Introduction: Bioethics in Israel

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Consider the following scenes: Early morning at an IVF clinic at a public hospital in a city in northern Israel: two women sit silently next to each other, both waiting for an ultrasound and a hormone adjustment protocol. Their weary eyes disclose that both have already had their share of ups and downs with these tiresome fertility treatments. The emotional roller coaster is clearly taking its toll; exhausted from the ongoing dance of hope and despair, the two are lying back on their chairs, motionless, staring at the clock in front of them. Who are these women? What are their stories? Is there any significance to the fact that both are Israelis? Grueling fertility treatments burden women everywhere who turn to them to fulfill their common wish to bring a child into the world. However, learning that one woman is undergoing her tenth cycle of treatments, subsidized by the Ministry of Health, and that the other is to be impregnated with the sperm of a dead man she had not known while alive, one could certainly attest to Israel's unique reproduction policy as a major factor in this scene.

Spring 2006: the global outbreak of avian influenza (H5N1) has become a clear public health menace. The Israeli army joins private contractors to cull infected poultry flocks, but collaboration on a regional scale is needed. Without cross-border partnerships with the Palestinians and the Jordanians, the Israeli efforts to combat the outbreak are not sufficient. Facing infectious diseases obliges preparedness at the international level. Indeed, rephrasing the "diseases know no borders" maxim, the head of foreign affairs at the Israeli Ministry of Health declared that "birds know no borders." But how can this necessary collaboration be attained in a region as conflict-ridden as the Middle East? Can public health be separated from politics? In a prolonged state of conflict threatened with the potential of unconventional warfare and terrorism, is preparedness against emerging infectious diseases different from biosecurity?

July 2015: the Israeli parliament, the Knesset, has enacted a law allowing a judge to sanction the force-feeding of hunger-striking prison inmates if there is a threat to an inmate's life, even if the prisoner refuses. In response, the chairperson of the Israeli

Medical Association declared the law unethical. "Doctors should follow the rules of medical ethics which are independent of political coalitions," he argued (Efrati and Lis 2015). Both critics and supporters indicated that the issue of force-feeding hunger strikers mixes together the ethical and the political spheres. "Hunger strikes are a new type of suicide terrorism," claimed the minister of public security, thus conceding that the law was more concerned with addressing Israel's security than with saving the strikers' lives. Ethicists who supported the law tried to camouflage its political aspect by adhering to the adage of the "sanctity of life" as the supreme rule in medical ethics. Both supporters and critics of the law on force-feeding referred to its ethical aspect as the professional framework for the debate. But focusing on only the medical ethics aspect of what is also a highly political question actually served to emphasize how interconnected the issues of bioethics and biopolitics are.

Taken together, these three scenes illustrate bioethical reality in Israel. The first scene introduces a bioethical issue of Israel's very well-known liberal reproductive policy. The second scene raises questions of how the geopolitical setting demands the development of an ethics of cooperation. The third scene relates to the Israeli–Palestinian conflict as a key factor in discussing bioethics. Whereas consensus is easily achieved regarding the bioethical nature of the first scene, the second and surely the third are often relegated to the realm of politics rather than that of ethics. However, we argue that all three cases represent important elements of current Israeli bioethics and all three cases illustrate the mixture of the bioethical and the biopolitical. Further, this sampling suggests that Israeli bioethics is indeed distinguished by some singular characteristics, but that it nonetheless reflects the current general concerns of the entire field of bioethics, particularly the shift from concentrating on medical ethics alone to focusing on political issues that are inherent in the field.

Israeli bioethics has attracted the attention of local and international scholars for more than two and a half decades (Prainsack 2015). In this respect, the studies in this collection represent another attempt to satisfy the growing curiosity about how Israel developed its bioethical regimes. However, in contrast to the majority of previous accounts of Israeli bioethics, the perspective of most studies in this volume does not pre-assume that the Israeli case is an exception to liberal bioethics. Instead, they present a thorough study into the meeting points of the bioethical and the biopolitical in the local setting of Israeli society, and suggest the Israeli case as a case study for the global concerns of bioethics today.

This introductory chapter will develop our main argument by presenting two analytical axes. The first will consider the theoretical and methodological position that bioethics is always biopolitics, a proposition that mainstream bioethical discourse often ignores or hides. The second will explore our position that Israel's bioethical landscape serves as a useful example for discussing the challenges of bioethics today. The introduction concludes by presenting this volume's structure and chapter outline.

EXTENDING BIOETHICS BEYOND MEDICAL ETHICS AND LIBERAL THINKING

Although bioethical concerns moved beyond conventional doctor–patient relationships already during the second half of the nineteenth century with the emergence and development of social medicine and the public health sector, it was not until the second half of the twentieth century that criticism of the medical profession became more prevalent. Attacks on the medical profession were varied and originated from numerous sources: social and political – the rise of the civil rights movement, feminism, anti-psychiatry, and other critical approaches against biomedicine; legal – an increase in medical lawsuits; economic – the need to restrict the use of expensive medical technology; alternative medicine – criticism of conventional medicine (Davidovitch and Filc 2006); and from patients who started to no longer blindly trust doctors and their motives. In addition, immense ethical breaches, two glaring examples being Nazi medicine and the infamous Tuskegee syphilis study, fueled the growing mistrust in the medical profession and its ethics (Reverby 2000; Rubenfeld 2010).

It is within these contexts, particularly the social, political, and economic ones, that the growth and development of bioethical discourse and practice should be examined. It is therefore not surprising that many medical practitioners have perceived bioethics as another antagonist force, or at least a foreign entity to be resisted (Rothman 1992). In contrast, some doctors who joined jurists, religious officials, and philosophers in supporting new trends in bioethics viewed bioethics as a tool that could be used to set guidelines that could help save the medical profession, which had been subject to serious criticism for quite some time (Filc, Davidovich, and Gottlieb 2016). Others (Evans 2002) considered bioethics a way for professions, including the medical profession, to maintain their control over decisions rather than opening up the decision-making process to others.

As mentioned previously, the impact of the Holocaust played an important role in the development of bioethics. The Nuremburg doctors' trials are considered a watershed in the development of bioethics, especially as it emerged in the United States. One central outcome of the trials was the creation of the "Nuremberg Code," which is quoted to this day in every bioethics textbook. The code was written by American doctors and jurists in an effort both to avoid the recurrence of such medical atrocities and to clearly differentiate between the crimes committed by Nazi doctors and ordinary medical research (Rothman 1992). Nonetheless, there has been debate about the role of the Holocaust in the development of bioethics, particularly in light of the rather late adoption of the Nuremberg Code in research ethics, not before 1964 in the formulation of the Helsinki Declaration.

Since its emergence as a recognized field, bioethics began developing in different directions. In its early stages, when questions of biomedicine's responsibility for social impacts and future generations were raised, bioethics emphasized ethics

within medical research clinics and laboratories. Later, thinkers in the field became interested in questions of doctor–patient relationships and examined the balance of power between medical professionals and patients from a liberalist viewpoint (unlike traditional medical ethics, which considered these relations legitimately paternalistic). Bioethics also began to be applied to additional medical professions, such as nursing, pharmacology, physical therapy, and public health.

While theologians and analytic philosophers joined bioethical discussions from the earliest stages of the field, members of other disciplines, including historians, sociologists, and anthropologists, only later joined bioethical debates, expanding discussions in the field to subjects ranging from feminist criticism of the medical world and bioethics to critical bioethics. Initially flourishing as a new discipline in the United States, the study of bioethics later spread throughout the world, influencing various nations and cultures differently. On one hand, today international bioethical codes exist and influence both international and local discourse in various fields, including clinical medical practice, doctor–patient relations, medical research, public health, and health policy. On the other, opinions on how to use this tool are quite diverse and expressions of bioethics diverge widely according to locale.

While bioethics has expanded and become more pluralistic, both disciplinarily and geographically, mainstream bioethical thinking is still strongly embedded in the classical liberal worldview. By *liberal bioethics* we refer here to the hegemonic mode of thought in bioethics that has developed mainly in liberal democratic societies.

Mainstream bioethics is mostly influenced from the disciplines and intellectual traditions of liberalism, analytical philosophy, and biomedicine that have made central contributions to mainstream bioethics, while also depoliticizing the field. Without negating the essence of bioethical thinking, liberalism and analytical philosophy's presumption of universal rationality, together with biomedicine's assumption of the professional's role as neutral due to its scientific and value-free character (Beagan 2000; Keshet and Popper-Giveon 2017), facilitated the de-politicization of mainstream bioethical thinking. Notwithstanding the depoliticizing influence of liberalism, analytical philosophy, and biomedicine, bioethics remains inherently political, with many layers to its political character.

First, at the most visible and recognizable level, the political nature of bioethics arises from the political discussions surrounding "traditional" topics of bioethical thinking, such as beginning- and end-of-life decisions. Second, mainstream bioethics is political precisely because of the assumptions it holds as certainties, such as the universal validity of liberal assumptions. One example of such an assumption is that liberal bioethics, like liberal legal theory, incorporates in its model the claim that there is a clear-cut distinction between law and politics (Altman 1990). In fact, it can be argued that bioethics' efforts to depoliticize the field by depicting its liberal values, which are in their essence political, as rational and universal and bioethics' claim that it is possible to detach interpretation from political discussion, are, paradoxically, political acts. Third, bioethics' actual field of

activity, including its determination of what topics are to be discussed and what topics are outside its scope of study, render the field inherently political. Even bioethics' method of phrasing its questions and issues, greatly influenced by its strong link with liberal legal theory, is inherently political. According to liberal legal theory, the goal of the rule of law is to secure a wide zone of freedom (Altman 1990), and in consonance with this goal, mainstream bioethics asks whether a specific procedure should be forbidden. Only if it should not be forbidden does mainstream bioethics inquire whether it should be allowed. Fourth, bioethics is political because of its role as the *ethics of bio-capitalism* (Rose 2007). And, finally, bioethics is political in the Foucauldian understanding of biopolitics as the management of life (Foucault 2003, 2004).

According to Salter, mainstream bioethical thinking "presents itself as a neutral technique that uses 'tools for measurement that transcends culture'" (2007: 273). However, it is difficult not to recognize the political nature of discussions over issues such as prenatal screening, stem cell research, assisted suicide, or euthanasia. With regard to bioethics' first layer of politicization by discussing essentially political issues, Bishop and Jotterand argue that bioethics is being increasingly politicized, and "one's 'bio-ethical views' will reflect one's *political* assumptions concerning the nature, goals and values that should guide the biomedical sciences" (2006: 205; italics in the original). Consequently, discussions on the aforementioned issues have confronted both Democratic and Republican administrations in the United States, as well as secular and religious political parties in Israel with challenges to traditional liberalism from religious worldviews.

Regarding the second issue, that bioethics' efforts to depoliticize are actually political, Callahan argues that bioethics presents "a set of essentially political and social values . . . not as a formal theory but as a vital background constellation of [axiomatic] values" (2003: 298). These values combine the assumption that the discrete individual is superior and has greater value than the society as a whole with "a more or less utilitarian perspective as an operative principle in ethical decision making" (Koch 2006: 253). According to Beauchamp and Childless, autonomy, non-maleficence, benevolence, and justice emerge as the four basic principles of mainstream bioethics. The order of the four principles is not arbitrary but lexically deliberate, and individual autonomy, liberalism's central value, outweighs the other three. It must be said that during the past decade, mainstream bioethical thinking has become more pluralistic, and the combination of individualism with a more or less utilitarian perspective has been enriched by other voices and approaches.

Mainstream bioethics' assumption that liberal core values and conceptions about human nature and society are universal has been challenged not only by religious thinkers, but by conservative viewpoints (Koch 2006; Smith 2000; Trotter 2006), communitarian ethics (Callahan 2003; Etzioni 2011), feminist philosophers (Leach et al. 2010; Nyrövaara 2011; Tong 1998; Wolff 1996), and critical disabilities studies (Newell 2006). Conservatives argue that bioethicists' approach is far from universal,

that there is an alternative sanctity of life ethic, and that the "older value of a blanket valuation of protected human life" should overcome liberal principles (Koch 2006: 263).

In contrast to liberalism's methodological and axiological individualism, communitarian thinkers posit that human beings are social animals that always exist and operate within a network of other people and social institutions; that the public sphere is important and is not clearly separated from the private one; and that the welfare of the whole must be taken into account (Callahan 2003). Thus, communitarians argue that the first, or at least an equally important ethical question to be raised in bioethics should address the potential societal and cultural impact of decisions (Callahan 2003; Etzioni 2011).

Feminist thinkers have been also very critical of mainstream bioethics (Bowden 1997; Gilligan 1982; Held 2006). Feminist thinking presents several objections to mainstream bioethics, criticizing several aspects: its abstract approach instead of one that is more contextual or relational or that takes into account differences; its assumption of human separateness instead of connectedness; its preference for the right over the good; its marginalization of women; its assumption of man as the universal category; its disregard for gender differences; its embrace of individualism; and its disregard of unequal power relations (Tong 1998; Wolff 1996).

Thinkers from the field of critical disability studies argue that mainstream bioethics is characterized by "disabilism," which classifies different types of impairments under a single universal category of disability (Newell 2006). They further contend that disregarding the perspectives of the disabled depoliticizes issues and that considering the person as a discrete being rather than relational and part of a group of others discriminates against those who are harmed by a lack of care (McBryde Johnson 2003).

As demonstrated, other bioethical traditions pose significant challenges to mainstream bioethics. However, with the exception of feminist bioethics and certain scholars within disability studies, the other approaches to bioethics address only the first two political dimensions presented earlier: the discussions in which it engages, and the assumptions under which it operates. Neither conservatives nor communitarians criticize the scope of issues discussed by bioethics, the political economy that frames its discussions, or bioethics' role as part of biopolitics.

The third political dimension in the field of bioethics refers to how bioethics frames its field, the scope of issues covered by bioethicists, and the institutional settings in which bioethical discussion takes place. In reference to how bioethics frames its field, Guido Berlinguer rightly notes that "[B]ioethics . . . has been focused almost exclusively on recent developments in biomedical sciences – on extreme cases that were, up to now, infeasible and sometimes almost inconceivable" (2004: 1086). The cases referred to include organ transplantation, stem cell research, genetic therapy, cloning, assisted ventilation, and more. These discussions, important as they are, address biomedicine's cutting-edge practices that are performed mostly, if not solely, in developed countries. These practices generally remain distant from the

experience of the overwhelming majority of humanity that nevertheless must confront issues of disease, illness, treatment or lack thereof, and death. Bioethics seldom addresses the ethical issues "raided by the mundane, routine, global depredations of illness and premature death" (Rose 2007: 16). Still working within a "principalist" approach, Berlinguer identifies equality, not only the equal dignity of every individual, but equity of life, disease, and health, as a principle that re-politicizes bioethics and broadens both its scope and the character of its practice (2004).

The fourth political dimension of bioethics is that of political economy. As Cooper (2011) claims, life has become a commodity. Indeed, it could be argued that since the emergence of a class society and extraction of labor, human life has become a commodity. However, until the advent of the biotechnological revolution, life as a commodity existed as human labor, and its extraction was mediated by social forms that allowed for the exploitation of human labor. The biotechnological revolution enables life to produce surplus value in much more immediate forms and bioethics plays a significant role in supporting this revolution. Bioethics plays "a crucial function in market creation, as biotech companies seek to commoditize DNA sequences, tissues, stem cells" by legitimating the extraction of surplus from life, and expanding the commodification of bare life (Rose 2007: 16).

The fifth and last political level in bioethics is that of biopolitics. As Bishop and Jotterand have argued, "bioethics has always been a bio-politics" (2006: 205). The other three political dimensions of bioethics analyzed previously refer mostly to power understood as sovereignty. Considering bioethics as part of biopolitics relates to biopower understood as "bio-politics of the human race" (Foucault 2003: 243). Biopolitics is "the acquisition of power over man insofar as man is a living being," i.e., man as a mass and the biological processes, such as birth, illness, and death, that affect it (Foucault 2003: 243). From this point of view, bioethics can be considered as an essential knowledge and as a technique of power over man as a living being. In this sense, Schicktanz and colleagues (2012) illuminate the way in which bioethics developed as a field of "expertocracy" in which "ethic experts" achieved influence and legitimization due to what is understood as a "superior and/or exclusive form of knowledge" (Schicktanz et al. 2012: 130). It is even possible to assert that the very emergence of bioethics as a discipline and a practice is a reaction to and a form of biopolitics (Schicktanz, Schweda, and Wynne 2012), since major bioethical breaches, such as Nazi medicine and the Tuskegee syphilis study, are examples of power exerted over man as a living being. In addition, bioethics can also be seen as a form of biopolitics, since bioethics evolved into a practice that is part of the "conduct of conducts" that characterizes biopolitical governmentality. Consequently, bioethics, representing ethical thinking related to life in general, but especially to human life and human health, plays a central role in contemporary biopolitics.

In contrast to the dominant liberal approach to bioethics, which obscures bioethics' political character, we argue that the Israeli case throws light over this

political character. The very publication in 2015 of a book including reflections on bioethics from a number of Israeli specialists from different disciplines and entitled *Blue and White Bioethics* highlights the closeness between bioethics and the polis (as blue and white are the colors of the Israeli flag and serve as a metaphor for the Israeli state). The political character of bioethics in Israel is conspicuous in each of the political dimensions discussed in this volume. Much, if not all, of bioethical thinking and discussion in Israel consists of confrontations among a variety of political actors, such as health care professionals, lawyers, academics, political parties, etc., defending or opposing liberal and orthodox religious views. Bioethical decisions and legislation in Israel express a constant tension between liberal, individualist positions and conservative, communitarian ones. The political role of bioethics in framing the field of discussion and excluding certain topics is particularly evident in the Israeli case, where issues such as the health consequences of the neoliberal commodification of health care, accusations regarding the abduction of Yemenite and Balkan babies,[1] power relations between Jewish and Palestinian Israeli citizens, or the serious health consequences of the prolonged occupation of the Palestinian population in the West Bank and the Gaza Strip have been systematically excluded from Israeli bioethical thinking. Finally, we can witness in Israel the role of bioethics in the emergence and development of a "somatic" ethics. Because Israel is a biocapital power, especially in the med-tech and repro-tech sectors, it plays a central role in the ethics of the flourishing of biocapitalism (Rajan 2006). In addition, the political nature of bioethics in Israel can arguably be discerned from the field's silence about the issue of how, because of the Israeli occupation of the Palestinian territories, the lives of Palestinians are transformed into bare, unprotected lives, lives left to die (Agamben 1998).

ISRAEL AS A CASE FOR BIOETHICS ANALYSIS

The alleged divergence of Jewish-Israeli bioethics from prevailing Christian-Western norms and culture has elicited different reactions. On a normative plane, some leading scholars in the field have criticized Israeli bioethics for not meeting the minimal standards of liberal bioethics, such as medical autonomy at the end of life, and for violating the principle of doing no harm in the excessive use of reproductive technologies at the beginning of life. In contrast, prominent Israeli bioethicists have endorsed Israeli exceptionalism, arguing against what they perceive as the dominance of Anglo-American bioethics in Israel and calling for a local, autonomous Israeli bioethics (Kasher 2015; Siegal 2015).

[1] In the 1950s, several babies born to new immigrants from Yemen and the Balkan countries were reported as dead. However, the number of cases, the lack of parental involvement in the decision to transfer the babies from one facility to another, and the lack of transparency related to questions about treatment and cause of death aroused strong suspicions that these babies were abducted from their biological families and given up for adoption. Notwithstanding public activism, investigations were not thorough and lacked transparency. Despite the extremely high public profile of the issue decades later, Israeli bioethical thinking mostly did not address the matter.

On a descriptive plane, scholars have directed their efforts at trying to elucidate the distinct Israeli bioethical approach in light of its special mixture of religious, political, legal, and historical traditions. Some scholars have attributed Israeli exceptionalism to the influence of the Jewish religion (Kahn 2000). Others have emphasized the unique cultural history of Jews and non-Jews in Israel, including the impact of the Holocaust. Others have turned to demographic and political explanations and to the Israeli–Palestinian conflict (Birenbaum-Carmeli and Carmeli 2010; Kanaaneh 2002). Most scholars, whether from a normative or a descriptive perspective, share the prevailing presupposition about the singularity of Israeli bioethics.

Prior to the 1990s, what is now commonly referred to as *Israeli bioethics* was mostly perceived as Jewish medical ethics or Jewish bioethics (Prainsack 2015). However, since the turn of the century, significant growth has taken place in the number of English-language scientific publications discussing bioethics in Israel. They have been examining the leading bioethical topics of our times, such as assisted reproduction, organ donation, stem cell research, genetics, and end-of-life decision making, all topics about which the Israeli point of view and public policies have appeared to be unique. Specific Jewish medical ethics of course remained relevant in this discourse, but it has been acknowledged that the State of Israel and its policies, as well as Israel's medical and popular cultures, do not rely solely on Jewish medical ethics, despite its strong and comprehensive influence.

Since the 1990s, scholarly curiosity about Israeli bioethics has been stimulated by the surprising fact that some highly contested topics in Western bioethics, most notably abortions and selective abortions, stem cell research, cloning, and community genetics, have been easily accepted in Israel, without raising public and expert debate. However, regarding end-of-life issues, Israeli law has remained adamant in its opposition to withdrawing life-sustaining support even upon the explicit request of the patient. Israeli law has also imposed a very stringent definition and limited acceptance of brain death. Israel's proclaimed exceptionalism has been explained by different culturally specific factors such as: Judaism's teachings regarding the beginning and end of life (Lavi 2010); the sanctity of life and the role of human beings as God's partners in creation (Wahrman 2002); the extraordinary pro-natalism and pro-family characteristics of Israeli society (Hashiloni-Dolev 2007; Rimon-Zarfaty 2014); the effects of demographic and militaristic threats, as well as the trauma of the Holocaust, leading to an emphasis on survival (Kasher 2015); and a positive attitude toward science and technology as part of a Zionist legacy that views them as crucial for achieving progress and ensuring the survival of the community (Prainsack and Firestine 2006).

The academic emphasis on explaining the exceptionalism of Israeli bioethics has led to the neglect of examinations of similarities between Israel and other nations as well as of internal contradictions in Israel, such as its more open attitudes toward beginning-of-life issues in contrast to relatively restrictive attitudes toward end-of-life issues. In addition, by stressing the novelty of Israeli regulations, scholars have occasionally overlooked the more traditional features of Israeli bioethics. Indeed,

the field of bioethics in Israel exhibits both modern and more dated elements. Equally misleading is that even in areas where Israeli bioethics seems exceptional, such as in the cases of artificial reproduction technologies, brain death criterion, or posthumous sperm retrieval, its exceptionality is often merely a matter of degree and not of kind. If this difference of degree rather than kind was recognized, Israel's variations from accepted practices in other countries could be more easily understood.

In their seminal paper discussing Israeli exceptionalism, Prainsack and Firestine anticipated two possible future scenarios:

> With regard to normative analysis and policy recommendations, we consider two different paths as equally worthy of consideration: first, Israeli policy makers may take on an identity of what we call "positive difference." This consists of the conviction that the liberal Israeli regulatory framework of biotechnology is no less moral than elsewhere, but less "inhibited" by religious moral objections (which do not exist in Judaism to the same extent as in Christian teachings) and guilt feelings from the past (such as in the German case, see Gerhardt (2002)). This attitude is prevalent among many stakeholders in biotechnology in Israel: it manifests, among other things, in the portrayal of Israeli biotechnology policy making as "doing it the Israeli way." ... The other possible path could be that Israeli policy makers will eventually give in to pressure from the international community. (2006:42)

However, there is another option, not raised by Prainsack and Firestine and congruent with the technological determinism theory (Marx 1994) that suggests that once technologies are available, all societies will eventually adopt them if they have the means to do so. While this theory suffers from oversimplification, it is time to ask a number of questions raised by the Israeli case. Has Israel's permissiveness and/or recklessness, depending on one's moral perspective, continued in its unique direction or has it restrained itself in light of international views and pressures? Or has the Western world moved in the direction of Israel's less inhibited bioethical standards? The answers are obviously not clear-cut, as will be demonstrated by the different chapter in this volume. During the past decade, Israel has been zealously regulating bioethical issues, sometimes downplaying its radical positions and sometimes serving as an instructive example for other countries.

Outline of Chapters

This collection of studies is comprised of three sections. It opens with a set of works that discuss different aspects of the connections between the political and the ethical in Israeli bioethics. The first five chapters cover issues that are less common in the discussions on bioethics in Israel, as they are considered "political" and are not included in the usual analytical axes of understanding bioethics in Israel. If we understand bioethics as having a strong political aspect, then the focus of interest of