the latter one. Nevertheless, the perspective of the expert can vary, focusing rather on the unborn fetus (like Feinstein) or on the woman and her survival, needs, and even emotional concerns (like Waldenberg).

(a) Main focus on the embryo/fetus (Feinstein) or main focus on the pregnant woman (Waldenberg)

Although neither Feinstein nor Waldenberg refer directly to the pro-life or pro-choice movement or broach the issue of their respective “focus” – either primarily on the embryo/fetus or on the pregnant woman – there are several hints in their responsa that reveal different tendencies within their approaches.

Feinstein, for example, strengthens the position of the embryo/fetus, stating:

And since there is the prohibition to murder the embryo/fetus, it is easy [to decide this case]: Although we explicitly know that it will be a child who will live only for a short period of time and will be ill all the time and will never have consciousness and [the parents] will have to take much trouble with him, more [trouble] than will be possible for them [to bear] and even if you can anticipate that his mother will get ill, too – you can’t allow murdering the embryo/fetus, because the prohibition to murder applies to a healthy and complete embryo/fetus as well as to this embryo/fetus.28

Two aspects should be highlighted here: First, Feinstein does not differentiate between a healthy and a severely disabled, nonviable embryo/fetus. According to him, the prohibition of murder is in force for both of them and cannot be nullified. Second, this holds true even if the mother or both parents cannot cope with the situation and get ill themselves. Feinstein considers abortion to be murder prohibited by Torah-law (“de-oraita”) and solely focuses on the fetus, trying to protect its life. According to him, the embryo/fetus “has its place here like the mother herself, although it came later” than her (Ibid., 302). In other words: It does not make a difference that the mother has been here first chronologically because the embryo/fetus came “from heaven” (thus from God) when its mother “got pregnant” – “and this means, that it also has to be here.” (Ibid.) Feinstein uses this argument in order to diminish and re-interpret the widely accepted thesis of Maimonides (Moshe ben Maimon,
called Rambam, 1135-1204, *Mishneh Torah*, Hilkhot Rotzeach 1:9.) He refers to bT Sanhedrin 72b stating that the embryo/fetus might, in certain circumstances during the birth process, be considered as a “pursuer” (“rodef”) and, therefore, must be killed in order to save the mother’s life. (This rule applies until the greater part of the body is born.) Although Feinstein, like all poskim, agrees that this has to be done if there is no other way to save the mother’s life, he holds the embryo/fetus in high esteem because it was created by God and brought into being within the womb (Ibid.). Thus, by means of interpreting the normative text against this background, Feinstein tries to minimize the number of situations, which necessitate abortion in order to protect the life of the embryo/fetus. According to the Halakhic sources, even Feinstein has to admit that only the child whose greater part has already emerged during the birth process may be called “nefesh” – a status that provides maximum protection against murder. However, Feinstein calls an embryo who is forty days old “nefesh ketzat” (“a little bit nefesh,”) thereby granting the unborn as much a right to live as possible.

Waldenberg, on the contrary, considers the prohibition of abortion as “de-rabbanan,” a fact that extends his scope for a solution of prenatal conflicts. Waldenberg is much less concerned about the embryo’s/fetus’ life than Feinstein because – according to his Halakhic analysis – it does not have the status of a “person” (“nefesh”) until the greater part of the body has emerged at birth. Instead, Waldenberg mainly focuses on the woman who might be in a painful and/or delicate position due to her pregnancy. Therefore, according to his psak halakhah, abortion could be approved, even if her life is not in danger: “It is allowed to be involved with aborting an embryo/fetus because it is for the sake of his mother’s cure. And everything to accommodate her need is allowed…Therefore, regarding everything that faithful [Jewish] physicians recommend for the sake of the medical need of the mother – and she herself suffers and feels much suffering due to her pregnancy – in all these instances one should, in my opinion, be lenient.” Waldenberg not only refers to the medical situation described by faithful Jewish physicians (i.e. medical experts). He also explicitly addresses the woman’s suffering and even mentions her feelings, i.e. her very intimate point of view within the prenatal conflict. Although Waldenberg is far from the “pro-choice-approach,” which
cannot be approved within the Halakhic system, he clearly focuses on the pregnant woman and takes sides with her, trying to decide in her best interest. Waldenberg does not only prefer the side of the woman against the embryo/fetus but, in this specific case, also against her husband who – as he described earlier – at first opposed the abortion (Ibid.). (It is important to note, though, that Waldenberg, in a different case, stresses the importance of getting the agreement of the husband before aborting an embryo/fetus.34)

According to Waldenberg, not only medical needs justify abortions. Like other prominent poskim before him, he refers to the sugyah (issue, episode) in bT Arakhin 7a and b: “Like the [sugyah] about the ‘disgrace’, they told in Arakhin about [a woman who was fated to die] who went outside in order to be executed through the law court: One strikes her against her womb so that the child will die because [otherwise] it [would] be a disgrace for her. Indeed because of this necessity related with this [i.e. the situation of disgrace], it is allowed [to abort the embryo/fetus].” (Ibid., 233.) One main point needs to be stressed: The disgrace of the woman (which would occur if the fetus emerged – in a gush of blood – after the pregnant woman has been executed, cf. Rashi’s comment on this sugyah) might be a sufficient reason for putting to death the embryo/fetus first. This, among others, might be the background for another decision in his extensive basic responsum in which Waldenberg is inter alia dealing with the question of whether an adulteress, as well as a woman who has been raped, is allowed to abort the fetus. This question, basically theoretical, sometimes practical, was brought before different notable poskim prior to Waldenberg. Waldenberg first refers to their piskei halakhah and then states himself:

But it is reasonable to say that the main reason to permit a married woman who committed adultery [to abort an embryo/fetus] is what is called the ‘necessity’ of his mother. This means sparing her the embarrassment and shame she would suffer...And this is similar to what ‘Yavetz’ [Jacob Emden, 1697–1776] writes afterwards: Even the abortion of a legitimate child is allowed because of ‘great necessity,’ ‘even if it is not for the sake of pikkuach nefesh [saving the life] of his mother, but [for the sake of] saving her from her evil that causes her great pain’ [cf. Jacob Emden, She’elat Yavetz, Part I, Siman 43] – Because there is no greater necessity and a greater physical or spiritual pain for a mother who repents [her adultery] than the sin of her mamser–child who will stand there vividly against her forever. And it is simple and
understandable that, if we will allow [an abortion] on this basis, one also has to allow [abortion] when the married woman was raped. (Ibid., 237.)

Although Waldenberg harshly criticizes many other arguments and conclusions of Jacob Emden’s above-mentioned responsum, he accepts his approach relying on “great necessity” (Ibid., 236-237.) Waldenberg stresses that a woman who has committed adultery and one who has been raped and thereby conceived is in great need because the child she would give birth to would be an illegitimate child, a so-called “mamser,” for whom special Halakhic rules and restrictions exist. But this is not the reason for Waldenberg’s lenient approach: He does not place emphasis on the mamser-status of the embryo/fetus with its Halakhic implications. Instead, Waldenberg focuses on the pregnant women and the situation they would be in if they would have their babies: All their life, every single day, these illegitimate children would vividly stand against them,” reminding them of the adultery or of the rape, respectively (even if the adulteress has repented her sin long ago.) In order to save the women from this embarrassment, shame and pain’, Waldenberg allows them to abort the embryo/fetus (Ibid., 237.)

At the end of his detailed basic responsum regarding abortion (Tzitz Eliezer, Part 9, Siman 51:3), it becomes clear to what extent Waldenberg is taking the women’s needs and requests into consideration. After he has put forward many reasons for and against abortion, discussing them point-by-point, he comes to the conclusion that abortion might be justified in many cases – thus taking up a lenient position. But then, he alludes to a special incident: A woman, fatally ill with cancer, gets pregnant. The physicians are of the opinion that the pregnancy will shorten her life, but the woman does not care. She wants to give birth in order to have someone to remember her. Waldenberg states:

If we follow the methods that assume that the prohibition of abortion does not border on [the prohibition of] ‘shedding blood’ and all the more so according to them who think that the prohibition is only ‘de-rabbanan’, who accept abortion for the sake of the woman’s health or preventing her suffering – then we would have to [halakhically] decide that one should not listen to the mother’s entreaty. [One should] reject [i.e. abort] the embryo/fetus in favor of prolonging the woman’s life…But when in this specific and tragic case we want to rely on the ‘Beit Shlomo’ [Shlomo (Solomon) Drimmer, approx. 1800-1872] and the ‘Avanei Tzedeq’ [Jekuthiel Judah Teitelbaum, 1808-1883] and on others who are stringent not to abort, even in
case of danger – we could halakhically decide to listen to the woman’s entreaty and be ‘passive’ [Hebrew terminus technicus: shev ve-‘al ta’aseh, literally sit and do nothing, i.e. not to abort] and to trust in heavenly mercy and allow her to complete the pregnancy. (Ibid., 239.)

This reasoning is highly noteworthy. Unlike his generally lenient approach, Waldenberg decides this specific case according to the strict poskim, the so-called “Beit Shlomo” and the “Avanei Tzedeq” and adopts their approach: If the woman is not about to die immediately due to the pregnancy, it is forbidden to abort the embryo/fetus. It is important to note that these strict poskim come to their conclusion as a result of their general approach towards abortion, irrespective of the attitude of the pregnant woman in this specific case. Waldenberg, on the contrary, is concerned with the “the woman’s entreaty.” He seems to reflect not only on the physical but also on the emotional impact his Halakhic decision has on the pregnant woman. Therefore, he does not decide against her will that she must abort. On the contrary, he is even willing to rely on those rabbis who have a markedly strict approach towards abortion – which he usually opposes – in order to listen to the woman and to Halakhically decide according to her request. This might be interpreted as Waldenberg’s attempt to strengthen the “choice” of the pregnant woman – without crossing the above mentioned strict lines of Halakhic decision-making.

(b) Implications of the different foci for Halakhic decision-making: Acceptable reasons for abortions

So far, it has become apparent that Feinstein and Waldenberg have opposing perspectives regarding prenatal conflicts: The former is mainly focusing on the embryo/fetus, while the latter is mainly taking into account the pregnant woman. The following section will have a closer look at the implications these different foci have for their respective Halakhic decision-making, highlighting their impact on the reasons the two poskim accept in order to allow an abortion. Feinstein, for example, while mainly focusing on the embryo/fetus, states:

For this reason I taught that even if the physicians say there is a concern that perhaps the mother might die if one would not kill the embryo/fetus (…) it will be forbidden to kill the embryo/fetus until the evaluation of the physicians that the mother will die is almost substantiated, nearly certain. [I taught this] because [in order to kill the embryo/fetus] he has to be considered a ‘pursuer’. And it is required that it is nearly certain that he is a ‘pursuer’.35…If

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According to Feinstein, the only acceptable reason for an abortion is the woman’s certain death due to the pregnancy. In this case, the embryo/fetus is considered to be a “pursuer” ("rodef") that must be stopped, even by killing it, in order to save its mother’s life. The way Feinstein argues seems as if he was not only focusing on the embryo/fetus but also taking sides with it, according to the maxim: “in dubio pro reo.” In case of doubt, one should rather wait and see what will happen during the birth-process (and this means: whether the woman is really about to die) than abort the embryo/fetus.

Waldenberg, on the contrary, permits abortions for manifold reasons, not only because of the impending death of the pregnant woman. He even finds some reasons for abortion in the embryo/fetus itself: “Therefore,… if there is a founded concern that the child that will be born will turn out [to be] disabled or suffering, you have to support the permission to carry out abortions…” Unlike Feinstein, Waldenberg trusts the medical examination of the physicians in this case. According to him, a “founded concern” is sufficient in order to allow an abortion. Thus, Waldenberg indirectly takes sides with the woman, allowing her a wider range of options, abortion included, in case the embryo/fetus turns out to be disabled or suffering.

Based on the comparison, the implications of the different foci become obvious: While Feinstein is focusing on the embryo/fetus, he tries to protect it as far as possible and therefore prohibits abortions. The binding Halakhic limitation here (a line that Feinstein is not crossing) is the pursuer (“rodef”) case: Thus, he solely accepts a certain danger to the mothers’ life as a reason for abortion. Waldenberg, on the contrary, is focusing on the pregnant woman: By accepting even a founded concern that the embryo/fetus will turn out to be disabled or suffering as a reason for abortion – in opposition to Feinstein’s requirement of a certain danger that the mother will die – he approves of a wider range of options, including abortion, if the woman is begging him to do so.

(c) Different levels of taking into account the prenatal conflict as a whole

This section will have a closer look at the different levels on which Moshe Feinstein and Eliezer Waldenberg take into account the situation of a prenatal conflict as a whole, including
other family members like the father or other siblings and their psychological and physical suffering. According to Feinstein, an abortion is justified solely in case of immediate danger to the woman’s life because of the special rules for a “pursuer” (“rodef”) in Jewish law (see above). This excludes saving others besides her. This is why Feinstein is not taking into account other family members: “If it happened by chance that killing a certain woman’s embryo/fetus could save another person whom he does not pursue, it would be forbidden to kill him…In other words: Only for [the rescue of] his mother [could an abortion be approved], but not if another person was, by chance, saved through killing him – this would be forbidden.”

In comparison with Waldenberg’s approach, this statement might become even clearer: Waldenberg approvingly refers to a response of Benei Yehudah (Yehudah Ayyash, died 1760): “Because the prohibition [of abortion] is only ‘de-rabbanan:’ If a woman is getting pregnant during the days she is breast-feeding, she is allowed to do whatever she can in order to abort because you have to be concerned about the newborn child [who is being breast-fed],” The underlying assumption for this rule is that a new pregnancy could endanger the newborn child – maybe because the pregnant mother may not be able to breast-feed. Thus, unlike Feinstein, Waldenberg is taking into account other siblings and their needs besides the direct threat to the mother’s life, which will be decided according to the law for a pursuer. By this, he leaves a door open for his decision to allow the woman to abort the embryo/fetus while she is breastfeeding.

Waldenberg also pays attention to the psychological and physical needs of the mother and her husband – as well as those of the embryo/fetus:

That being the case [that it is allowed to abort because of ‘great necessity’ as stated above], imagine: Could there be a bigger need, sadness, and pain than that which we talked about [i.e. a child with Tay-Sachs disease] that such a creature would cause its mother? That says ‘suffering and pain’ and its death is certain within a few years and the eyes of the parents see [this] in despair because they are not able to save it? …And also the amount of suffering and pain of the newborn itself who…has every disability. Therefore, you have to allow abortion according to halakhah because of ‘great necessity’ and because of pain and suffering; this seems to be the most classic case you have [in order to] allow [abortion]. And it doesn’t matter in which way the pain and suffering is expressed/manifested, physical or psychological. And psychological
suffering and pain are many times bigger and [more] painful than physical suffering...And especially regarding those cases at hand: Many times they [i.e. psychological suffering and pain] will lead to severe physical attacks like an attack of the heart, the gall, the kidneys, insanity and the like from the sadness and sorrow. 39

It is obvious to what extent Waldenberg focuses on the parents – i.e. also the father, not only the mother – of a severely disabled child with Tay-Sachs disease. He looks at “such a creature” (Ibid.) from a parents’ point of view. Although he also mentions the “amount of suffering and pain of the newborn itself,” thus taking into consideration the embryo’s/fetus’ perspective as well, Waldenberg mainly concentrates on the impact raising such a child has on the parents (Ibid.). He distinctly takes sides with the parents. According to him, this situation is the “most classic case you have” in order to allow abortion (Ibid.). His focus on the difficult physical and psychological situation of the parents influences Waldenberg’s Halakhic decision to subsume this case under the circumstance of “great necessity” (see above). That is why he approves of an abortion in case of a child with Tay-Sachs disease.

IV. DISCUSSION: SOCIAL SITUATEDNESS OF HALAKHIC RESPONSA

As mentioned earlier, the differences between the two Halakhic perspectives demonstrated by Feinstein’s and Waldenberg’s rulings may be explained in terms of the theological, “inner-Halakhic” direction. In what follows, however, the analysis will focus on the socio-cultural contexts in which these decisors operate, and argue that the poskim may be influenced by their social and political environment. This is remarkable because, in general, the environment of the Ultra-Orthodox is considered to be hermetically sealed. Most of them live within the Ultra-Orthodox community and hardly get in touch with the non-Ultra-Orthodox world. Nonetheless, this paper suggests that Feinstein and Waldenberg, who lived within Ultra-Orthodox environments or communities, did relate to and were influenced by wider socio-cultural contexts. Previous sociological research discusses Jewish religion or law as a socio-cultural script that also influences or frames Israeli policy-making and public debate on new medical technologies at the beginning of life, genetic testing and biotechnology, and on the issue of abortion. 40 This section argues that society and culture can also influence decisors and frame their process of decision-making.
As clearly demonstrated by the issue of abortion, Halakhic decision-makers may reach very different rulings regarding the same issue. According to Aharon Lichtenstein, this is due to the decision-makers' sensitivity to the "human and social circumstances," which may be considered in especially difficult cases or framework conditions (Ibid.). But, more relevant to the present discussion, it may also be a result of the interpretive nature of the Halakhic process of decision-making. Indeed, when Jewish medical ethics is applied to contemporary moral issues, the role of interpretation cannot be ignored. Louis E Newman criticizes many contemporary Jewish ethicists and authorities for viewing their process of Halakhic thinking as a pure and objective formalism: "We should be wary… of exegetes who announce that they merely discover and report what the texts say. The very process of interpretation necessitates acts of judgment on the part of the interpreter… It follows that the interpretive assumptions that readers bring to the literature play a decisive role in creating the very meaning that they attribute to the text." (Ibid., 33.)

Although Newman's approach seems radical since it contradicts the above mentioned theological, inner-Halakhic direction of dealing with the Halakhic abortion debate, his conclusions as Dena S Davis puts them appear plausible: "Different people with radically different experiences and status in a society, may very well have different interpretive assumptions that will be reflected in the conclusions they draw." Dealing with this issue, Rabbi Aharon Lichtenstein claims that a posek needs to consciously examine himself and his situation in order to make sure he filters and not simply absorbs whatever external cultural forces may influence him. It is clear that, although Lichtenstein is striving to protect Halakhic rulings from "distortion", he acknowledges (and therefore tries to raise the posek's self-conscious awareness of) the fact that socio-cultural forces can in fact influence Halakhic decisions.

Daniel Sinclair already claimed that the social context in which decision-makers operate influences their interpretations of the Halakhah as well as their decisions on the issue of abortion. According to him, it is noteworthy that Feinstein lived in the U.S. where abortion is a constantly debated issue. This might have had an impact on his Halakhic decision-making, dealing very carefully with the issue of abortion. In this social context and in light of a strong...
Christian movement condemning abortion, the expression of the Jewish position on the issue holds moral and political importance. On the other hand, Waldenberg lived in Israel where the issue of abortion has not been publicly debated. Therefore, according to Sinclair, Waldenberg presents a Halakhic analysis without feeling the need to protect the Halakhah's moral reputation (Ibid.).

This section takes Sinclair’s argument a step further by presenting the abortion debates in both social contexts (especially in regard to therapeutic abortion following prenatal diagnosis) and the ways in which they may have differently affected Halakhic decisors by reinforcing or formulating their approaches towards abortion. It further suggests that the existence of profound public, legal, and political debate on the issue of abortion (in which Jews take part) may result in restrictive Halakhic rulings, and vice versa: When the nature of those debates is not radical or less controversial, the result may be relatively lenient Halakhic rulings. The fact that there are Talmudic and/or medieval sources that support the decisors’ standpoints does not necessarily rule out the possibility that those standpoints are, at least to some extent, still socially situated as well. It is important to clarify that this does not imply a strictly deterministic claim, e.g. in the sense that a specific social context will necessarily lead to a certain Halakhic perspective. Nonetheless, there are good reasons to assume that the choice to rely on a certain source and the different interpretations of the Jewish sources can be, at least partially, explained by different socially situated perspectives.

Abortion is an extremely controversial issue both within the North-American medical community and in the general public. An examination of the history of the abortion debate in the U.S. reveals that, until the nineteenth century, abortions (at least early ones) were in fact permitted. However, during the nineteenth century, due to an effort made by physicians, they became illegal in the U.S. at all stages of pregnancy, with the exception of cases in which it was medically necessary in order to save the pregnant woman’s life. Nevertheless, American women continued to seek and perform abortions. In addition, until the middle of the twentieth century, the issue of abortion was neither publicly discussed nor a matter of public interest. Thus, surprisingly, women did not try to oppose or reform the restrictive laws. According to Ginsburg, public commitment to reform restrictive abortion laws began to rise
only in the early 1960s, due to the famous case of Sherri Finkbine.\(^{52}\) By the late 1960s, pro-choice activists became more prominent, as they tried to repeal anti-abortion laws denouncing them as undemocratic. This pro-choice effort was first aimed at state legislatures and, during the early 1970s, began to focus on the court. Their main argument was that the anti-abortion laws represent a violation of the civil rights of women, specifically the right to equal protection and privacy (Ibid., 37-42). As a result, in January 1973 (the time of the debate between Feinstein and Waldenberg), the Supreme Court handed down decisions addressing two cases: *Doe v. Bolton* and the famous *Roe v. Wade* decision. “The rulings essentially legalized elective abortion in the first trimester with restrictions to protect maternal health in the second, and the potential life of the fetus in the third.” (Ibid., 41) The *Roe v. Wade* decision sparked and polarized the public debate as it divided the public along religious and gender lines.\(^{53}\) This decision has dramatically influenced the right-to-life movement, transforming it from a small mainly Catholic group into an organized, politically active national movement.\(^{54}\) As a result, the abortion debate changed dramatically: Hundreds of thousands of people became active participants in grass-roots organizations, huge financial investments were made in order to promote the efforts of both movements, and views became increasingly polarized on both sides.\(^{55}\) This polarization resulted in an escalation of violence,\(^{56}\) which included bombings, and vandalism directed against abortion clinics, death threats, acid attacks, and even the murder of physicians.\(^{57}\)

Although both, the pro-life and the pro-choice camp, became well organized national movements and although both included religious as well as secular activists,\(^{58}\) conservative religious groups and organizations that stress the sanctity of the fetus’ life (mainly traditionalist Catholics, fundamentalists, and since the late 70’s also Evangelicals) are identified with the formal, organized opposition to abortion.\(^{59}\) Under all the circumstances described so far, a prominent public and legal debate ensued on the issue of abortion, extensive activism and media coverage,\(^{60}\) combined with the fact that Christian ethics and religious authorities hold a very restrictive position on the issue of abortion, Sinclair’s argument sounds very reasonable: That Feinstein makes an effort to protect the Halakhah’s (i.e. Jewish religious) reputation.\(^{61}\)
It is also possible that Feinstein felt the need to emphasize a restrictive position on the issue of abortion as a reaction to an overall permissive tendency (mainly non-Ultra Orthodox) in Jewish views on abortion. Indeed, it has been claimed that U.S. Jews hold relatively permissive attitudes toward medical interventions, prenatal diagnosis, abortion, and genetic screenings. In addition, Reform Jewish clergy played a central role in the establishment and activities of American religious pro-choice SMOs (social movement organizations), such as The Clergy Consultation Service on Abortion (CCSA) as well as The Religious Coalition for Abortion Rights (RCAR), which were active during the years of the debate between Feinstein and Waldenberg. In view of the situation just described, it may be that Feinstein felt that restriction (Hebrew: “hachmarah”) was needed and therefore formulated his restrictive position on the issue of abortion. As was mentioned earlier, Sinclair claims that Feinstein’s rulings on the issue of abortions seem to be derived from his moral position on the issue and not only from the Halakhic-legal point of view. By his argument Sinclair suggests that Halakhic decisors hold subjective moral beliefs which may have some effect on their process of decision making: Beliefs that may be influenced by social factors – which may trigger, reinforce, or even change such presuppositions and the following Halakhic decisions. As suggested, Feinstein’s restrictive position on the issue of abortion may be understood in light of the fundamental nature of the U.S. abortion debate as well as the part Jews play in this debate in the U.S. and in other countries.

In contrast to the Northern American socio-cultural context, issues such as abortion or fetal rights have been less critically debated in Israel. Unlike the clear ideological gap, which separates pro-life and pro-choice activists in the U.S., the Israeli abortion debate was characterized as lacking a strong ideological dispute between the two camps that formulated their arguments within an overall narrower spectrum of disagreement. Furthermore, several scholars have identified Israeli society and mainly Israeli secular Jews as extremely selective (and even controversially defined them as pro-eugenic) – as promoting the use of prenatal diagnosis including genetic testing as well as adults’ carrier screenings which may lead to selective abortions in cases where a fetal defect is detected. It is important to note that the use of PND is common in the U.S., as well. However, the scope of the Israeli
medicalization of pregnancy, use of PND, and genetic screenings (which are common even for low risk population) has been described as outstanding. Indeed, it has been claimed that (as opposed to other Western countries) the Israeli Jewish secular public was found to be uncritically accepting prenatal screening, prenatal genetic testing, PND, and selective abortion. It was further claimed that in Israel PND and genetic testing is considered a moral duty – an indispensable part of “good” and “responsible” motherhood.

Within the Israeli public and policy discourses, the advancement and use of biotechnology and science are constructed as ‘natural’ and crucial for the Jewish-Israeli survival and continuity of existence in the Middle East. Hence, public controversies are absent from the Israeli debate on these issues. Especially in comparison to the U.S., it seems that in Israel, there is less public debate or controversy regarding abortion in general, selective abortion in particular, PND, and genetic screenings. Aviad E Raz found that in Israel, as opposed to their North-American counterparts, even leaders of support groups for people with abnormal genetic conditions do not oppose and are in fact in favor of prenatal genetic testing and selective abortions. Raz explains his findings as a ‘two-fold view of disability.’ According to this two-fold view, disability should be prevented (hence the encouragement of the use of PND leading to selective abortion), but once a disabled person is born, he or she should be fully treated and supported.

The nature of the Israeli public debate on abortion also has to be discussed in the context of the Israeli abortion law. The law was passed in 1977 – when Waldenberg and Feinstein debated on the issue of abortion. Until the 1970s, the legal situation had been restrictive (although liberalization took place in 1966: Women who aborted their fetuses were no longer punished). Yet, policy itself was in fact permissive: A decision was made not to enforce the law; hence, in fact illegal abortions were performed. While the North-American law coming into effect in 1973 constructs abortion as a private and personal issue (by allowing abortion ‘on demand’ based on women’s autonomy in the first trimester), the Israeli abortion law treats abortion as a public issue, formally regulated by official abortion committees. On the one hand, on the declarative level, the Israeli law is restrictive as it prohibits abortion on demand while giving abortion committees the authority to decide upon abortion requests – thus
muting moral, religious, or collective-demographic (pro-natalist) objections to abortion. On the other hand, in practice the abortion law is ambiguous (thus leaving enough loopholes to allow selective abortions), and committee members are rather lenient and therefore almost all abortion requests are approved. This in turn may have muted feminist or liberal objections to the restrictive law. It seems that the Israeli public and political abortion debate is somewhat silenced due to this pragmatic status quo. Noga Morag-Levine further refers to this status quo (or as she sees it: a compromise obtained through the separation between the declarative official level and the practical level) as an accommodation mechanism employed by abortion committees, which results from the flexibility and discretion the law accords, the committees, as well as from the normative diversity between the different, autonomous committees. It is also worth noting that the importance of feminist thinking and women's position have been recognized quite late in Israel. Indeed, feminism has arrived in Israel only in the late 1970s. This in turn may have affected the Israeli abortion debate. Furthermore, Delilah Amir and Niva Shoshi have noted that women's movements did not play an important role in the changes made in the Israeli abortion law over the years and thus did not make a substantial effort in promoting women's control over their own sexuality and reproduction.

In summary, public debate on abortion in Israel has been inconsistent and less explicit compared to the U.S., in part because the law on abortion was pragmatically seen as a necessary outcome of the political status-quo, in part because secular Israeli women could use the leniency of the existing law to get abortions, and in part because feminism has arrived quite late in Israel. A comparative view on the Canadian context reveals further informative similarities and differences. Until 1969, abortions were in fact illegal in Canada. In 1969 (around the time in which the debate between Feinstein and Waldenberg took place), a new amendment to the law was initiated. The 1969 Criminal law amendment act legalized therapeutic abortion (abortion performed for the sake of the pregnant woman's physical or mental well-being) if approved by a majority of a special medical abortion committee comprised of three doctors, and performed in an authorized hospital. However, further liberalization of the law took place following the famous R. v. Morgentaler Canadian Supreme
Court ruling in 1988 and due to an extensive liberal campaign and public effort. Since then, abortions were no longer regulated by criminal law but by the Canada Health Act (i.e. since 1988 there is no law regulating abortion in Canada). Within this liberalization, abortions on demand have been essentially unrestricted. However, even though the Canadian abortion legalization is permissive, it is interesting to note that according to late-term abortion rates (which are being performed mostly on the basis of fetal anomaly), the Canadian late abortion policy is more restrictive than the Israeli one since the late term abortion rate in Israel is much higher. In addition, abortion is in fact a publicly and politically debated issue in Canada – an issue that has stimulated public activism on both sides of the debate. Regarding the Canadian Jews, similarly to the U.S, in which non-Ultra-Orthodox Jews have been identified as generally holding positive views towards abortion, the Canadian Jewish national organization "National Council of Jewish Women of Canada" belongs to the 'Canadian for Choice' movement and has been supporting the legal liberalization of abortion ever since the late 1960s. Interestingly, similarly to Feinstein, current prominent Rabbi Reuven P. Bulka is known for his restrictive position on abortion. Rabbi Bulka actively participated in Canadian pro-life activities (along with Christian religious leaders) and publicly expressed his anti-abortion opinions. It is possible that like the social situation in the U.S, the Canadian social context with its active abortion debate, permissive Jewish tendency, and Christian restrictive authorities’ objection to abortion has influenced Rabbi Bulka’s anti-abortion position. However, this is only a hypothesis. Further research both on the Canadian social context as well as on Rabbi Bulka's position is needed in order to sustain this claim.

Relating to its leniency, closer examination of the Israeli abortion law reveals that it allows abortion because of fetal anomalies (including mild and probable ones) even at late stages of pregnancy. While many Western abortion laws (including the U.S.-law) reflect a perception of stages in pregnancy, thus prohibiting ‘late abortion,’ defined as abortions performed after 12-18 weeks of pregnancy (depending on the country) or after fetal viability, the Israeli law allows abortion at all stages of pregnancy and denies the embryo/fetus any legal status or protection. Indeed, late abortions (defined as abortions performed beyond week 24 0/7), which are being discussed in special “high-level” hospital abortion committees, are relatively
common in Israel. Nonetheless, one should note that a more recent secondary legalization (memorandum #23/07, issued 19.12.2007) delineates guidelines for late abortions and determines that in order to justify late abortions because of a fetal abnormality, this abnormality must be medically defined as “severe” (or “moderate” up to week 27 6/7) as opposed to “mild”, as well as probable (probability of at least 30% for phenotype expression).

Indeed, the Israeli abortion law and moral norms have been described as depriving fetuses (including late-term fetuses) of legal personhood and any claim to rights, and thus the Israeli abortion policy as focusing solely on the interests of the mother. Under these circumstances (and especially in the case of a fetal anomaly which is perceived as a more substantial reason for abortion than inconvenience or accidental conception), the “symbolic value of life” is disregarded and “parental discretion” becomes the decisive factor in an abortion decision. According to this viewpoint, the Israeli abortion committees are meant to “restrain…wholly arbitrary abortion.” In contrast, Israeli feminist scholars have claimed that the Israeli abortion law and policy is patriarchal as it prohibits abortions on demand, places abortion decisions in the hands of the state through hospital committees instead of the women themselves and supervises, controls, and educates women. They claim that, in Israel, abortion is not perceived as a matter of women’s rights over their own bodies and reproduction, but rather as an issue, which needs to be regulated by the state in order to achieve collective (e.g. demographic and social) goals. According to this viewpoint, both, women as well as fetuses are neither considered in the Israeli (public and political-legal) abortion debate, nor in the abortion law. Furthermore the Israeli abortion law is perceived as validating the construction of the normative woman, fetus, pregnancy, and family, that is, women’s positions in the Israeli society and their commitment to their reproductive and maternal role. This paper does not intend to take sides in this scholarly debate – neither with those criticizing the Israeli abortion law and policy for focusing solely on the woman, nor with the feminist point of view perceiving it as rightly patriarchal. However, a central point on which both parties agree has to be emphasized: The fact that the “Israeli” fetus is not granted any moral or legal status and rights. Waldenberg’s rather permissive perspective may
also result from the nature of the Israeli public legal and political debate on the issue of abortion or fetal rights. As part of the discussion regarding the influence of different national socio-cultural scripts on Halakhic tendencies, the possible influence of PND on these tendencies needs discussion. Indeed, the use of PND has been identified as influential and as creating negotiations of the perception and moral status of the fetus. Two opposing directions of influence have been identified, the construction of a “human” fetus vs. the construction of a “tentative” fetus. Some researchers claim that PND technologies (especially ultrasound) lead to the recognition and subsequent constructions of the “life before birth” and the fetus’ personhood and humanity. Others see the (routine) use of those technologies as a factor undermining the fetus's status, constructing the pregnancy as well as the fetus as “tentative” – i.e. as an entity whose very existence is dependent upon test results. According to Tsipi Ivry, within the Euro-American socio-cultural context, ultrasonography has propelled the construction of the fetus as a separate, independent human subject, entitled to “human rights,” while the pregnant women become increasingly transparent. In contrast, in Israel, fetal images are connected to what Ivry recognizes as a “‘politics of threatened life:’ Where ‘life’ stands typically for the pregnant woman and ‘threat’ for the fetus, while the prospect of a reproductive misfortune is the very fabric through which pregnancies, regardless of their medical categorization as ‘low risk’ or ‘high risk,’ are navigated and negotiated by medical professionals, pregnant women, and their supporters.” (ibid., 190) Thus, in the Israeli secular context, the effect of separateness created by ultrasound does not construct the fetus as a separate human subject but rather enables women to keep it “tentative” – “a potential candidate for abortion.” (ibid., 202)

It is possible that each local socio-cultural version of the construction of the fetus as reflected in and influenced by the use of PND has affected Halakhic decisors operating within it. Although many Ultra-Orthodox women both in Israel and in the U.S. avoid the use of PND and the following selective abortion (unless it is medically necessary, see below), it is worth noting that both Feinstein and Waldenberg dealt with and referred to PND: See for example Feinstein’s reference to amniocentesis in Iggerot Moshe, Choshen Mishpat, Part 2, Siman 71,
as well as Waldenberg’s reference to amniocentesis and genetic screening tests in Tzitz Eliezer, Part 13, Siman 102. This is positive evidence that the poskim took into account these “technologies.” Feinstein and Waldenberg were aware of the public discussion that went along with PND. As mentioned earlier, in Israel, prenatal diagnosis is interpreted through the prism of “reproductive misfortune,” (ibid., 190) which leads to the perception of the fetus not only as tentative but also as a threat. The construction of the fetus as a threat can also be linked to the perception of the fetus as a “pursuer” (ibid.), which – inter alia – influenced Waldenberg’s relatively permissive rulings regarding abortion (see above). At the same time, the fact that in the U.S., prenatal diagnosis has an influence on or reflects the perception of the fetus as a human being or as a person (at the expense of the pregnant woman) may have contributed to or reinforced Feinstein’s attempt to minimize the number of situations, in which the fetus will be considered as a “pursuer” – a situation which will necessitate abortion. Nevertheless, within the context of this article, it is important to clarify that the Ultra-Orthodox communities, both in the U.S. and in Israel, generally refuse the usage of PND and the following selective abortion if there is no important reason to abort. According to Rayna Rapp,106 U.S. Hasidic (Ultra-Orthodox) women will often avoid prenatal care and testing, at least until late stages of pregnancy (after the time in which prenatal tests such as amniocentesis are being offered). Similarly, many Israeli Ultra-Orthodox communities generally refuse PND in order to avoid the option of abortion. This refusal, however, is directly connected to PND and the following selective abortion and not to the prevention of life with disability or to genetic testing.107 Thus, the Ultra-Orthodox Jewish communities, both in Israel as well as in the U.S.,108 employ the unique, community-based premarital (prearranged marital) genetic screening program "Dor Yeshorim" (Upright Generation). This technologically advanced program, which aims to prevent the conception of genetically impaired children, is being perceived within the Israeli context as an act of obligation and responsibility for future generations (ideas which match positions identified with the general Israeli-Jewish secular society).109 Nonetheless, although Ultra-Orthodox communities, both in Israel as well as in the U.S., generally object to PND and selective abortion (if there is no important reason to abort sanctioned in the specific case by the responsible posek,) both
Waldenberg and Feinstein were in fact dealing with the issue. It is clear that their rulings, as on the issue of abortion, addressed very specific cases within the Ultra-Orthodox communities. Thus, under specific circumstances, even Ultra-Orthodox individuals ask for, perform, and are given Halakhic permission to perform abortion.

Indeed, Waldenberg operated within this Israeli socio-cultural context. More than many other Ultra-Orthodox poskim, Waldenberg took into account state affairs of the new state of Israel (founded in 1948); he dealt with Halakhic rulings regarding the legal system, the Israeli army, the political system including elections, governance, and so forth, and collected these responsa in his three-volume-work “Hilkhot Medinah” (1952, 1953, 1955). Many members of his own family did not accept these rulings relating to mundane topics, and the Ultra-Orthodox organization “Ha-‘Edah Ha-Charedit” even condemned the publication of these volumes;110 thus one can imagine to what extent Eliezer Waldenberg was exceptional within the Ultra-Orthodox world and involved with the Israeli context.

Waldenberg also worked in an honorary capacity as a rabbi at the hospital Shaare Zedek in Jerusalem, regularly prayed in the hospital’s synagogue (because he lived nearby) and was in close contact with the patients as well as with the physicians, nurses, and the clinic director. He gave lectures on medical ethics and answered the Halakhic questions of the physicians.111 Thus, it seems likely that he did not feel the need to protect the halakhah’s reputation in presenting his Halakhic interpretations and rulings on the issue of abortion.112 Furthermore, as discussed earlier, Israeli Jewish secular society has been characterized as extremely selective both in terms of ideology as well as practices. Such selective tendencies, combined with the inconsistent public debate and the lack of criticism regarding selective abortion, PND, and genetic testing, may have had an influence on the fact that Waldenberg relates to the issue of fetal abnormalities. He consequently determines that, in specific cases, a “founded concern” for a fetal defect is sufficient in order to allow an abortion. This also reflects the fact that he trusts the medical examination of the physicians.

As for Feinstein, on the other hand, it is worth noting that the Israeli and even the wider international social context had an influence on his position, as well. Thus, he read the newspaper every day in order to know what was going on in the world and especially tracked...
the news from Israel. Direct reflections of this can be found even in his responsa dealing with abortion. In the very last paragraph of his response from 1976, he explicitly refers to the situation in “many states,” Israel amongst them: “I wrote all this regarding the matter of the big breakthrough in the world that the governments of many states allowed to kill embryos/fetuses, amongst them also the heads of the state in Israel. And countless embryos/fetuses have already been killed, so that you have to build a fence around the torah in our times…” As can be seen from this response, Feinstein is influenced by the broader international social context and thus, within the North-American context, in which he operates, feels the need to protect the Jewish torah from what he perceives as bad cross-cultural influences. Unlike his response of 1935 when he was still in the Soviet Union, in this response Feinstein explicitly relates to something new: The social context. It seems that he is very much aware of the existing abortion policies and debates and feels the need to respond to them and to express his restrictive opinion. This might be seen also in the way he rejects PND and selective abortion, especially in the sharp wording he uses:

Anyhow, you have to know: The medical examination of the physicians who say on the basis of their medical examination that it would be such a child [with Tay-Sachs disease] – this is just an opinion and assumption. You cannot rely on their words. This is not tangent to the Halakhic rule, because – even if it is such a child [with Tay-Sachs disease] – it would be forbidden [to abort]. Anyhow, you have to know: Everything comes from heaven, and you cannot outsmart [God in heaven], you cannot escape from the punishment… of these things the physicians incite [to do]. Because God has many emissaries. Therefore, you have to accept with love everything God is doing. And then, thanks to that, [when the woman is] relying upon him and begging him, he will bless the woman. She will give birth to a viable, healthy and complete [child that will live] for many days and years.

Feinstein’s need to protect (i.e. to build a fence around) the torah may have reinforced his restrictive position on the issue of abortion, hence complementing the claim regarding the possibility of social influences on Halakhic rulings.
V. CONCLUSIONS

The observations presented here indicate that social contexts have an impact on Halakhic responsa. As pointed out above, the different Israeli and North American social contexts may have affected Eliezer Waldenberg and Moshe Feinstein differently and hence may have influenced their process of decision-making regarding abortion. These considerations regarding the social situatedness of the Halakhic responsa support the research hypothesis that, in order to understand conflicting ethical judgments about abortion in this field of study, it could be advisable to take into account and examine the role of different socially situated standpoints and perspectives. Apart from obvious religious or ideational differences, that is, differences on the level of explicit theological or philosophical doctrine, there also seem to be essential differences on the underlying level of framing the problem as such and identifying and weighing the morally relevant subjects and aspects.

Generally speaking, two different points of view and corresponding perspectives could be detected in sociological research as well as in the Halakhic expert discourse: One rather focuses on the fetus as such, its presumed status and rights, while the other rather adopts the viewpoint of the pregnant woman, her personal situation and her immediate social environment. These findings of the sociological analysis of Halakhic responsa indicate that besides the explicit theoretical or doctrinal considerations, the different implicitly underlying perspectives seem to influence the decision-making process: While the fetus-centered perspective apparently suggests a rather restrictive pro-life position towards abortion, the parent-centered one seems to favor a more permissive, pro-choice stance.

Of course, more socio-empirical research and theoretical reflection will be necessary in order to substantiate and interpret this finding. While this paper arrives at its results by identifying correspondences and correlations between public perceptions and the Halakhic discourse, and then drawing hypothetical conclusions by analogy, future research should be aimed directly at potential influences of socio-cultural contexts on the Halakhic decisors and their decision-making process. Although there does not seem to be a point in trying to prove such influences in a strict, deterministic sense, reflections and traces of external factors can be explored in order to gain a fuller understanding of the decision-making process. At least three
main research questions have to be pointed out: First of all, the broader socio-cultural context of Halakhic decision-making should be explored further in order to identify other influences such as national legal regulations, political traditions, historical experiences, economic framework, and other issues. Secondly, the influence of ‘being personally affected’ (e.g. being ill, disabled, carrier of a disposition for a genetic disease) on bioethical positioning and decision-making should be taken into account since it is a prominent paradigm for perspectivism. Especially in the case of abortion, this focus on “being affected” could – finally – also lead to a closer empirical examination of the role of gender perspectives in Halakhic decision-making.

In conclusion, relating to the two directions of analyzing Halakhic debates presented in the introduction – the theological “inner-Halakhic” direction represented for example by Alan Jotkowitz and the socio-cultural direction represented, for example, by Ronit Irshai – this paper suggests that in dealing with the Halakhic debate on abortion, both approaches should be combined. This may be achieved by both mapping the main important Halakhic decisors and interpretations of the relevant texts as well as considering the social forces, scripts, and contexts that may have influenced Halakhic decision-making. Both directions are legitimate and important, and it seems plausible that their combination will deepen the analysis and understanding of the Halakhic debate.

Pursuing this interdisciplinary line of research further could be of high interest for both domains, social studies of science and technology as well as Jewish medical ethics. From the sociological point of view, it could help to correct oversimplifying (pre-)conceptions about the influence of religion on the public perception of critical issues such as abortion. The findings presented here indicate that the direct equation of religion with “pro-life” and restrictiveness regarding abortion on the one hand, and secularity with “pro-choice” and liberal stances towards abortion on the other hand, is inadequate. In fact, similar differences of perspectives could be found in public perceptions (religious and non-religious) and in the Halakhic discourse, which indicates that the prominent distinction between religiosity and secularism as such is not the most important line of demarcation in this field. In this respect, the distinction between religious and secular persons underlying much social research on
public views and attitudes is in need of critical reflection. Furthermore, the findings suggest that religion does not just play the role of a factor exerting a unidirectional influence on public perceptions and positions. There rather seems to be a reciprocal interaction between both sides: While religious beliefs and attitudes certainly constitute a “social script” influencing peoples’ views and positions on moral problems in manifold ways, they are – at the same time – themselves influenced by social factors and contexts. In order to understand this mutual influence, however, it is not sufficient that social research on religion contents itself with an examination of its reflexes in what is sometimes called “folk religion.” Instead, it is important to develop a more profound understanding of religion itself, its particular perspective, its authorities, teachings, and decision-making processes. In this respect, social research on the role of religion in society could clearly benefit from an interdisciplinary exchange with theology and from more sophisticated theological knowledge concerning the constitution, inner logic, and transformation of religious discourses.

On the other hand, it is important to stress that Jewish theology and law can also benefit from the exchange with social sciences. Naturally, the perspective on social contexts and influences seems to conflict with the inner theological self-understanding which claims that the Halakhic decisions are influenced by the Torah and the Halakhah alone and thus are nothing but an immediate expression of divine will, free from any external human – psychological, social, cultural – factors. This paper is in line with recent critical voices, which question the formalism of Halakhic decision-making by exploring the influence of factors such as contemporary culturally coexistent moral discourses (i.e. how “Christian and secular moral discourses permeate halakhah”); national socio-political contexts and gender perspectives (i.e. how the gender in the male-dominated Halakhic world influences the process and outcome of Halakhic decision-making). These tendencies belong, in turn, to a general trend towards a growing awareness of and sensitivity towards the social situatedness or constructedness of scientific knowledge and expertise. Nevertheless, this trend does not automatically discredit theological claims because it does not necessarily imply the relativistic idea that the truth and validity of theological or ethical statements are relative to a particular – individual or collective – point of view. Quite to the contrary, it can further the theological
quest for truth by helping to overcome the pretension of a detached, objective position, a “view from nowhere” which contemplates moral problems “sub specie aeternitatis.” After all, influences have to be detected, acknowledged, and reflected in order to be able to penetrate and control them. In this sense, socio-empirical research can eventually lead to a greater awareness of one’s own influencing factors, blind spots and biases, thus contributing to a more clear-sighted and (self-)reflective way of theological reasoning. Thus, the so-called “empirical turn” in bioethics could be introduced to Jewish Medical Ethics and pave the way for a more “empirically informed” approach in this field, too.
NOTES


5 For this direction see also Daniel Sinclair, "The Intersection of Law and Morality in Jewish, Canon, Common and Israeli Abortion Law," HaMishpat, 23 (2007): 22-32 [in Hebrew].


8 Ziad W. Munson, The Making of Pro-Life Activists: How Social Movement Mobilization Works (Chicago: The University of Chicago Press, 2008), 85. In this context it is important to note that the "pro-life" is a late 20th-century position while the "right-to-life" is an independent national movement. Although many churches (like Anglican and United churches and many others) raise concerns over abortion, we will briefly allude to the strong historical connection between the Catholic Church and the right-to-life movement. Since its early establishment, the Catholic Church provided this movement with crucial resources: both in terms of material resources as well as organizational ones. This support system helped mobilize the right-to-life into a

It is worth noting, however, that according to Dillon (1996), although the Catholic Church's anti-abortion position is doctrinal, when facing the public, Catholic bishops tend to present "culturally salient, secular arguments" (Dillon, "Cultural Differences", 25) (e.g. the relationship between the civil law and religious morality, national tradition and identity, and women’s socio-economic and psychological situations). Furthermore, in his cross-cultural research, Dillon explores whether and recognizes (at least to some extent and mainly in relation to the theme of national tradition and identity) that "there is a relationship between the way in which the Church argues about abortion and the national, political and cultural context in which it articulates its views" (Dillon, "Cultural Differences", 26). Although this paper will not deal with Dillon's categories of analysis, it will try to further confirm this observation in relation to the Jewish-halakhic debate on the issue of abortion.

9  Smith, "Beyond Pro-Choice Pro-Life" (above, note 6).
12  Smith, "Beyond Pro-Choice Pro-Life" (above, note 6).
Smith, "Beyond Pro-Choice Pro-Life" (above, note 6).

In addition, „the ‚pro-choice‘ stance is clearly inconsistent with the whole thrust of Jewish tradition, for it is based on a notion of human ownership of the human body, an idea that directly contradicts the Jewish dogma that everything belongs to God—men’s bodies, women’s bodies, anyone’s body.” David Novak, Abortion, http://www.peopleforlife.org/novak.html (accessed August 24th 2013).


Eliezer Waldenberg, Tzitz Eliezer, Part 9, Siman 51:3 (undated responsum; published 5726 – 1966/67), http://www.hebrewbooks.org/pdfpager.aspx?req=14508&st=&pgnum=238 (accessed August 24th 2013). Tzitz Eliezer 9:51:3 is a very long, extensive basic responsum in which Waldenberg is (a) dealing with his general halakhic approach towards abortion, (b) mentioning several (theoretical and/or practical) cases and piskei halakhah of other poskim, and (c) also giving some halakhic decisions on different (theoretical and/or practical) cases himself.


Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 300.


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28 Moshe Feinstein, Iggerot Moshe, Choshen Mishpat, Part 2, Siman 71, 303 (responsum dated 2 Shvat 5731 – January 28th, 1971), http://www.hebrewbooks.org/pdfpager.aspx?req=921&st=&pgnum=298 (accessed August 24th 2013). In this responsum Feinstein deals with the question whether prenatal diagnosis (amniocentesis) is allowed in order to find out if the fetus is so severely disabled that it is not viable.

29 http://www.hebrewbooks.org/pdfpager.aspx?sits=1&req=19401&st=%u05e8%u05d5%u05e6%u05d7 (accessed August 24th 2013).


31 Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 298.

32 Eliezer Waldenberg, Tzitz Eliezer 9:51:3 (above, note 20). According to halakhah, the offspring whose greater part (generally the head) emerged during the birth process, is called “nefesh”.

33 Eliezer Waldenberg, Tzitz Eliezer, Part 7, Siman 48:1:8, 190 (undated responsum; published 5723 – 1962/63), http://www.hebrewbooks.org/pdfpager.aspx?req=14506&st=&pgnum=199 (accessed August 24th 2013). Waldenberg is talking about the case of a faithful Jewish physician allowing a woman to abort in the first stages of pregnancy because he fears that the woman will get ill due to the pregnancy (although she will not die from the pregnancy).

34 Eliezer Waldenberg, Tzitz Eliezer 9:51:3 (above, note 20), 240.

35 Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 297.

36 Eliezer Waldenberg, Tzitz Eliezer 9:51:3 (above, note 20), 237.

37 Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 296.

38 Eliezer Waldenberg, Tzitz Eliezer 7:48:1:8 (above, note 33), 190. Cf. also Eliezer Waldenberg, Tzitz Eliezer 9:51:3 (above, note 20), 239 (Summary, No. 11).


Davis, "Abortion in Jewish thought," (above, note 42), 320.

Lichtenstein, Leaves of Faith (above, note 41), 173.

Sinclair, "The Intersection of Law and Morality" (above, note 5).

Jotkowitz, "Abortion and Maternal Need" (above, note 3). It is important to note, though, how the poskim deal with the normative texts. Feinstein, for example, claims that several lenient normative texts show a “scribal error”– amongst others even a commentary of the tosafot (Niddah 44a and b, “ihu”): although it says there twice that an abortion of an embryo/fetus is “allowed”, Feinstein is of the opinion that this is a scribal error. According to him, tosafot actually meant that abortion is forbidden, but the murderer of an embryo/fetus will be “exempt” from death-penalty (Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 295). Waldenberg, on the contrary, points out that a posek has to interpret the existing text without changing the words – even if this might be difficult (Eliezer Waldenberg, Tzitz Eliezer 14:100 (above, note 25), 183f.; Eliezer Waldenberg, Tzitz


Munson, *The Making of Pro-Life Activists* (above, note 8), 85.

Ginsburg, *Contested Lives* (above, note 8), 50.

Sinclair, "The Intersection of Law and Morality" (above, note 5); Munson, *The Making of Pro-Life Activists* (above, note 8), 88.
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Evans, "Multi-organizational fields" (above, note 58); Evans and Hudson, "Religion and Reproductive Genetics" (above note 8).


Sinclair, "The Intersection of Law and Morality" (above, note 5).


Evans, "Multi-organizational fields" (above, note 58).

Sinclair, "The Intersection of Law and Morality" (above, note 5).

Morag-Levine, "Abortion in Israel" (above, note 40); Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40).

Morag-Levine, "Abortion in Israel" (above, note 40).


"Eugenics" is a loaded, ambivalent and ambiguous concept. It is important to clarify that, usually, when used in the context of selective reproductive technologies, it does not reflect nor mean to reflect the meanings of the "old" authoritarian eugenics (identified for example with the Nazi regime). However, the use of those technologies has been criticized as reflecting "backdoor" eugenics (as discussed, for example, in disability critique) and bio-governmentality or defined in terms of voluntary "liberal eugenics" (e.g. as enabling personal

69 We are making here a nontrivial, critical connection between adults' genetic carrier screenings and abortion - claiming that such tests may lead to further prenatal genetic diagnosis and may be followed by selective abortion. For this argument see for example Remennick, "The Quest for the Perfect Baby" (above, note 67).

70 Remennick, "The Quest for the Perfect Baby" (above, note 67); Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40); Prainsack and Firestine, "Science for survival" (above, note 40); Aviad E. Raz, "'Important to Test, Important to Support': Attitudes toward Disability Rights and Prenatal Diagnosis among Leaders of Support Groups for Genetic Disorders in Israel," *Social Science and Medicine*, 59 (2004): 1857-1866.

71 Remennick, "The Quest for the Perfect Baby" (above, note 67), 34-35; 37; 48.

72 Prainsack, "Natural Forces" (above, note 40); Prainsack and Firestine, "Science for survival" (above, note 40).

73 Raz, "Important to Test, Important to Support" (above, note 70), 1857; 1860.


76 Raz, *Community Genetics and Genetic Alliances* (above, note 68).

77 See Delilah Amir and Niva Shoshi, "The Israeli Abortion Law - a Gendered and Feminist Perspective," in *Studies in Law, Gender, and Feminism*, ed. Daphne Barak-Erez et al. (Kiryat-Ono: Nevo, 2007), 777-808 [in Hebrew] for an analysis of the Israeli abortion law and its current 4 enabling clauses as meeting the accepted (by most Israeli decisors) interpretation of the Jewish law. This analysis may serve as an additional explanation for the reduction of religious objections and debate over the law.

78 Nitzan Rimon-Zarfaty and Aviad E. Raz, "Abortion Committees as Agents of Eugenics: Medical and Public Views on Selective Abortion Following Mild or Likely Fetal Pathology," in *Kin, Gene, Community: Reproductive Technologies among Jewish Israelis*, ed. Daphna Birenbaum-Carmeli and Yoram S. Carmeli,
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79 Rimon-Zarfaty and Raz, "Abortion Committees as Agents of Eugenics" (above, note 78); Rimon-Zarfaty and Jotkowitz, "The Israeli Abortion Committees' Process of Decision Making" (above, note 15); Morag-Levine, "Abortion in Israel" (above, note 40); Delilah Amir and Niva Shoshi, "Feminism and Women’s Empowerment in Israel: Abortion Policy as a Case Study," in Empowerment on Trial, ed. Mimi Ajzenstadt and Guy Mundlak (Tel-Aviv: Tel Aviv University, Nevo, 2008), 279-313 [in Hebrew]; Amir and Navon, The Politics of Abortion in Israel (above, note 78), 73-80; see Amir and Shoshi, "The Israeli Abortion Law" (above, note 77) for a different explanation of the lack of the Jewish secular objection to law (as part of the lack of Israeli political debate on the abortion law). According to them, the secular political sector and the Jewish religious establishment agree on several basic assumptions such as the essential difference between men and women, the importance of the institution of the family, and the perceived inevitable connection between the mother, the family, and the nation. The secular side's agreement to those conservative assumption which according to Amir and Shoshi, are reflected in current formation of the abortion law, explains the lack of expected relevant liberal objections to the abortion law.

80 Rimon-Zarfaty and Raz, "Abortion Committees as Agents of Eugenics" (above, note 78); Rimon-Zarfaty and Jotkowitz, "The Israeli Abortion Committees' Process of Decision Making" (above, note 15); Amir and Navon, The Politics of Abortion in Israel (above, note 78), 73-80; Morag-Levine, "Abortion in Israel" (above, note 40).

81 Morag-Levine, "Abortion in Israel" (above, note 40).

82 Francis Radday, Carmel Shalev and Michal Liban-Kobi (eds.), Women’s Status in Israeli Law and Society (Tel Aviv: Schoken, 1995) [in Hebrew], 17.

83 Amir and Shoshi, "Feminism and Women’s Empowerment in Israel" (above, note 79).


88 See for example: Reuven P Bulka, Art. "Partial Birth Abortion", in: Religion from A to Z (General store Publishing House: Renfrew, Ontario, Canada, 2005), p. 84, for his objection to partial birth abortion (late-term abortion) as well as earlier ones.

89 Gosgnach, "Thousands march on Parliament" (above, note 86).

90 Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40); Rimon-Zarfaty and Raz, "Abortion Committees as Agents of Eugenics" (above, note 78).


92 Gross, "After Feticide," (above, note 85); Hashiloni-Dolev, A life (un)worthy of living (above, note 40), 149-150; Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40).

93 Gross, "After feticide" (above, note 85).


95 For this discussion regarding the Israeli abortion law, see also Rimon-Zarfaty, Raz and Hashiloni-Dolev, "When Does a Fetus Become a Person" (above, note 67).

96 Gross, "After feticide," (above, note 85), 454; 459; 460.

97 Amir and Shoshi, "Feminism and Women's Empowerment in Israel" (above, note 79).
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98  Ibid.; Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40); Amir and Shoshi, "The Israeli Abortion Law" (above, note 99). For this and further discussion regarding women's and fetuses' rights as reflected in the Israeli abortion law and practice of abortion committees see also Rimon-Zarfaty and Jotkowitz, "The Israeli Abortion Committees' Process of Decision Making" (above, note 15).

99  Amir and Shoshi, "The Israeli Abortion Law" (above, note 77).


102  Michaels and Morgan, "Introduction" (above, note 100), 6.

103  Draper, "It Was a Real Good Show" (above, note 100); For further discussion see Williams, "Framing the Fetus in Medical Work" (above, note 100).


107  For further discussion see Aviad E. Raz and Yafa Vizner, "Carrier matching and collective socialization in community genetics: Dor Yeshorim and the reinforcement of stigma," Social Science & Medicine, 67 (2008): 1361-1369; Raz, Community Genetics and Genetic Alliances (above, note 68); and Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40).

108  Ibid. See also Rapp, Testing Women, Testing the Fetus (above, note 62), 170.
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109 Raz and Vizner, "Carrier matching and collective socialization in community genetics" (above note 107); Raz, Community Genetics and Genetic Alliances (above, note 68); Hashiloni-Dolev, "Between Mothers, Fetuses and Society" (above, note 40).


111 Mordechai Halperin, "Milestones in Jewish Medical Ethics. Medical-Halachic Literature in Israel, 1948-1998, “ASSIA – Jewish Medical Ethics, 4 (2004), 4-19. Waldenbergs response Tzitz Eliezer, Part 9, Siman 51:3 (above, note 20) has emerged from lectures he gave at Shaare Zedek (cf. Tzitz Eliezer, Part 9, Siman 51:1), and his response Tzitz Eliezer, Part 13, Siman 102 (above, note 21) is the halakhic answer to a question of Shaare Zedek’s director Prof. Dr. David M. Maeir.

112 Cf. also Sinclair, "The Intersection of Law and Morality" (above, note 5).


114 Moshe Feinstein, Choshen Mishpat 2:69 (above, note 22), 300. Solomon Freehof, one of the most famous rabbis of Reform Judaism, comments this kind of reasoning from his point of view: „The Orthodox rabbi (justly from his point of view) is protecting the law itself against its violation by non-observant people. Hence, he is often much more strict than the law actually requires[.] He is, as the phrase goes, 'building a fence' to protect the law. “ Solomon B. Freehof, Today's Reform Responsa (Cincinnaty: The Hebrew Union College Press, 1990), 48f.

115 Ronit Irshai („Response to Alan Jotkowitz“ (above, note 4)) stated that ‘the newborn Soviet Union’ was the first country allowing abortion when Moshe Feinstein wrote his restrictive response against abortion in the 1930s there (Feinstein, Yoreh De’ah 2:60 (above, note 23)). In this early response, however, Feinstein does not explicitly mention his surroundings. This does not mean that he was not influenced by his surroundings as well; further research would be necessary in order to substantiate which impact the socio-cultural context in the Soviet Union had on Feinstein. This goes far beyond the current article. Anyhow, in his later response that he wrote in the U.S. (and which is focused here, cf. Feinstein, Choshen Mishpat 2:69 (above, note 22)), Feinstein explicitly mentions his socio-cultural context.


117 Silke Schicktanz, Mark Schweda, Martina Franzen, ‘In a completely different light’? The role of ‘being affected’ for the epistemic perspectives and moral attitudes of patients, relatives, and lay people, Medicine,
Health Care & Philosophy, 11 (2008) 1: 57-72. Tirzah Meacham, too, refers to the point of being "personally affected", arguing that in the case of abortion, the rabbis/poskim are not really personally affected (Tirzah Meacham (leBeit Yoreh). "Abortion," Jewish Women: A Comprehensive Historical Encyclopedia. 1 March 2009. Jewish Women’s Archive http://jwa.org/encyclopedia/article/abortion (accessed August 24th 2013)). However, although Waldenberg himself was not affected directly, he was in close contact both with patients and physicians at Shaare Zedek hospital (above, p. 30). This might have contributed to his attitude listening to the pregnant women in prenatal conflicts and taking into account her point of view. In addition, it might explain why Waldenberg trusts the results of the prenatal diagnosis of the physicians. See the more detailed analysis and thesis by Mordhorst-Mayer, Medizinethische Entscheidungsfindung im orthodoxen Judentum (above, note 27).

118 Davis, "Abortion in Jewish thought" (above, note 42).

119 Jotkowitz, "Abortion and Maternal Need" (above, note 3).

120 Irshai, “Gender Perspectives in Halakhic-Decision Making” (above, note 4).

121 As was thoughtfully done, for example, by Jotkowitz, "Abortion and Maternal Need" (above, note 3), but may be seen as only partially achieved by Irshai “Gender Perspectives in Halakhic-Decision Making” (above, note 4) who, as mentioned by Jotkowitz, omitted Waldenberg, for example, from her analysis of the halakhic abortion debate.

122 As was thoughtfully done by Irshai (ibid). See also the in-depth analysis by Mordhorst-Mayer, Medizinethische Entscheidungsfindung im orthodoxen Judentum (above, note 27).

123 See also Sinclair, "The Intersection of Law and Morality" (above, note 5).


125 Gray, Foreign Features in Jewish Law (above, note 4).

126 Sinclair, "The Intersection of Law and Morality" (above, note 5); Daniel Sinclair, Jewish biomedical law. Legal and extra-legal dimensions (Oxford: Oxford University Press, 2003).

127 Irshai, “Gender Perspectives in Halakhic-Decision Making” (above, note 4).

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