to all who struggle with the prejudices and intolerance
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Berna Arda and Vardit Rispler - Chaim
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EDITOR BIOGRAPHIES

Berna Arda

Prof. Berna Arda, a graduate of Ankara University School of Medicine 1987, has medical specialty and PhD degrees, teaches at the Department of Medical Ethics and History of Medicine in Ankara University School of Medicine, Ankara, Turkey. Her main research and publication fields are science ethics, human rights, woman and bioethics, medical law, ethics education and disease concept in history of medicine. Guest professor on the University College of London, History of Medicine Center, between January and June 2008. Founder chairperson of Turkish Bioethics Society (1994-2001), Member of High Disciplinary Committee of Turkish Medical Association (2008-2012). Governor (2006- ) and Vice-president (2010- ) of World Association for Medical Law, founder International Association for Education in Ethics(2011- ).

Vardit Rispler-Chaim

Prof. Vardit Rispler-Chaim, a graduate of UC Berkeley, USA 1985, teaches Islamic Studies at the Department of Arabic Language and Literature at the University of Haifa, Haifa, Israel. Her main fields of research and publication are Islamic law, Islamic medical ethics, and human rights in Islam, Qur’an and commentaries. She has published several articles on the position of Islamic ethics on topics such as abortion, genetic engineering, postmortem examinations, the beginning of life, selecting the sex of the embryo, restoration of virginity, and more. She is the author of the books: Islamic Medical Ethics in the Twentieth Century. Leiden: E.J. Brill, 1993, and Disability in Islamic Law. Dordrecht: Springer 2007. Prof. Rispler-Chaim has organized several local and international conferences on the subject of Islam and bioethics, the most recent one was co-organized in April 2010 in Manavgat-Antalya, with Prof. Berna Arda of Ankara University.
AUTHOR LIST

Editors
Berna ARDA
Vardit RISPLER - CHAIM

(in alphabetical order)

Ahmet ACİDUMAN, MD, PhD
Associate Professor of Medical Ethics and History of Medicine
Ankara University, School of Medicine
Department of Medical History and Medical Ethics
Ankara,
Turkey
Ahmet.Aciyiduman@medicine.ankara.edu.tr

Mashhad AL – ALLA, PhD
Professor of Philosophy and Islamic Studies
The Petroleum Institute
Abu Dhabi,
United Arab Emirates
mashhad9@yahoo.com

Abdul – Razzaq Abdul – Majeed ALARO, PhD
Senior Lecturer
University of Ilorin,
Faculty of Law, Department of Islamic Law
Nigeria
aralaro@hotmail.com

Teresa ALFONSO
Alcala University,
Legal and Forensic Medicine
Area of Bioethics
Spain

Ahsan AROZULLAH, MD, MPH
Astellas Pharma Global Development
Deerfield IL,
United States of America

Mahmut AY
Associate Professor
Ankara University, Faculty of Divinity
Department of Theology  
Ankara,  
Turkey  
mav@divinity.ankara.edu.tr

Noaman BEJI  
Consultant for Ministry of Justice  
Department of Juvenile Justice  
Cultural Mediator, Ministry of Justice  
Palermo  
Italy

Maurizio CASTELLI  
European Centre for Bioethics and Quality of Life  
UNESCO Chair in Bioethics Unit  
Italy

David CUMMISKEY, PhD  
Bates College, Philosophy Department  
Lewiston,  
Maine  
United States of America  
dcummissk@bates.edu

Abdul Fadl Mohsin EBRAHIM, PhD  
Professor of Islamic Studies  
University of KwaZulu – Natal, School of Religion and Theology  
Durban,  
South Africa  
ebrahima@ukzn.ac.za

Sahin FILIZ  
Professor, Akdeniz University,  
Faculty of Art and Sciences  
Department of Philosophy  
Antalya,  
Turkey  
sfiliz@akdeniz.edu.tr

Cemal Huseyin GUVERCIN, MD, PhD  
Ministry of Health  
Ankara,  
Turkey  
cemalcin@yahoo.com

Hadas HIRSCH, PhD  
Oranim Academic Collage for Education,  
Ramat Ishay  
Israel  
hhirsch@bezeqint.net
Onder ILGILI, MD
PhD Candidate, Ankara University, School of Medicine
Department of Medical History and Medical Ethics
Ankara,
Turkey
ilgili@medicine.ankara.edu.tr

Esin KAHYA, PhD
Ankara University,
Faculty of Letters
The Department of Philosophy, Emeritus Prof.
Ankara,
Turkey
esin.kahya@yahoo.com

Shirin KARSAN
MBE, University of Pennsylvania
Ben Mawr,
PA
United States of America
shirinkarsan@gmail.com

Mohammed Amin KHOLWADIA
Dar – ul – Qasim Institute
Glen Ellyn,
Illinois,
United States of America

Rosario NARDELLO
Assistant Professor
University of Palermo, Faculty of Medicine and Surgery
“Mother /Child University Department”, Neuropsychiatry of Child and Adolescence Section
Palermo,
Italy
r.nardello@unipa.it

Elisabetta NECCO, MS
Ph.D. Candidate – Multiculturalism and Islam
University of Seville
Spain
elisabettanecco@yahoo.com

Aasim I. PADELA, MD, MS
University of Michigan,
Robert Wood Johnson Clinical Scholars Program
Departments of Emergency & Internal Medicine
Michigan, MI
United States of America
aasim@umich.edu
Antonio PIGA  
WAML Honorary Governor  
Alcalá University,  
Legal and Forensic Medicine  
Area of Bioethics  
Spain  
Antonio.Piga@auh.ed

Müfit Selim SARUHAN,  
Assoc.Prof., Ankara University, Faculty of Divinity,  
Department of Islamic Philosophy,  
06500 Beşevler- Ankara  
Turkey  
saruhan@divinity.ankara.edu.tr

Hasan SHANAWANI, MD, MS  
Department of Pulmonary & Critical Care Medicine  
Wayne State University,  
Detroit, MI  
United States of America  
shanawah@karmanos.org  
hshanawani@med.wayne.edu

Şehriyar ŞEMS  
Independent Scholar,  
Ankara,  
Turkey  
ssems@isbank.net.tr

Serena TOLINO, MA  
PhD Candidate – University of Naples L’Orientale and Graduate School Society and Culture in Motion, Martin – Luther – Universität, Halle – Wittenberg  
Halle (Saale),  
Germany  
serena.tolino@scm.uni-halle.de

Ahmet UNSAL  
Associate Professor  
Ankara University, Faculty of Divinity  
Department of Theology
Ankara,
Turkey
Ahmet.Unsal@divinity.ankara.edu.tr

Miroslava VASINOVA, MD
Professor, Governor of WAML
European Centre for Bioethics and Quality of Life
UNESCO Chair in Bioethics Unit
Italy
mvasinova@libero.it

Hajrija M. MUJOVIC – ZORNIC, PhD
Senior Research Fellow at the Institute of Social Sciences, University of Belgrade, Serbia;
Secretary General of Association for Medical Law of Serbia
medlaw@eunet.rs
INTRODUCTION TO THE PROCEEDINGS

This book contains twenty-one of the papers presented at the 3rd Islam and Bioethics International Conference held April 14 - 16, 2010, in Manavgat, Antalya, Turkey.

The topics covered

The topics of the papers in this volume are indeed variegated, as the participants at the conference were from diverse disciplines: medicine, history, law, Islamic studies, anthropology, religion, sociology, medical ethics, etc. For convenience the papers can be classified into the following general groups.

A. Historical aspects of Islamic bioethics

In the field of the history of medical ethics, we have the paper by Esin Kâhya on healthcare provided to travelers to Turkey and Istanbul in the 17th century. There is also a paper by Hadas Hirsch on the preparation of the dead for burial: the difference between treatment of males and females after death in pre-modern Muslim societies.

B. Methodology of Islamic bioethicical decision-making, and Islamic ethico-religious attitudes to certain topics in bioethics

Şahin Filiz discusses in detail the relation of bioethical principles and Islamic ethics. Abul Fadl Mohsin Ebrahim writes on the sources of Islamic medical ethics, the primary, secondary and tertiary sources, and whether they can or cannot be enforced through actual legislation.

In their paper, Asim Padela and colleagues survey how ethical positions on brain death are handled by various groups of Muslim scholars representing a range of academic disciplines (social scientists, physicians and health-related professionals, Islamic studies scholars, devotional jurisconsults, etc.) and by different organizations (legal, religious, policy-making, bioethical, etc.).

Mufit Selim Saruhan discusses the main objections to two important bioethical subjects - euthanasia and organ transplantation; he also tries to evaluate universal values from an Islamic perspective.
Changing ethical and legal approaches to abortion in Egypt today are discussed by Elisabetta Necco; on Assisted Reproductive Technologies from an Islamic perspective we have a paper by Abdul-Majeed Alaro. Mahmut Ay writes about ethical permissibility to tamper with human nature, such as gene therapy. Ahmet Ünsal researched attitudes to chemical castration and sterilization in Islamic law. Attitudes to cloning in the Islamic bioethical deliberations are set forth in a paper by Mashhad al-Alla. Asim Padela and co-authors, already mentioned, contribute a paper on attitudes to brain death, and whether it should be accepted as death in respect of permission to harvest organs for transplants; these same authors similarly write on attitudes to surrogate motherhood in Islamic bioethical discourse.

C. Bioethical positions in specific Islamic communities or in certain countries

Hajrija Mujovic Zornic offers an article on bioethics among Muslims in Serbia. Rosaria Nardello and colleagues write about the psychiatric problems of young illegal immigrant detainees from North Africa in Sicily, Italy. The main issue is how to employ their religion (Islam in most cases) and culture in helping the detainees overcome their mental problems. Shirin Karsan studied the attitudes of Emirati Muslims to Assisted Reproductive Technologies.

Ahmet Aciduman and colleagues analyzed why 10 weeks were determined as the permitted period for abortion in present-day Turkey. Serena Tolino about the ongoing discourse in Egypt on Female Genital Mutilation (FGM). Cemal Hüseyin Güvercin surveys the present viewpoints of the Presidency of Religious Affairs of the Republic of Turkey on several bioethical issues.

D. Miscellaneous

A group of fascinating papers do not fall within the scope of the above-mentioned groups. One of these is Önder Ilgili and co-authors' quantitative research of articles on Islamic bioethics published in the American Journal of Bioethics and in the Journal of Medical Ethics since 2001. Another interesting paper is a preliminary attempt by David Cummiskey to compare Islamic and Buddhist medical ethics, in quest of some common denominators despite obvious differences. Miroslava Vasinova and colleagues in a pioneering study conclude that religious adherence (to Islam in this case) was responsible for the better preparedness of the population of Iran (1990) to face natural disasters, in contrast to Mexico City (1985) and Haiti (2010).
An Overview

Despite the different scholarly disciplines of the contributors to this book, certain traits surface in almost all of them.

The main message emerging from the above papers is that the scope of Islamic bioethics is wide, and ever-expanding. This means that all the topics that interest "consumers" of bioethics in the Western or the Eastern world are of interest to Muslims and to "consumers" of Islamic bioethics as well. Islamic bioethics demonstrates awareness of and acquaintance with the latest developments in medicine, be they in the scientific innovation or bedside manner.

Three main questions preoccupied the authors of almost all papers, albeit not always at the same level of intensity:

1. What is really meant by Islamic bioethics, and is it justified to speak of Islamic bioethics?
2. Who formulates the Islamic ethical norms: who has the authority?
3. How can we assess the conclusions reached in Islamic bioethical deliberations?

1. What is meant by Islamic bioethics?

Ethics is a broad field, stretching over the prohibited and the permitted, and draws the general tendencies of any given ethical system (contrary to Law, which provides exact answers to specific cases/scenarios). In Islamic scholarship the ethical domain resounds with terms such as akhlaq (virtues), istihsan (equity), maslaha (the public interest or welfare), and al-amr bil-ma'ruf wal-nahy 'an al-munkar (the duty to command the right/moral and forbid the wrong/immoral). True, it leaves much room for debate as to what is "right" and "wrong", what does or does not foster the best interests of the public, and what is a "juristic preference". It becomes clear through many presentations that these debates are influenced by cultural as well as by religious and philosophical factors. In the case of Muslims, ethical debates draw basically on Islamic theology and the Shari'a - Islamic law. Islamic bioethics does not differ in this regard from other Islamic ethics (of war, of commerce, of marital life, etc.). That is, any position on Islamic bioethics, on the
part of supporters or opponents of any given moral dilemma, will still rely, to this very day, on Shar'i sources, and/or on Islamic theology.

The consumers of Islamic medical ethics today are physicians and academics, medical institutions, bodies that decide medical policy, and religious leaders.

The lay patient looks up to all of them, not necessarily in the order mentioned, when he or she is uncertain as to whether a medical procedure offered him or her suits the general guidance of the Sharia and Islamic theology. A devout Muslim wants to be assured that the treatment they are offered will not violate any religious dogma. This harmony is expected to prevail at all costs, since God created the world in harmony and equilibrium. To violate this harmony would be considered a rebellion against God's will and planning, namely heresy.

2. Who formulates the bioethical norms?

This is an important question, since those who formulate the bioethical norms exert profound influence on patients, physicians, and other consumers of bioethical guidelines, and definitely on the quality of life or life expectation of those who follow these norms.

Bioethical norms are pronounced mainly via fatwas, but fatwas are non-binding juristic consultations.

In a paper presented at the conference (not published here) it was noted that a major shift of authority has occurred in the last two decades on the question of authority. The shift has been from individual muftis (ijtihad fardi), who were the main source of fatwas until the 1990s, such as Jad al-Haqq, al-Qaradawi, al-Sha'rawi, the Saudi muftis, Ibn Jabarin and Ibn Uthaymin, and previously Shaltut, Rida and many more famous, especially Egyptian religious scholars, to groups of muftis of many nationalities, who nowadays belong to institutional bodies. These have become the leading source for bioethical fatwas since the 1990s. Notable among the institutional groups are IOMS (the Islamic Organization for Medical Sciences, established 1994), IFA (the Islamic Fiqh Academy, centered in Mecca since 1977), IIFA (the International Islamic Fiqh Academy, centered in Jedda since 1981), ECFR (the European Council for Fatwa and Research, based in Dublin since 1997), and more.
An abundance of fatwas are readily found today in the media, and their spread is worldwide; hence the issue of authority becomes even more crucial. The reader may find more than one fatwa on the same topic—sometimes contradictory: which is one to follow? This is important especially due to the non-binding/consultative nature of the fatwa.

The choice of mufti to follow is sometimes a matter of fashion, or of local preference. In Egypt, for example, until twenty years ago, the Azhar scholars were almost the only recognized authority. The political-religious inclination of any Muslim undoubtedly drives them to follow a "liberal" or a "conservative" mufti, a "fundamentalist" or a "modern" one; again, it all depends on the interpretations and understandings associated with such labels (which themselves are subject to vague popular definitions and to an abundance of academic research). Most people would follow their relatives, their neighbors, and their colleagues in deciding on their revered religious leader. But in the end whoever they follow remains a personal matter; each person themselves bestows authority on the mufti of their choice, just by following the latter's opinion.

That today we encounter more legal activity on the part of groups of religious scholars, while in the past we heard more of individual muftis, may not mean anything. In the past the names of the leading muftis were known to all. Today we know the title of the organization—IFA, IIFA, IOMS, etc., but less the names of their members. A collectively reached *ijtihad* may be viewed as more authoritative by some and as too flexible or accommodating by others. In any case, the authority is vested from below, bottom-up, not top-down. Islamic bioethics is seldom imposed by governments or by officials (with few exceptions, such as the Turkish "Presidency of Religious Affairs" surveyed in this volume by Güvercin). All in all, bioethical guidelines remain dynamic and relatively flexible and adaptable to the changing circumstances.

3. How can we assess the conclusions reached by the bioethical deliberations?

As explained above, the conclusions reached for any bioethical topic are ad hoc; they may soon change in time and place. Therefore, ethical questions should be continuously reexamined and reassessed, as suggested by Prof. Kenan Gürsoy, the Turkish Ambassador to the Vatican.

The difference between Sunni and Shi'i attitudes to sperm donation may serve as a good example. While the Shi'is (Khamena'i, for example) permit it, because no illegitimate sexual
contact is involved in the process, the Sunni muftis view any sperm donation from a man to a woman other than a husband to his wife as fornication. No one can foretell today whether mutual influences in the future will approximate these two presently contradictory views, but it will definitely be worth checking periodically. The urgent need of childless couples to produce offspring, as explained by Shirin Karsan regarding the Emiratis, suggests that motivation to ease the ethics on sperm donation may exist; the flight of other Emirati childless couples to ART clinics abroad is also indicative that the present Sunni position may expect some amendment.

As informative as the papers presented at our conference were, the participants sensed that much more needs to be discussed in Islamic bioethics, and that additional meetings and conferences in the spirit of this last one will soon be in order.

Berna Arda and Vardit Rispler-Chaim
SECTION I

HISTORICAL ASPECTS OF ISLAMIC BIOETHICS
The Evaluation of Healthcare in the Seventeenth Century in Respect of Travelers

Esin Kahya

As already known, during the seventeenth century, there were travelers who came and lived in Turkey, or especially in Istanbul, for a while and have written their impressions. Apart from these, Evliya Celebi, the well-known traveler, also traveled and collected his notes in his famous book, *Seyahatname* (Book of Travels). When we compare the traveling books written by foreign travelers with that of Evliya Celebi, we can define interesting differences between them.

Evliya Celebi preferred to focus on geographical aspects and also gave information about the people who lived in the places he visited. Foreign travelers, however, focused on living styles, habits, nutriments, rules of healing, dressing, etc. That is to say, they tried to show the differences between their life style and that of the Ottomans.

Evliya Celebi gives information about public baths in Istanbul;¹ he classifies public baths and then provides information on where they were built and who used them. He writes about almost 150 public baths.² For instance, he notes that Mahmut Pasha Public Bath was for mothers, Zincirkapı Public Bath for innocents, Gedik Pasha Public Bath for the custodian of the arms (of a great personage), etc. He also gives further details about Abu Fath Muhammed’s Cukurca Public Bath and writes that it was large and had a cozy atmosphere. The Little Public Bath with Pond, which was located near the Imperial Mint, the Sultan Bayezid Public bath and the Suleymaniye Valide Public Bath were important public baths in the Ottoman Empire in the seventeenth century.³ Let us give some examples about the rest of the explanation about public baths in the Ottoman Empire:

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³ Age., p. 137.
Kasimpasha Public Bath: Its atmosphere is cozy; its water is soft and fresh.

Tersane Public Bath: It is located behind the wall of the maritime arsenal; it is a small public bath.

Hekimbashi Public Bath: It is suitable for its purpose.

Kulaksiz Public Bath: Its materials are clean and its workers are active; it is for the deaf.

Piyale Public Bath: It is known as a beautiful public bath.

Foreign travelers also wrote about public baths in Istanbul and, as we see for instance in Grelot’s *Relation Nouvelle d’un Voyage de Constantinople*, their narration differed quite much from that of Evliya Celebi. Instead of depicting the details of special public baths as in the Book of Travels of Evliya Celebi, Grelot’s work described how Turkish people used public baths. Grelot compared the bathing customs of the Christians and Turkish people. He said that Turkish people took bath for religious purposes because they believed that they had become dirty during the night and they were obliged to clean themselves in the morning. This practice is called *taharet* (*purity*) in Turkish. He also described how Turkish people also washed the deceased according to the principles of the Muslim religion.

Grelot gives the following information about the Turkish public bath:

‘There are a lot of public baths in the important cities in Turkey. There are also a lot of hot water sources which were built during the Roman period. But the most famous public baths are in Bursa. In public baths there are 3 halls. The first one has a mild atmosphere, it is not warm, but warmer than the outside. This place is for dressing. The second hall is warm and the third hall is hot; it is impossible to stay without sweeping. These baths are also used by Jews and Christians living in Turkey. This cleanness prevents occurrence of diseases. Of course, people can use drugs for treatment, but they have to use them when diseases appear.’
Here, the writer, Grelot tells that he met an old medical man who said that he had never drunk wine except for when he was ill; it was good for the treatment of the disease. That physician said that he drank wine whenever he had a headache; it was good for headache.

Grelot also notes that Muslim did not drink wine because they thought that drinking spirit was against their religious belief; they also went to public baths frequently even if it led them to catch a disease. He writes that if they had needed to pay a lot of money for public baths as the French did, their money would not have been sufficient to pay it and maybe they would complain about this religious obligation. (After the tenth century in Hijri calendar, they had to pay a quarter Turkish lira per person).

According to his writings, except for children until six years old, everybody, including slaves, had to pay a fee in Turkish public baths. Mothers would take along their children when they went to the public bath. But Turkish people did not go to public baths with all members of their family; women would never go to a public bath together with their husbands. Public baths had different time tables for women and men. For couples, having bath together in a public bath would be a reason for severe punishment.

Grelot notes that he took this information from a clever child who used to go to public baths with his mother when he was a little child and who remembered his childhood very well.

The writer also noted that when the doors of a public bath were opened, the bells would not ring as it happened in the Roman public bath. The doors of a public bath would open at four o’clock in the morning and close at eight o’clock in the evening. During this time period there would be no discussion or quarrel but only the sound of the water. Nothing would be stolen in a public bath, neither belongings nor money. For that reason, no one had to watch his belongings or money in public baths.
He also adds:

*Women put on their most beautiful dresses and they enjoy themselves and spend the whole afternoon with their friends in the public bath. Behind them there are also slaves who carry dresses and other stuff that might be necessary in the public bath. Women apply hunna (henna) on their hands and hair. Henna, ’kına’ in Turkish is a kind of powder. It is mixed with water and applied on the hair. Women apply some black kohl on their eyelash and eyebrow, and also apply balm to keep them in a certain form.*

Grelot claims that public baths were important for Turkish people because of their religion; it was a kind of obligation to wash in a public bath. However, it was not the evidence of their cleanliness. Although they were very fond of cleaning their body, they did not mind eating from the same plate and using a piece of dirty cloth, *kese*, in the public bath.

According to Grelot, public baths were so important for Turkish people that they built special public bathrooms at home. Thus, women did not go out for public bath. However, the fire lit in the public bath was also used for cooking especially in villages it was very useful; they used the fire for washing themselves and cooking their meals.

Grelot also mentions *taharet* as a part of cleanliness. He says even foreigners recognized this idea: ‘they always carry ibrik (water ewer). They don’t use paper for cleaning, because they believe paper is intended for writing. It is to be used for mentioning God’s name; it is a respectful object.

In 1664, another traveler, Monsieur Thévenot, wrote his book, *Relation d’un Voyage Fait au Levant*. He also visited almost the same places and he was also interested in the same subjects. The main difference between the two works is that Thévenot’s work is not

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5 Age, p. 194
6 Monsieur Thévenot, *Relation d’un Voyage Fait au Levant*, Paris 1664. It was translated from French to English and published in London 1686 as three parts: 1. Turkey; 2. Persia; 3. The Esatindies under the name of The Travels of Monsieur Thevenot into the Levant.
illustrated. Another difference between the two is that Grelot focused on Istanbul and the life style in Istanbul, whereas Thévenot also gave information about Persia and the East Indian countries. That is to say, he also gave information about the Syria, Egypt, etc.

About the public bath, Thévenot said that their upper part was covered with a glass ceiling. People entered into the washing place after taking off their cloths. As Grelot mentions, he also noticed that no one would touch others’ belongings. The staff of the public bath would be held responsible in case of any incident.  

In his work, Thévenot describes the Turkish bath as follows:

‘Turks make great use of bathing, both for keeping their body neat and clean and for the sake of their health. For that purpose, there are many fair baths in their towns and many villages that have at least one public bath. They are all built in the same fashion and there is no difference except that some are bigger and adorned with larger amounts of marble.

Thévenot describes the public bath at Tophane in Istanbul as follows:

‘It is close to a fair Mosque in Tophane and it is one of the loveliest that I have ever seen. You enter into a large square hall of about twenty paces in length and a very high roof; all around the hall, there are masatbez or stone benches against the wall, which are all covered with mats; so as soon as you arrive, they spread for you a large napkin (which they call foutha) upon the said benches, where you sit down and put your cloths after you take them off’.

In 1682, Cornelius de Bryun, a traveler from the Netherlands, came to visit Turkey. He gave the following information about Turks and their health situation:

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‘Turkish people have a beautiful and healthy body structure in general. Yet, other people, that is, Christians and Jews, have amorphous bodies. The rest of them are healthy and strong; they lead a long life. This is thanks to their life style and the things they eat and drink; they rarely fall sick. They do not have any calculus, rheumatism or any other similar disease. The reason of their healthiness is a well-balanced nutrition and a simple life style.’

Thévenot also talks about the health conditions of Turkish people and makes the following description:

‘Turks are long livid, little subject to diseases, and there are many dangerous conditions, such as calculus and many others, that are not known among them. I believe, this great healthiness results partly from their frequent bathing habit and partly from their temperance in eating and drinking; for they eat moderately and do not feed upon so many different things as Christians do: for the most part, they make no debauch in wine and they do exercise.’

Grelot gave the following information about the cleanliness of Turks:

‘Turks build toilets near mosques. Each Thursday, these places are cleaned by the cleaning workers. Unfortunately we do not have such important places in Europe as the Ottomans have. In the Ottoman Empire, no one urinates on the walls of temples and sanctuaries or public places like gardens and when they need to urinate they do not need to hold their urine and disturb their health.’

However, eating and drinking habits were different in Europe and the Ottoman Empire. However, there were also differences between regions and even among Ottomans. For Evliya Celebi, it was meaningless to give an account for all these differences. It appeared to him that it would be the reiteration of well-known information. For that reason, in his

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11 Age. p. 196.
Book of Travels, he preferred to depict the peculiarities of the places he visited, just as he did for Istanbul.

Contrary to foreign travelers, Evliya Celebi was not interested in the cuisine or eating habits or habits of drinking coffee or smoking; instead, he preferred to portray what foreigners and Christians in Istanbul (in Galata) ate and drank. He gave the following explanation about the cuisine in Galata:

‘There are different kinds of bread, such as French roll, etc and certain sorts of amber flavored candies. There are some non Muslim sellers, who sell Damascene dessert, some kinds of glasses, clocks, some kinds of devices, etc.’

Here we should note that, although foreign travelers referred to the cuisine only to a certain extent, they were not so much interested in it. Instead, they preferred to give brief information about gardens and vineyards. We can identify that attitude especially when they talked about Anatolia and people’s life style there. They also gave brief information on caravansaries and mosques when they wrote about big cities in Anatolia.

In their books of travel, writers also portrayed general health conditions and provided certain medical information. They underlined the significance of honey in certain treatments and drug production. They also described drinks and syrups made from fruits. Trévenot notes that cupping and venesection were also practices that were employed as a method of treatment in the Ottoman Empire. He said that they used lancets. He described cupping as follows:

‘When they are sick they commonly apply to a Christian or Jewish physician; when there is no physician, they (Turks) have recourse to renegades who let their blood out, though there are Turks: they can do it very well; ... when they are troubled with a pain in the head, they sacrifice the painful part of it; and after having let out a pretty high quantity of blood, they put a little cotton on the wound so as to stop it; or they make five or six little cuts in the forehead. They also use fire in a lot of way.’
He also said that Ottomans did not like to deal with drug preparation and were not interested in this job. According to him, Turkish people were generally healthy. If a Turkish person becomes ill and if a physician achieves to treat the illness, the patient pays the physician’s fee. Yet, if the patient fails to recover and dies, it is the fault of the physician who takes the responsibility of treatment.12

As mentioned above, Turkish people did not prefer to be a physician. Christian and Jewish physicians had offices called *dukkan*, which would be closed down if the physician were not a successful one. One of those physicians was mentioned by George Wheeler, an English traveler who lived in Istanbul during 1675-1676. The name of the physician was Mehmed Pasha and he was actually of English origin. He had converted to Islam and wrote a lot of books in foreign languages. Wheeler said: ‘*I cannot claim that he is a good physician.*’13

Although there were a lot of Christian and Jewish physicians who worked and treated Turkish patients in the Ottoman Empire, we know that there were also Turkish physicians. We also know that, after the conquest of Istanbul, Ottomans opened two significant complexes, the Fatih Complex and the Suleymaniye Complex. Both of them had medical schools. There are also a lot of medical books written in Turkish by Turkish medical scientists. Turkish physicians preferred to write their works in Turkish in order to let everybody read their book easily.

Another subject that was covered in these books of travel is contagious diseases. One of the travelers, Jean du Mont, said that Turkish people did not care about contagious diseases and if a person would die because of such an illness, they would easily bury him; they did not escape in any way.14 Some of the travelers said that these diseases easily became

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epidemic because people did not take care of themselves. For instance, the plague (pestilence), which spread on a ship coming from Egypt, was easily transmitted among the people living around the harbor that was the destination of the ship. It was characteristic for Turkish people to believe in destiny; nobody was capable of doing anything against the destiny. He also wrote that they did not like being warned about this matter.

As we know, epidemics came from other countries, especially from Egypt. History and travel books, point out that the ship coming from Egypt carried epidemics, spesifically plague, to Istanbul and the disease immediately spread to other towns. The situation endangered harbors such as Smyrna and Istanbul. From there, the contagious disease spread to all neighboring cities. For instance, Cornelius de Bryun wrote that, in 1678, the number of plague associated deaths reached 30,000 in Manisa.

However, the information provided by travelers is not completely true. We know that certain contagious diseases were first identified in Middle Eastern countries and they have been well-known since ancient times. For instance, leprosy was known. In this disease, patients were isolated and put in proper places called leprosaria. In Anatolia, Turkish people also knew small pox and practiced variolization since ancient times. As already known, in a letter to her friend, Lady Montague, wife of the English ambassador, wrote about this practice. We should still say that Muslims treat the dead with respect, which is difficult for foreign travelers to comprehend.

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16 C. De Bruyn, p. 36.
The Gendered Discourse of the Preparation for Burial in Pre-Modern Muslim Societies

Hadas Hirsch

I. Introduction

Despite the fact that, at the end of their earthly lives, the differentiation between the free and the slaves is cancelled, the hierarchical division between men and women remain as differentiated as ever. This situation reflects the centrality of the patriarchal-gendered view of the world to the way the Muslim jurists see things and which continue to exist even when other divisions (for example status divisions) lose their importance or are cancelled.

In spite of the fact that a picture can be seen in Muslim sources of a two-sex world in which men and women are forbidden from looking like each other, the legal discussion includes reference to burial laws involving those who have no clear sexual identity – Mukhannathūn.\(^1\)

The way the Muslim jurists deal with this issue reflects the patriarchal need to preserve the hierarchical gender division of the two recognized sexes.\(^2\) The location of the Mukhannathūn in the twilight zone which is neither clearly male nor female caused the Muslim jurists to choose the strictest of all approaches: to apply all the prohibitions involving the way one looks to both men and women because of the fear of crossing the borders that separate the two recognized sexes and so cause harm to the patriarchal order.

The main sources for this research are religious literature and more specifically legal literature (fiqh) collected in books of law (furu` al-fiqh) and legal opinions (fatawa).\(^3\) Those legal sources that were composed by authors of different law schools reflect a wide geographical and

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3 The need to order the legal procedures in every area of life, in accordance with the demands of the divine law following the conquests and the development of the small community of believers into an extensive empire made up of a range of different types of population, was the prime mover for the development of Muslim law by the Muslim jurists.
chronological range of discourse in pre-Modern Muslim societies. They deal with various aspects of the outward appearance of believers at each stage of their lives and in specific situations, since Islam is a law-based religion that prescribes the behavioral patterns of believers in all areas of life.

My basic assumption is that *fiqh* and *fatawa* collections were not created in a vacuum, but were anchored in a local, socio-economic, cultural and political reality. One can assume that these essays, which are the product of an ongoing two-way dialogue between theory and reality, reflect both normative approaches and responses to the changing needs of a society. The *fiqh* and *fatawa* collections were supposed to match the often abstract law to the needs of the community. Together with the often hypothetical theoretical discussion, they reflect the community's practices, since the written texts dealt with the reality that existed in their determination of standards for what was and was not permitted according to legal norms.

Accordingly, the aim of this article is to present the principles involving the attire of the dead in pre-modern Muslim societies, as they were formulated in medieval Muslim legal sources. A gender based analysis of these principles will allow us to demonstrate the connection between gender, sex and dress and show how a patrilinial-patriarchal society uses clothing to structure the status of men and women according to its needs.

**II. The preparation of a body for burial**

The high rate of mortality in pre-modern societies made the social existence of the dead very concrete, and because of this, the rites of death and burial, by way of which one separates the dead from life, are one of the important ways for us to learn about the cultural values that fashion the lives of different societies.\(^4\) Funeral ceremonies provide the living a ritual of departure from the dead; the ritual treatment of the body by relatives suggests a halfway situation for the dead person, as one who is located between two worlds.\(^5\) An example of this is the washing of the body, the use of perfuming materials, and the cutting of hair and nails – all typical of life, as opposed to the sealing of the body's pores. In many societies the rituals of parting from the dead are scant and simple, while the rituals involved with transferring the

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deceased to the world of the dead – meaning the preparation of the deceased for burial – are longer and more complex.⁶

Early Muslim concepts about death and what follows it – for example the deterioration of the body as opposed to the survival of the spirit, and its passage into the spiritual world – were influenced by ideas that were common before the appearance of Prophet Muhammad in earlier societies in the Arabian Peninsula. Together with this, Islam redefined the mutual relations between life and death, and ruled that life was sacred because it was God who granted it to humankind.

We learn from the Qur'an that God controls the lives of people in this world and in the world to come – The Hereafter; he invests them with the spirit of life and takes their lives away – evidence of his greatness and humanity's absolute dependence upon him.⁷ The Qur'an, however, does not present an organized approach to death. The philosophical and theological activity that took place in this area after the Prophet, is what created, based on the Qur'anic declarations, an organized Muslim theology of death.⁸ According to Jewish and Muslim traditions the lack of proper burial was and still is one of the greatest humiliations and was interpreted as a sign of exclusion from one's community.⁹

The importance of burial attire can be learned from a tradition referred to 'Ibn 'Abī Dunyā (died 894), which notes that the deceased should be buried in their best clothes, because this will be what they will be wearing on the day of resurrection.⁰ Even 700 years later, al-Suyūtī (died 1505) cites a list of traditions that emphasize the obligation of dressing the body in good

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In the 13th century Maimonides also raises the question of what the dead should be dressed in on the Day of Resurrection – whether they should be naked or dressed, and if dressed, should they be dressed in their burial clothes, or in a piece of clothing that only covers the body. For more see: Mosheh Ben Maimon, *Hakdamot Leperush Hamishnah* (An Introduction to the Commentary on the Mishnah), edited with commentaries by M.D. Rabinovitch. Jerusalem: Mosad ha-Rav Qūq, 1962, pp. 112-113.
clothes. For example a dead person was buried in clothes provided by bayt al-akfān - an interesting concept that is not referred to in other sources, and in my opinion, describes a place where minimal clothes were distributed to the needy in order to cover their bodies' nakedness. At nighttime the deceased comes back to complain to those who buried him about his miserable clothes, and demands to be dressed in the clothes of paradise (kafan al-janna). As proof, he leaves them his original burial clothes in the bayt al-akfān. According to another tradition, a man whose wife has died, does not see her in his dreams among other women, and in answer to his queries, the women tell him that his wife is ashamed to be seen in public, because he has been stingy with her burial clothes.

There are four stages of burial rituals in Islam – the washing of the body, dressing it in burial clothes, prayer during the funeral, and burial with one's face turned to Mecca. All stages that are extensively discussed in the fiqh, but not in the Qur'an, which does not deal with the laws of burial. The legal literature discusses extensively the instructions for washing the body and dressing it in appropriate attire because the grave is seen as a temporary station. The dead have to be prepared for the Resurrection Day when they will be spared or doomed according to their deeds in this world. We can learn about the preservation of the social hierarchy in regard to gender from al-Sarakhsī (died 1090). He maintained that, if there is a need to bury a number of bodies in a common grave, the first to be buried facing the qibla (the direction of prayer to Mecca) will be the male, next the ghulām (youth), then the khuntha (those with no clear sexual identity), and last the women.

When people depart this life they remain subject to the same world of concepts and values that they were subject to during their life. In the case of Muslim societies, these are patriarchal concepts. Those concepts are expressed in the instructions formulated by the Muslim jurists in regard to the burial of both sexes, and in their many rulings imposed on the burial of women.

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13 Ethnographic evidence about burial rituals in modern Muslim societies shows that many of the principles formulated in the legal sources, such as the washing and perfuming of the body, the sealing of the pores, giving preference to the color white and burial in a number of pieces of clothing, are still preserved but, in addition to them, there are other practices influenced by time and place. For more see: S. El-Aswad, “Death Rituals in Rural Egyptian Society: A Symbolic Study”, Urban Anthropology, 16(1987), pp. 205-241; F. D. Mathewson, “Funerary Rites - Modern Practice “, The Oxford Encyclopedia of the Modern Islamic World, Vol. 2, p. 36; H. Granqvist, Muslim Death and Burial. Helsinki: Helsingfors, 1965, pp. 62-63.
The guiding principle is that what was forbidden for men and women in life is also forbidden after their death, and what was permitted in life is also permitted in their death. In other words, the gender restrictions between men and women are preserved in the laws of burial, and there is an appropriate way to bury men, as is for the burial of women. Simultaneously, there are components of adornment that are appropriate only to the living. As a rule, the laws about preparing the body for burial stipulate that the bodies of men and women must be washed at least three times in water and scented materials, their hair must be groomed, and they must be dressed in new or clean clothes – with three articles of clothes for men and five for women, whose nakedness is greater. Out of fear of exposing the forbidden organs of women it is forbidden to even loosen their burial clothes when their bodies are put in the grave (a practice that is allowed for men). Men cannot be buried in silk clothes or in clothes colored in yellow-orange hues (al-mu’aṣfar) – something forbidden to them in life; but one cannot conclude from the sources whether this also applies to women.

No mention is made in the legal sources of the production of burial clothes. In the Hisba guides there is no reference to them being sold in the markets.\(^\text{14}\) Apparently Muslims prepared their burial clothes themselves, whether they were laundered clothes or new.\(^\text{15}\) When new burial clothes were purchased, they had to be bought with the dead person's money, and men usually purchased the burial clothes for their women. If the deceased did not leave enough money to buy burial clothes, the state's coffers (bayt al-māl) would purchase one article of clothes for him (the minimal necessity) which would cover his whole body. It was also permitted to bury in less than that, and in case of shortage in clothing the nakedness (i.e., the sexual organs) had to be covered first, then the head, and if needed, the legs were to be covered with leaves, branches and weeds. When there were many dead people and insufficient clothing for burial, as happened in the 'Uhud battle (in 624), it was permitted to bury two bodies, and even three, wrapped together in the same piece of clothing.


\(^{15}\)Interestingly, it is in modern ethnography that the question of the sewing of the burial clothes is discussed, and it seems that there were tradesmen who specialized in making them. For more, see: Atalya Ben Ami, “Decorated Shrouds from Tetuan in Morocco”, in Y. Ben Ami (ed.). Mekhkarim Betarbitam shel Yehudey Tsfon Africa. Jerusalem: Va’ad `Adat ha-Ma’arvim bi-Yeruhalayim, 1991, p. 261.
The legal compendiums did not ignore the economic aspects of clothing the dead. It was stipulated that one should not exaggerate in the expenditure, and it even was permitted to launder clothes for burial. According to a tradition, Abu Bakr (the first caliph) gave instructions to wash his clothes for his burial. In response to a question from `Aysha (the beloved wife of the prophet Muhammad) about this, Abu Bakr said that the living need new clothes more than the dead.\textsuperscript{16} from al-Nawāwī (died 1277) we learn that in the 13\textsuperscript{th} century burial attire reflected one's economic status, despite the jurists stipulations: "If the deceased is rich he will be buried in the most expensive ways (of dress), if he is average (he will be buried) in the average way, and if he is poor, he will be buried in the lowest way (of dress)".\textsuperscript{17}

There are special virtues attributed to burial in clothes of people with special status in Islam. At the top of the list are the clothes of the Prophet Muhammad. The 11\textsuperscript{th} century 'Ibn Hazm (died 1064) relates that when `Abd'allah bin 'Ubay, head of the Munāfiqūn (the hypocrites) died, his son came to the Prophet and asked him for a shirt in which to bury his father. Muḥammad gave the son his personal clothing and so signified that he forgave his father for not choosing Islam. During the Fatamid period, the Khila (the prestigious coat worn by rulers) was a much sought after piece of clothing for burial, because the Shiite Fatamid rulers were thought to bear special blessing. The pieces of clothing that were decorated with Tirāz (special embroidery) were famous for having special importance during this period, and were supposed to protect the dead on the Day of Judgment, because they were adorned with the caliph's names that were invested with holiness.\textsuperscript{18}

Two categories of the dead are not subject to the laws of purification for burial which are incumbent upon most Muslims – the Shuhada'\textsuperscript{19} (martyrs), and those who have died in Ihrām (the holy state of the pilgrims to Mecca). The bodies of those who have fallen in battle, mostly men, are not washed, their clothes are not changed, and they are buried exactly the way they looked when they departed from this world. According to the jurists, these Shuhada' will


\textsuperscript{19}E. Kohlberg, “Shahid”, \textit{EI}, Vol. 9, p. 204.

Those who die in 
\textit{Ihrām} are also not subject to the rules of purification. Their bodies have to be washed in water and jojoba, but without camphor or any other form of scent, and they are to be buried in the clothes of 
\textit{Ihrām}. A male \textit{muhrim} will be buried with his face and head uncovered, and a \textit{muhrima} (female) with only her head, but not her face, covered, as is the practice among men and women in a state of 
\textit{Ihrām}.

In the 9th century 'Ibn  Saʿd (died 845) in 
\textit{Kitāb al-Tabaqāt} relates that the body of the Prophet was washed in a shirt three times, was perfumed, and dressed in three pieces of white clothing, and like many other practices attributed to the Prophet, these practices became 
\textit{Sunna} – a model for imitation. Together with this 'Ibn Saʿd presents a list of contradictory traditions concerning the quality and prestige of the clothes in which the Prophet was buried. According to another tradition attributed to ʿAysha, the Prophet was buried in the following articles of clothing: "three articles of white clothing made from cotton thread that did not include a shirt or head covering".\footnote{Ibn ʿAnas, \textit{Al-Muwatta'}, vol. 1, p. 399; Shams al-Dīn al-Sarakhsī, 

As a general rule, the articles of clothing preferred for the burial of men are made of white cotton or linen, but wool of different types is also permitted.\footnote{According to al-Ghazālī the wearing of the simple white clothing of the 
\textit{Ihrām} is supposed to recall shrouds to the believers, because the journey to Mecca involved many hardships during the Middle Ages, and not all the pilgrims to the city succeeded in getting there, or returning safe and healthy. As it is incumbent upon someone who makes the pilgrimage to change his mode of dress before reaching Mecca, it is also incumbent upon him, before he meets his maker, to look different from what he looked in this world. For more, see: Muhammad ʿAbū Ḥāmid al-Ghazālī, \textit{Thuyaʾ ʿUlūm al-Dīn}. Bayrūt: Dār al-Maʿrifā, , 1981, vol. 1, p. 350.} Men are supposed to be buried in three articles of clothing that do not include a \textit{qamīs} (shirt) and ʿ\textit{amāma} (head cover), and there are those who add a \textit{sirwāl} (an under garment) and ʿ\textit{izār} (a piece of clothe for the lower part of the body), while the upper article of clothing needs to be the most attractive. Those who oppose to the dressing of men's bodies in a \textit{sirwāl}, claim that it is meant for covering the sexual organs while walking, and that this purpose is cancelled at the time of burial. In the opinions of those who support the binding of an ʿ\textit{amāma} to a man's head, one has to let its tassels fall over the faqe in contrast to the practice in life, where the tassels fall backwards. Al-Nawawī (died 1277) points out that if one adds a \textit{qamīs} and ʿ\textit{amāma} to a man's
body, one has to do so under the *thiyyāb* (an upper clothing), because these articles of clothing are meant for decoration – a practice cancelled by death.

It is recommended to perfume the two layers of underclothing of the man's body with *hanūt* (embalming fluid for perfuming the body) and camphor. Al-Sarakhsī (died 1090) explains why the burial clothes have to be perfumed: "Because he wears the burial clothes in order to present himself before God. In his life, when he dressed for the Friday prayer or for a festival, he perfumed himself, and thus his burial clothes should be treated similarly after his death".⁹

Women are buried in five articles of clothing: a *dara`* for the body, a *khimār* for the head and face, and three other coverings for the body – *lifāfa*, *mantagā* and *Ridā*. Al Nawāwī (died 1277) explains that the difference in the number of articles of burial clothing for women comes from the difference in the definition of what constitutes nakedness for the two sexes. A contemporary of al- Nawāwī, 'Ibn Qudāma (died 1223), adds that it is undesirable for women to be buried in clothing colored in yellow/orange hues, or in silk. In his opinion, silk was permitted for women during their lifetime to adorn themselves for their husbands, and are no more needed after their deaths. There are differences of opinion over whether the faces and palms of dead women should be covered, since during their lifetime these organs were not considered to be parts of nakedness (ʻawra).

In matters concerning the burial of the *mukhannathūn* (those with ambiguous sexual identity), the jurists decreed that what was applicable to a *mukhannath* during his life also continues after his death, and that the laws of burial that apply to him are those that are obligatory for women, but which are not forbidden to men; thus, in no way can there be a legal infraction.

**IV. Conclusion**

A male or female's outward appearance is the result of a normative gender determination in the context of time and place. The fashioning of clothing styles in Muslim societies in the Middle Ages was based on legal written texts – the *Qur'an* and the *Hadith*, and on the struggle that took place between the Muslim jurists and the reality of their time and place. The description of the articles of clothing in those sources teaches us about both desirable norms and existing customs; in other words, the sources reflect the mutual relations of dependence and influence between reality and the written texts. From our discussion of the sources we can see that

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medieval Muslim jurisprudence dealt with the attire worn by men and women during burials, whose goal was to establish and preserve the patriarchal gender-based hierarchy.

Two of the ceremonies of burial in Islam are directly connected to outward appearance – the washing of the body, and its dressing in burial clothes. Washing and dressing are activities typical of life, but they receive special significance in regard to the dead, since the appropriate treatment of the outward appearance of the body prepares the dead for their resurrection - when they will stand before their maker who will seal their fates forever – in Paradise or Hell.

The laws governing the preparation of men's and women's bodies for burial preserve the characteristic gender standards of what is suitable for men and women to wear, while still alive. The bodies of both sexes are washed and perfumed but their burial attire is different: women are buried in five articles of clothing, men in three that are not made of silk, or colored in shades of yellow, and the Mukhannathūn are buried the way women are. There are prohibitions regarding the outward appearance of people of the two sexes, that apply only to the living; these reflect the decrease in the power of gender differentiation through the use of components that make up outward appearance at the end of the cycle of human existence.
SECTION II

METHODOLOGY OF ISLAMIC BIOETHICAL DECISION – MAKING AND ISLAMIC ETHICO – RELIGIOUS ATTITUDES TO CERTAIN TOPICS IN BIOETHICS
The Place of Bioethics Principles in Islamic Ethics

Şahin FİLİZ

Abstract

Islam holds that life and vitality of all living beings, especially of human beings, are more blessed than Shari' a and the Muslim juridical system devised by human beings. In that human beings were created by God, they have priority over all juridical precepts. Muslim Law and fatwas are considered by Muslims just as adherents of other religions accept their own religious rules.

By contrast, medical sciences, like all sciences, are universal and considered by all human beings all over the world, not merely by some part of humanity in the world. Furthermore, the development and progress of medical science have exceeded the limits of time and space, whilst Muslim Law and the fatwa system have faced historical and juridical difficulties in keeping pace with scientific developments and progress. Muslim Law has indirectly been a source of Islam, but Islamic ethics is based on God’s word directly, that is, God the source of life and vitality. In consequence, Islamic ethics is more flexible, exhaustive, and inclusive, not limited in time and place. Its natural limits are inclusive of all human beings' lives and health, not only Muslims'. Yet Islamic ethical principles are neither casual nor bounded by religious authorities. It is clearly understood that Muslim Law could catch up with the speed of medical progress yet it remains inoperative. Moreover, it is limited to Muslims alone. I have called the concept underlying this real circumstance “juridical theologism.” The first part, “juridical,” symbolises a religion consisting of orders produced by humans in God's name. The second part of this conception presents the rules of theology, the unique aim of which is to defend the principles of faith for Muslims. Instead, my suggestion is this: “Islamic ethical philosophy.” This has its source directly in God; this concept describes a sort of ethics which aspires to benefit of humankind’s life and health, not a sort of law wrapping up ethics. The latter gives order. Accordingly, medical sciences can develop and be beneficial through ethical inspiration, not through canonical or legal instructions.

Introduction
“The Place of Bioethics Principles in Islamic Ethics” describes bioethical principles in general and their place in Islamic ethics in particular, focusing on features common to both. The scope of law or juridical codification is narrower than that of ethics. The same situation pertains between Islamic ethics and Muslim Law. The former covers the latter with its space and its limits, hence is more comprehensive than Muslim Law.

Canonical rules or Islamic Jurisprudence are mandatory and limited to Muslims alone, whereas Islamic ethics suggests comprehensive analytical solutions about medical problems for all human beings. Ethics in Islam is more part of humanistic than religious ethics. It is not reasonable for a religion, in this case Islam, claiming to be universal and revealed for all humankind, to be obliged to solve bioethical issues through territorial fatwas applicable only to Muslims.

Some thinkers, such as Ismail Raja al-Faruqhi and Ziyauddin Sardar, were not satisfied with confining Islamic ethical philosophy to Muslim Law. They went a step farther, making science, which belongs to all human beings, “Islamic”; starting from this point they invented the concept of “Islamization.” This is nowhere to be found in any holy text. Neither this nor “sacred science,” as it is named by Syed Hussain Nasr, features the Qur'an or hadith. Contrary to what has been claimed by Osman Bakar, as long as Muslim Law speaks in the name of Islamic ethics it will not be easy to refer to “Islamic sciences and their holistic being.” Still, both ethics and science are sacred for being science and ethics. For Islam, there is no need to make them religious or “sacred.” Islamic ethics carries sanctity and religiosity in its very essence. To overcome the chaos of the concept, to my way of thinking, Islamic Law is only part of Islamic ethics. The former should not decide on bioethics instead of the latter, which is part of Islamic ethical philosophy as well. From this day forth, the fatwa-makers should nurture an Islamic ethical philosophy. In other words, we are in need of fatwa-makers from the field of Islamic ethics, not only from the field of Muslim Law; because Islamic ethics, especially bioethics, is more capable of solving modern medical issues related to ethics than Islamic Law.¹

Islamic bioethics derives from a combination of principles, duties and rights, and to a certain extent from a call to virtue. In Islam, bioethical decisions are made in a framework of values

¹ Here is concrete example of the ability of Islamic ethical philosophy to evaluate some issues on ecology: Al-Biruni (d. 1051) mentioned “ecology,” emphasizing protection of the natural environment. For him, if we protect the environment including all biotic and abiotic assets, the balance of nature will continue. He calls this continuation “the economy of nature”. See details on ecology in Islam: Mehmet Bayraktar, Islam ve Ekoloji, DIBY., Ankara, 1997, p. 20.
derived from revelation and tradition. They are intimately linked to the broad ethical teachings of the Qur'an and the tradition of the Prophet Muhammad, hence to the interpretation of Islamic Law. Islam thereby is flexible enough to respond to new biomedical technologies. Islamic bioethics emphasises prevention, and teaches that the patient must be treated with respect and compassion and that the physical, mental and spiritual dimensions of the illness experience be taken into account. Because of this, Islam shares many foundational values with Judaism and Christianity. Otherwise Islam could not share fatwas with these other religions and cultures.

The Place of Islamic Bioethics in Applied Ethics

Islamic bioethics has a particularly close relationship with the empirical sciences such as psychology and sociology. It has a similar relationship with the normative sciences such as theology and jurisprudence too. Islamic ethics has same main issues as general ethics: “happiness in this world and in the hereafter”, “freedom and determination,” “good and bad.”

In Islamic ethics some foremost ethical methods are employed, such as “logical,” discursive dialectical, analogical, transcendental, analytical and hermeneutical. I do not intend to examine each of these, but instead, in respect of bioethics I will try to show ethical instances matching one of them.

Islamic bioethics, like bioethics in general, dwells not only on human life, which is the principal issue of medical ethics; it also concerns the life of all organisms existing in nature. However, I will deal only with the life of the human being, and his/her bioethical issues according to Islamic ethics.

Medical ethics are based on the moral, religious and philosophical ideals and principles of the society in which they are practiced. Not surprisingly then, what is ethical in one society might not be so in another. Practising doctors and critics of conduct are obliged to be aware of such backgrounds before they make their judgements on different decisions in medical practice.

4 See: Annemarie Pieper, ibid., pp.86-89.
Those for whom religion is important, as it is for Muslims, must distinguish medical ethics and humanitarian considerations on the one hand from religious teachings and national laws on the other. The doctor should always be clear on the differences and potential conflicts between legal and ethical duties. What is legal might not be ethical. Yet what is legal in Muslim Law might not be ethical in the Islamic ethics, and vice versa. After all, Islamic ethics is more efficient than Muslim Law in adjusting to medical issues in pursuit of an Islamic way of thinking through philosophical ethics.

**Islam and the Human Being**

Islam is a social religion in the cultural sense and a philosophical religion in the personal sense. As I mentioned before, my focus here is on bioethical issues regarding human life alone. First, what is the place of the human being in Islam?

The human is innocent.

He or she is not condemned by an original sin. Qur'an 97:8: “Consider the human self, and how it is formed in accordance with what it is meant to be, and how it is imbued with moral failings as well as with consciousness of God!”

A human is neither “pure good” nor “pure bad.”

On the contrary, he or she may incline to be both. Employing his/her reason and will, he/she can choose the way to one of them. Qur'an 85:4-6: “Verily, We create man in the best conformation, and thereafter We reduce him to the lowest of low- excepting only such as attain to faith and do good Works: and theirs shall be a reward unending!”

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6 Gamal. I. Serour, Ibid., 171-188.
Human life is very valuable; killing a soul is like killing all humanity, and saving a soul is like saving all humanity. All human lives are equal. That is why Islam uses a single criterion for the repair of physical damage sustained by a human being regardless of social status, wealth or degree, and knowledge. The human is honoured in himself/herself, his/her thinking power, dignity, and physical wholeness.\(^7\) The Qur'an says:\(^8\) “We have honored Adam’s offspring.” Furthermore, the human was given God’s soul, that is, the vital part of human beings is divine. The Qur'an says: “And then He forms him in accordance with what he is meant to be, and breathes into him of His spirit.”\(^9\)

As a human is either authoritative or responsible, he/she is independent.\(^10\)

In Islam, human beings are the crown of creation and are God’s vice-regents on earth. They are endowed with reason, choice and responsibility, including stewardship of other creatures, the environment, and their own health. Muslims are expected to be moderate and balanced in all matters, including health. Illness may be seen as a trial or even as a cleansing ordeal, but it is not viewed as a curse of punishment or an expression of Allah’s wrath. Hence, the patient is obliged to seek treatment and to eschew fatalism.\(^11\)

Islamic bioethics is intimately linked to the broad ethical teachings of the Qur'an and the tradition of the Prophet Muhammad, hence to the interpretation of Islamic Law. Bioethical deliberation is inseparable from the religion itself, which highlights continuities between body and mind, that is, the material and spiritual realms, and between ethics and jurisprudence. The Qur'an and the traditions of the Prophet have

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\(^7\) Abdel Moneim Hassaballah, Definition of Death, Organ Donation and Interruption of Treatment in Islam. Minisymposium, Internal Medicine, Cairo University and The Arab Contractors Medical Center, Nasr City, Cairo, Nephrol Dial Transplant (1996) 11.964-965.

\(^8\) 17.70.

\(^9\) 32.9.

\(^10\) The Qur'an emphasises that human is authority—2.30: “And Lo! Thy Sustainer said unto the angels: ‘Behold, I am about to establish upon earth one who shall inherit’. They said: ‘Wilt Thou place on it such as will spread corruption thereon and shed blood - whereas it is we who extol Thy limitless glory, and praise Thee, and hallow Thy name?’ Elsewhere, 33.72: “Verily, We did offer the trust (of reason and volition) to the heavens, and the earth, and the mountains: but they refused to bear it because they were afraid of it. Yet man took it up.”

laid down detailed and specific ethical guidelines on various medical issues. The Qur'an itself contains a surprising amount of accurate detail on human embryological development, which informs discourse on the ethical and legal status of the embryo and foetus before birth.\textsuperscript{12}

\textbf{The Nature of Islamic Ethics and the Theoretical Characteristics of Islamic Bioethics}

On the promotion of good, Qur'an 3.104 only urges: “Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong.” Not doing evil is also found in 16.90: “God commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion.”

If secular Western bioethics can be described as rights-based, with a strong emphasis on individual rights, Islamic bioethics is based on duties and obligations.

However, addressing values, mentality, local customs and religions is critical for establishing the best criteria with which to treat a patient.\textsuperscript{13}

Fatwas of Muslim Law are insufficient to solve modern ethical problems as Islamic ethics because the fatwas demonstrate how bioethical problems are to be solved but not why these are to be solved, unlike inquiries in logic and philosophy.

\textbf{The Necessity of Medicine and Medical Care}

\textsuperscript{12} Abdallah S. Daar\& A. Khitamy, ibid., 164(1).
\textsuperscript{13} Atighetchi, D., ibid., 22,23.
The fundamental principles of Muslim medical ethics derive from the concentric action of several currents—Hippocratic ethics, classical medical ethics in the holy sources, and juridical authorities:

1. Qur'an 5.32: “If anyone saved a life, it would be as if he saved the life of the whole people.” This is the basic principle of medical practice in Islam, whereby the doctor must not only heal but also prevent, as understood from Qur'an 2.195: “and make not your own hands contribute to your destruction.”

2. An authentic saying of Prophet Muhammad is: “There is no disease that Allah has created, except that He also has created its treatment.” This is interpreted as an explicit invitation to doctors to discover cures and defeat pathologies.

3. The juridical principle of necessity maintains: “Pressing needs even allow what is prohibited.” Through analogy and extension this arises from various Qur'anic verses, e.g. 6.145: “Say: ….if a person is forced by necessity, without wilful disobedience, nor transgressing due limits, thy Lord is oft-forgiving, most merciful.”

4. Once necessity is recognised as the exception to the rule of the right to avoid serious harm, another principle is derived, namely the “lesser evil.” Avoiding evil has priority over the acquisition of good. This is one of the principles traditionally used to justify therapeutic abortion.

5. The principle of the “public good” or “usefulness” (maslaha). The public good remains closely connected with the altruism that has its roots in Qur'an 5.2: “Help ye one another in righteousness and piety.”

6. The sacred character of the human being. God Himself says: “We have honoured the sons of Adam” (Qur'an 17.70). He wants to promote the human being’s well-being, harmony and happiness. God says: “God intends every facility for you; He does not want to put you to difficulties.”\(^\text{14}\)

\(^{14}\) Atighetchi, D., ibid., 33-35, 161,162,163.
I can summarise these principles as follows:

Need and necessity are equivalent. Necessity allows "prohibited" matters. Injurous "harm" should be removed. Prevention of evil has priority over obtaining benefit. The greater benefit prevails over the lesser benefit. Islamic ethics, so to speak, employs pragmatic and analogical methods.

It has other theoretical characteristics besides as well, described by Daniel Brown as follows:

1. In the field of jurisprudence, the purposefulness of God’s will allows for the systematic, albeit limited, extrapolation of general rules.

2. The purposefulness of God’s will seems to open the door to utilitarian tendencies which are at one with the voluntaristic and scripturalistic assumptions of Islamic ethical theory.

3. Islamic ethical reflection displays ongoing tension over the respective importance of God’s specific commands and His general will, or, in other words, a tension between scripturalistic absolutism and a sort of theistic utilitarianism.

Muslim ethics is a systematic reflection from a theological-philosophical perspective, both on moral actions and practices of those in the Muslim community. The primary source of Islamic ethics seem quite well matched to the four main principles of medical ethics.

In regard to the principle of autonomy, respect for the person in Islam is not restricted to the existing human being but also extends to the foetus before birth.

In regard to the principle of beneficence, the Qur’an encourages doing good and even requires it from individuals and from nations at large. If one does good one is rewarded with good, according to the Qur’an. Instructions to do good are mentioned

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15 Abdel Moneim Hassaballah, ibid., 11.964-965.
17 3.104.
18 99.7-8.
in several hadiths of the Prophet Muhammad. Beneficence is directed not only to human beings but also animals and the environment. The Prophet said: “The Muslim makes no implementation or planting which results in feeding of a human being, an animal or a bird for which he gets no reward till the day of the Hereafter” (by Anas). The Prophet also said that one may "avert punishment in the Hereafter for bad deeds by planting a palm tree” (by Anas).

The principle of non-maleficence is mentioned in the Qur’an and the hadith. Islam encourages beneficence and non-maleficence not only in deeds but also in feelings.

The principle of justice is emphasised in many Qur’an verses. The Qur’an orders justice for all, without discrimination on racial, social, political or financial grounds.\(^\text{19}\)

**The Sources of Shari’a, or Does Shari’a Mean “Islam”?**

**Origins of Muslim Law**

The development of the science of fiqh (jurisprudence) resulted in the establishment of certain guiding principles to help to arrive at rulings. Several examples show the role of fiqh, for example, harm should be removed, the lesser of the two harms should be chosen, the public interest should take priority over private benefit. The goals of Shari’a, or rather Islamic bioethics, can be summarised in the preservation and protection of self (life, health, procreation, etc.), mind (prohibition on drugs, freedom of thought, etc.), religion (freedom of faith, non-compulsion in religion, rituals of worship, etc.), ownership (sanctity of private ownership, legitimate commercial relationships, prohibition on stealing, fraud and usury, etc.), and honour (purity, marriage and laws of family formation and chastity).\(^\text{21}\)

In Muslim societies life, in all its daily aspects, has always been moulded and characterised by the precepts and values of Islamic Law, that is, of the Shari’a. Muslims must observe what is revealed by God to regulate and evaluate human conduct, and not obey

\(^{19}\) See Gamal I. Serour, ibid., 171-188. The verses are 22.71; 16.90; 49.9.
\(^{20}\) I prefer “Islamic Ethics” to “Shari’a”.
\(^{21}\) See Gamal I. Serour., ibid.,
dictates of the heart. For Muslim Law, each human act belongs to one of the following five categories:

Compulsory (fard, wajib), recommended (mandub, mustahabb), free (ja’iz, mubah), reprehensible or unadvised (muhruh) and forbidden (haram, mahzur). \(^{22}\)

The Shari'a stands on four “roots of the law” (usul al-fiqh), or sources, from which the principles and rules for the Muslim are drawn. These roots are following:

1. The Qur'an, the supreme source of the religion and law, is the direct and literal word of God revealed to the Prophet Muhammad.

2. The Sunna (tradition) is the set of rules based on the words, actions and tacit consent of the Prophet.

3. The Prophet said: “Allah has protected you from three things: …that those who follow what is false should not prevail over those who follow the truth, and that you should not all agree in an error.” In fact, ijma, or consensus of the community on ritual, legal and religious issues, when it is “continuous and unanimous,” is valid as a source of Law that is equivalent to the Qur'an or a hadith reflecting, in this case, a position inspired by God. \(^{23}\)

When the first three sources of divine inspiration fail to provide a clear rule of conduct in a given situation, it becomes lawful for the majority of the legal schools, and within widely varying limits, to have recourse to qiyas, or reasoning by analogy. This is an instrument of logic that allows deduction, with the aid of specific criteria, new rules of conduct to handle unforeseen situations taking as a starting point the prescribed rules in similar cases identified in the sacred sources \(^{24}\)

If there is no religious authority, no fatwas are binding on people.

a. On the one hand, it is a religion based on the direct, literal, and perfect word of God and on its eternal and all-inclusive law (the Shari’ a). On the other hand, there

\(^{22}\) Gamal I. Serour, ibid.,
\(^{24}\) Atighetchi, D., ibid., 1-4.
is no supreme-juridical religious authority or magistracy, an element which inevitably leads to the multiplication of interpretations and positions. Moreover, what is forbidden today may become allowed in the future, if science proves that the alternative will be harmful to human beings.\textsuperscript{25}

Sometimes, instead of speaking of “Muslim bioethics” it would be more correct to speak of the “different types of Muslim bioethics,” albeit all based on the divine sources.\textsuperscript{26}

The contrast between medical ethics and Muslim Law

A contrast between medical ethics and Muslim Law seems to exist in:

b. the equality of the faithful and/or all people before God;

c. the structural juridical distinction between Muslims (faithful to the “true religion”), dhimmis and infidels.\textsuperscript{27} That is why I prefer “Islamic philosophical ethics” to “Shari’a” or “Jurisprudence”. Otherwise we could not explain the distinction between Muslims and non-Muslims in respect of Medical ethics.

**The Contrast between Islamic Ethics and Muslim Law**

I referred to the contrast between Muslim Law and Islamic philosophical ethics in the introduction. Let us focus on this contrast in detail, following D. Brown’s remarks:

The resulting combination of scripturalism and utilitarianism is an unstable mixture. On the one hand the principles \textit{darura} (necessity), \textit{maslaha} (public interest) and \textit{istihsan} (equity) hold powerful attraction for those concerned with the adaptation of Islamic ethical norms to meet modern conditions. On the other hand, they are potentially too powerful, threatening to undermine scripture-based norms.

\textsuperscript{25} Gamal. I. Serour, ibid., 171-188.
\textsuperscript{26} Atighetchi, D., ibid., 28.
\textsuperscript{27} Atighetchi, D., ibid., 39.
It goes without saying that ethical voluntarism and its corollaries have had a profound impact on the way in which particular ethical questions are approached.

When Muslims say abortion is not an ethical question, they mean, Muslims do not have to think about abortion, they just go to the Qur’an and the Sunna to find out whether it is right or wrong. If God is the only sure source of knowledge of good and evil, then there is little need for ethical reflection. The only proper method in ethics will be to go directly to revelation.

The dominance of voluntarism as a foundational assumption of Sunni ethical theory has two corollaries with important ramifications for Islamic ethical reflection: First, voluntarism is often accompanied by a pessimistic view of the ability of human reason to make ethical judgements. Second, the ramification of voluntarism, that is, the fostering of a particular form of scripturalism which prefers specific concrete cases over general rules.²⁸

Needless to say, fatwas and their rootedness in Muslim Law conflict with Islamic ethical principles. Otherwise stated, in the history of Islamic philosophy, theoretical ethical issues failed to find adequate opportunity to mature in the framework of philosophy. This resulted in taking Islamic ethics’ Islamic jurisprudence. So Muslim Law, with its casual and factual efficiency, began to make ethical judgements, resulting narrow and contradictory rulings in Islamic history.

In the Islamic world, medical ethics are formulated by means of legal opinions pronounced by well known religious jurists (muftis), often in a question-answer format (fatwas). Since fatwas are non-binding legal opinions, different and even contradictory fatwas can appear on the same issue in a given period, in various geographical locations or even in the same country; thus a variegated range of opinions exists, and this helps in defining the ethical dilemmas involved in any particular subject.²⁹

²⁸ Daniel Brown, Islamic Ethics in Comparative Perspective, 181-192.
In the theoretical framework of the Qur’an, God ordains deeds that are good or righteous; and He forbids deeds that are bad or unjust. Whether or not God ordains or forbids, good is good in itself and bad is bad in itself.  

**Life, Illness and the Patient**

There is no good or bad life. Every kind of life is valuable in Islamic ethics.

Islamic bioethics emphasises the importance of preventing illness, but when prevention fails it provides guidance—not only to the practising physician but also to the patient. The physician understands the duty to strive to heal, acknowledging God as the ultimate healer. Islamic bioethics teaches that the patient must be treated with respect and compassion, and that the physical, mental and spiritual dimensions of suffering an illness should be taken into account.

The main principles of the Hippocratic oath are acknowledged in Islamic bioethics, although the invocation of multiple gods in the original version, and the exclusion of any god in later versions, led Muslims to adopt the Oath of the Muslim Doctor, which invokes the name of Allah. It appears in the 1981 Islamic Code of Medical Ethics, which deals with many modern biomedical issues such as organ transplantation and assisted reproduction. In Islam life is sacred: every moment of life has great value, even if it is of poor quality. Saving life is a duty, and unwarranted taking of life a great sin. The Qur’an affirms reverence for human life in reference to a similar commandment given to other monotheistic peoples. “On that account We decreed for the Children of Israel that whosoever killeth a human being…it shall be as if he had killed all humankind., and whosoever saved the life of one, it shall be as if he saved the life of all humankind.” This passage legitimises medical advances in saving human lives and justifies the prohibition against both suicide and euthanasia.

30 “(But), behold, as for those who attain to faith and do righteous deeds-verily, Ye do not fail to requite any who preserve in doing good.” The Qur’an 18.30.


32 Abdallah S. Daar and Khitamy, ibid., 164 (1).
The Oath of the Muslim Doctor includes an undertaking “to protect human life in all stages and under all circumstances, doing (one’s) utmost to rescue it from death, malady, pain and anxiety. To be, all the way, an instrument of God’s mercy, extending… medical care to near and far, virtuous and sinner and friend and enemy.”

Some Basic Medical Issues In Respect of Islamic Bioethics

Contraception

The Qur’an does not mention, even indirectly, contraceptive techniques, although jurists for or against them will attempt to extrapolate various passages accordingly. More explicit, but partially discordant, are the sayings of Prophet Muhammad, despite the hadith “Marry and Multiply.” The most authoritative hadiths on contraception tolerate, or do not prohibit, coitus interruptus. The absence of unanimity has given rise to differing juridical opinions formulated over the centuries.

When may contraception be practised?

Islam rejects a “weak multitude,” and one way of avoiding it is to implement a programme of population control with several points:

1. Temporary contraception to be practised during breastfeeding.
2. “Total” contraception to be practised if the spouses or one of the parents suffers from hereditary incurable pathologies.
3. Population control is recommended for parents who are not in a position to raise and care for their children or to assume their responsibilities in observance of the juridical principle; harm must be avoided as far as possible.

The example of family planning clarifies how health care instructions are formulated. No text in the Qur’an explicitly forbids prevention of conception. The sayings of the

33 Abdallah S. Daar and Khitamy, ibid., 164 (1).
34 Atighetchi, D., ibid., 65.
35 Atighetchi, D., ibid., 73.
Prophet Muhammad allowed some of his followers to practice “withdrawal.”\(^{36}\) By analogy, methods of contraception available today which were not available at the time of Prophet may be permitted, provided they cause no harm and prevent conception only temporarily.\(^{37}\)

The general Islamic view is that, although there is some form of life after conception, full human life, with its attendant rights, begins only after the ensoulment of the foetus. On the basis of interpretations of passages in the Qur’an and of sayings of the Prophet, most Muslim scholars agree that ensoulment occurs at about 120 days (4 lunar months plus 10 days) after conception; others, perhaps in the minority, hold that it occurs about 40 days after conception.\(^{38}\)

**Abortion**

Muslim views on abortion are historically complicated and diversified, especially due to the criterion of the infusion of the soul and the stages of development mentioned in the Qur’an and Sunna. These criteria form a “step” structure, on both the level of juridical thought and the penal level. It is extremely difficult to summarise such a variety of positions on abortion in Islam with a single expression. Before the infusion of the soul, abortion may be prohibited, criticised or allowed. After animation the attitude becomes more severe, generally allowing only so-called therapeutic abortion: this term admits, especially today, diverse possibilities of abortion depending on the definition.\(^{39}\)

Munawar Ahmad Anees concentrates his discussion on the legal rather than the ethical implications of this act.

Allah has made clear that killing people is an ethical wrong as their lives are made sacred by Allah’s having created them. “And do not kill anyone whom Allah has made sacred, except for a just cause…”\(^{40}\) This applies to killing anyone at all—although killing one’s children is specifically forbidden by Allah. “They are lost indeed who kill their children foolishly without knowledge and forbid what Allah has

\(^{36}\) Reported By Muslim.

\(^{37}\) Gamal I. Serour, ibid.; 171-188.


\(^{39}\) Atighetchi; D., ibid., 133; Vardit-Rispler-Chaim, ibid., 130-143; Abdallah S. Daar and Khitamy, ibid., 164 (1).

\(^{40}\) The Qur’an, 17.33.
given to them, forging a lie against Allah; they have indeed gone astray, and they are not the followers of the right course.”  

Foetuses before 120 days are not “souls” or children, and are not included in this injunction.  

“And do not slay your children for (fear of) poverty We provide for you and for them…”  

God states clearly in the Qur’an the stages of human development in the womb. “O people! If you are in doubt about the raising, then surely We created you from dust, then a small seed, then from a clot, then from a lump of flesh, complete in make and incomplete…”  

Clearly then, existence is not human until the lump of flesh stage is completed, since the verse concerns human beings and describes the successive stages prior to their creation as such.  

If someone else causes a woman to abort before the foetus has reached 120 days’ gestation, this person will be liable for indemnity.  

Research on pregnant women was discussed at the first International Conference on Bioethics in Human Reproduction Research in the Muslim World in Cairo, December 10-13, 1991, and at the workshop on Reproductive Health Research Methodology in Dubai, April 25-29, 1995.  

The following research guidelines were adopted:  

1. Deliberate exposure of a foetus to the uncertain consequences of an experimental intervention unrelated to the pregnancy is unacceptable.  

2. Any woman who is or is likely to become pregnant will be excluded from clinical study, especially in drug trials.

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41 The Qur’an, 6.140 (from Therisa Rogers, ibid., 122-129).  
42 Therisa Rogers, ibid., 122-129.  
43 The Qur’an, 6.151.  
44 22.5.  
45 Therisa Rogers, ibid., 122-129.
3. A pregnant woman should, in no circumstances, be a subject of non-therapeutic research that carries any possibility of risk to the foetus or neonate.

4. Therapeutic research on pregnant women is permissible only with a view to improve the health of the mother without prejudice to the foetus.

5. Research on pregnant women is permissible if it aims to enhance the viability of the foetus or aid its healthy development.46

**Organ Transplants**

Initially there was some resistance to accepting organ transplantation in the Islamic world. Objections were mainly cultural rather than religious.47

It is asked whether disconnecting a comatose or a terminally ill patient from life-sustaining machines falls under the definition of prohibited “killing,” and further, whether saving the life of severely deformed foetuses is ultimately praiseworthy.

The general Islamic attitude is against changing anything in God's creation, in this case the human body, hence opposes plastic and cosmetic surgery. However, when the person in need of such surgery stated, or threatened, that if the operation were not approved his or her other option would be suicide, the muftis, apprehensive of such an outcome, and resorting to the argument that to maintain life is the highest priority, approved of the desired surgery and furnished it with the proper legal grounds. The quality of life of those in need of plastic surgery was thus indirectly assured.48

Organ transplants in Muslim countries first started in the early 1970s and caused considerable popular concern as they raised at least two juridical-theological post-mortem problems:

a. Until the Resurrection of bodies on the Day of Judgement Muslim Law prescribes burial of the deceased as soon as possible and prohibits cremation and any mutilation of the corpse.

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46 Gamal I. Serour, ibid., 171-188.
47 Abdel Moneim Hassaballah, ibid., 11.964-965.
48 Vardit Rispler-Chaim, ibid., 130143.
b. The Creator is the sole owner of everything, including the human body. The human merely exercises a sort of trusteeship on the latter, in other words, a conditional ownership for which he is responsible before God.

After the initial doubt raised by jurists and in public opinion by the introduction of transplants, there has been steadily growing approval of these operations, even if some opposition remains to the practice in general or limited to some circumstances (especially transplants from cadavers).

Organ transplantation is practised in almost all Muslim countries. This generally involves kidney donations from living relatives, but cadaver donation is increasing. The Qur’anic affirmation of bodily resurrection has determined many religious and moral decisions regarding cadavers. Mutilation, hence cremation, is strictly prohibited in Islam. However, autopsies, although uncommon in Muslim countries, are permitted under certain circumstances, for example, when there is suspicion of foul play. Similarly, many Muslim scholars have permitted cadaver organ donation.49

The principles deemed favourable as well as those contrary to transplants are taken from Muslim Law; through reasoning by analogy (qiyas) it is easy to adapt these principles to concrete situations. Amongst the most widespread criteria and principles in favour of transplants the following can be observed in addition to medical care.

1. Qur'an 5.32: “If anyone saved a life, it would be as if he saved the life of the whole people.” This is the basic principle of medical practice in Islam according to which the doctor must not only heal but also prevent illness, after Qur'an 2.195: “and make not your own hands contribute to your destruction.”

2. An authentic saying of Prophet Muhammad is “There is no disease that Allah has created, except that He also has created its treatment.” This is interpreted as an explicit invitation to doctors to discover cures and defeat pathologies.

3. The juridical principle of necessity holds: “Pressing needs even allow what is prohibited.” This is based—through analogy and by extension—on various verses

in the Qur'an, for example, 6. 145: “Say: ….if a person is forced by necessity, without wilful disobedience, nor transgressing due limits, thy Lord is oft-forgiving, most merciful.”

4. Once necessity is recognised as the exception to the rule of the right to avoid serious harm, another principle is derived, that of the “lesser evil.” Avoiding evil has priority over the acquisition of good. This one of the principles traditionally used to justify therapeutic abortion.

5. The principle of “public good” or “usefulness” (maslaha). Public good remains closely connected with altruism, itself rooted in Qur'an 5.2: “Help ye one another in righteousness and piety.”

The sacred character of the human being. God Himself says: “We have honoured the sons of Adam” (Qur'an 17.70). He wants to promote human beings' welfare, harmony and happiness. God says: “God intends every facility for you; He does not want to put you to difficulties.”

6. Caring for the sick comes under the responsibility of society, and the donation of organs may be considered a social obligation (fard kifaya); if someone dies because an organ cannot be found, society is responsible. This criterion is based on an analogy with the behaviour of Omar, the second Caliph (d. 644). He ruled that if a man dies of hunger because society does not help him, then the latter must pay monetary compensation as the penalty for failing in its duty.

The ensoulment? specifies that organs belong to God (Qur'an 2. 195), but as divine assets were created for the benefit of human beings (Qur'an 2. 39), they can use bodily organs for the benefit of the community.

Accordingly, it is generally accepted that selling human bodily organs is absolutely prohibited by Islam. Medical research of commercial nature or not related to the health of mother or child, is not allowed.

50 Atighetchi, D., ibid., 33-35, 161,162,163.
51 Atighetchi, D., ibid., 162.
52 Abdel Moneim, Hassaballah, ibid., 11.964-965.
53 Gamal I. Serour, ibid.; 171-188.
The Basis of Islamic Medical Ethics and Gene Therapy

Gene therapy is a new kind of treatment aiming to cure either genetic diseases or diseases having later. It is based on transferring small DNA and RNA cells to human cells, organ and tissues.\(^{54}\)

From a Muslim perspective human gene therapy should be restricted to therapeutic indications alone. Somatic cell gene therapy is encouraged as it involves treatment for and alleviation of human suffering. However, enhancement genetic engineering or eugenic genetic engineering, involves change in God's creation, which may lead to imbalance of the whole universe and must be prohibited. Gene therapy to manipulate hereditary traits such as intelligence, stupidity, stature, beauty or ugliness may also impair the balance of human life.\(^{55}\)

Here are some principles and guiding values drawn from medical ethics and Muslim Law that have been formulated for guidance in application of genetics:

1. The principle of justice (istihsan)

2. Protecting the collective interest (maslaha).

3. Respect for the human being's physical integrity. Qur'an 95.4: “We have indeed created man in the best of moulds.”

4. Respect for the human's psychic integrity. Qur'an 30.30: “No change (let there be) in the work by God”; Qur'an 32.9: “But He fashioned him in due proportion, and breathed into him something His spirit.”

5. Protecting families' genetic heritage.

6. The Shari’ a abhors any confusion or uncertainty in identifying natural and legitimate parents. The Prophet said: “Select your spouse carefully in the interest of your offspring because lineage is a crucial issue.” This also implies rejection of adoption, as expressed by Qur'an 33.4: “Nor has He made your adopted sons your sons”; and by 33.5 “Call them by (the names of) their fathers.”


\(^{55}\) Gamal I. Serour, . ibid., 171-188.
7 Prohibition on manipulating creation.\textsuperscript{56}

**Human Cloning**

Islam adopts four positions on human cloning. The first two are against it, the third and fourth treat it more or less favourably.

1. God is the creator of all things. Cloning aims to imitate divine creation; at the same time it wants to modify it. The perfection and variety of creation is damaged by human cloning. Divine will is ignored.

2. The foregoing principles are accepted. Nevertheless, cloning will succeed only if God so wishes, similarly to contraception. Therefore, it is not act of creation but only a “reshuffle” of what has already been created by God.

3. Human cloning is merely a new tool of assisted medical procreation. Indeed, by cloning, transfer of the nucleus takes places between married partners, akin to a homologous reproductive practice.

4. Cloning helps understand the miracle of the Resurrection at the end of time and the miracle of the conception of Christ without a father.\textsuperscript{57}

Some verses imply that cloning is permissible:

Qur'an 22.5: “O mankind! If ye have a doubt about the Resurrection (consider) that We created you out of dust, then out of sperm, then out of a leech-like clot, then out of a morsel of flesh, partly formed and partly unformed…”

To those who do not believe in the Resurrection of bodies with the recomposition of the dispersed chemical and physical compounds, Qur'an 36.78-81 replies: “Who can give life to (dry) bones and decomposed (at that)? - Say, ‘He will give them life Who created them for the first time! For He is well-versed in every kind of creation! Is not He Who created the heavens and the earth able to create the like thereof?’”

\textsuperscript{56} Atighetchi, D., ibid., 236.
\textsuperscript{57} Atighetchi, D., ibid., 236.
The Qur'an underlines the infinite capacity of God to restore every detail of the human body, as stated in 75.3-4: “Does man think that We cannot assemble his bones? Nay, We are able to put together in perfect order the very tips of his fingers.”

Accordingly, cloning allows us to understand that the restoration of human life with the Resurrection is no more difficult than the original creation. In short, cloning becomes proof of the Resurrection and allows us to understand it, even proving it scientifically.58

**Medicine is a Collective Precept**

Medicine in the Shari'a is a duty to be performed by a competent member of the Muslim community. More precisely, in Malikite and Shaf’ite Muslim Law medicine is fard kifaya, that is, a collective precept which not everyone is obliged to obey; some believers do so, others are exempt from it.59

**Medicines and Medical Care are Compulsory**

The religious justification for recourse to medical treatment is present in the well known hadith “There is no disease that Allah has created, except that He also has created its treatment” (Bukhari).60 Ibn Hanbal considered medical care permitted but not compulsory because it is better to trust in God rather than the efficacy of drugs. By contrast, the Hanbalite jurist Ibn Taymiyya (d. 1328) judged medical treatment compulsory. However, for the majority of jurists, recourse to treatment seems indispensable for recovery, which is granted only by God according to Qur'an 2680: “and when I am ill, it is He who cures me.” A hadith collected by Muslims confirms: “there is a remedy is applied to the disease. It is cured with the permission of Allah.”61

Islam has no sect which opposes recourse to medicine in principle.

**Euthanasia**

58 Atighetchi, D., ibid., 241, 247.
59 Atighetchi, D., ibid., 32.
60 Bukhari, Sahih, Medicine, Vol. 7, Book 71, No. 582, in www.usc.edu/dept/MSA/index.html (from Atighetchi, D., ibid., 33)
61 Muslim, Sahih, The Book on Salutations and Greetings (Kitab As-salam), Book 26, No. 5466, www.usc.edu/dept/MSA/index.html (from Atighetchi, D., ibid., 33).
No specific distinctions between the different cases of euthanasia exist in classical Muslim Law. In any case, modern fatwas do not dwell on the different types of euthanasia and generally do not go beyond the distinction between active and passive euthanasia, condemning them both as murder. However, many differences can be perceived within this condemnation.62

A person is considered legally dead and all the Shari’a’s principles can be applied when one of the following signs is established:

a. Complete stoppage of the heart and breathing, which is deemed irreversible by doctors.

Complete stoppage of all vital functions of the brain, which is deemed irreversible by doctors, and the brain has started to degenerate.

Under these circumstances it is justified to disconnect life-support systems even though some organs continue to function automatically with these devices.63

Islamic ethics does not approve of a person being in pain so that he or she may simply remain alive.

**Suicide and Martyrdom**

The Qur'an contains no explicit indications on suicide. Nevertheless, Muslim commentators understand Qur'an 4.29: “Do not kill yourself, surely God is merciful to you,” as a prohibition against suicide or against killing other Muslims; but other interpretations can be accepted. Qur'an 3.145, recalling that the time of death is in the hands of the Creator alone, seems to complement this: “Nor can a soul die except by God’s leave, the term being fixed as by writing.”

Some sayings of the Prophet are more direct than the Qur'an. “In old times there was a man with an ailment that taxed his endurance. He cut his wrist with a knife and bled to death. God was displeased and said, 'My subject hastened his end: I deny him paradise'.”

62 Atighetchi, D., ibid., 286.
63 Abdel Moneim Hassaballah, ibid., 11.964-965.; Gamal. I. Serour, ibid. ,
In a second hadith (in Muslim and Bukhari), he who commits suicide by stabbing himself will continue to stab himself in Hell (for eternity).  

A third hadith (in Bukhari) recalls the case of a warrior who had distinguished himself in battle, but wounded several times he lost heart and killed himself. The Prophet declared that owing to this act the warrior had cancelled all the merits he had won on the battlefield for God, and was condemned to Hell.

Generally, according to the logic of Islamic bioethics, medical research, aiming at treatment for patients and betterment of humans' health, consist of trying to understand God’s verses in nature. For that reason, all research should be considered a highly religious duty. And the reverse: to stymie or prohibit such research is to be considered obstructing comprehension of God's laws of God in the universe. The physician Hasan Hathout agrees. This bioethical principle is contained in this verse: “And among His wonders is the creation of the heavens and the earth, and the diversity of your tongues and colours: for in this, behold, there are messages indeed for all who are possessed of (innate) knowledge.”

Conclusion

Islam not monolithic, and views on bioethical matters are diverse. This diversity derives from the various schools of jurisprudence, the different sects within Islam, differences in cultural background, and different levels of religious observance.

On the other hand, although Islam has some doctrinal differences from Judaism and Christianity, it shares essentially the same code of morality.

If secular Western bioethics can be described as rights-based, with a strong emphasis on individual rights, Islamic bioethics is based on duties and obligations.

In the absence of an organised “Church” and ordained “clergy” in Islam, the determination of valid religious practice, hence the resolution of bioethical issues, is left to qualified scholars of religious law, who are called upon to provide rulings on

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64 Bukhari, Sahih, Medicine, Volume 7, Book 71, Number 670 in www.usc.edu/dept/MSA.
65 Atighechi, D.; ibid., 291.
66 See: Hasan Hathout: Islamic Basis for Biomedical Ethics, in Pellegrino, E. Et al. (Hrag.): Transcultural Dimensions in Medical Ethics, Maryland 1992, 57-72.
67 The Qur’an: 30.22.
whether a proposed action is forbidden, discouraged, neutral, recommended or obligatory.\(^{68}\)

The methods of casuistry in Islamic Jurisprudence are of first priority over normative methods, in other words, ethical ones. This method of classical fatwa has certain advantages and disadvantages in solving bioethical issues. This method, closely connected to real life, provides speedy solutions to medical problems. By contrast, in modern medical development and medical issues this method is not faster and cannot work as an Islamic bioethical philosophy.\(^{69}\)

The famous hadith of Mu’ādh Ibn Jabal marks the turning point from converting canonical judgements into ethical philosophical judgements. Ibn Jabal says he would employ his reason and his opinion when he encounters new circumstances.\(^{70}\) the Prophet Muhammad asked, “\textit{What will you do if you do not find any guidance in the Sunna of the Apostle of Allah and in Allah’s Book? Ibn Jabal replied: I shall do my best to form an opinion and I shall spare no effort.}”

Islamic bioethics takes a holistic approach to all medical issues and developments. It does not examine them one by one. It does not try to give local answers to universal medical issues. Yet Muslim Law cannot precede scientific developments and progress, whilst bioethics in Islamic philosophy can establish a theoretical framework even for issues in the future.

\(^{70}\) The complete hadith is as follows. “Muhammad himself and his Companions, in the case of necessity, used this method of logic and deduction, as attested by the words addressed by the Prophet to Mu’ādh Ibn Jabal, one of his envoys in the Yemen.

The Prophet asked: “How will you judge when the occasion of deciding a case arises? He replied: I shall judge in accordance with Allah’s Book. He asked: What will you do if you don’t find any guidance in Allah’s Book? He replied: I shall act in accordance with the Sunna of the Apostle of Allah. He asked: What will you do if you do not find any guidance in the Sunna of the Apostle of Allah and in Allah’s Book? He replied: I shall do my best to form an opinion and I shall spare no effort. The Apostle of Allah then patted him on the breast and said: Praise be to Allah who has helped the Messenger of the Apostle of Allah to find something which pleases the Apostle of Allah.” Abu Dawud, Sunan, The Office of Judge, Book 24, no. 3585, in www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/satintro.html
Islamic bioethics as a part of Islamic philosophy leaves no loophole open to discrimination by race, religion and region. This is because it is based not only divine sources but also on reason and logical analogy, which Classical Jurisprudence borrowed from Islamic philosophy. Further, instead of Muslim Law, Islamic ethics can share basic similarities with Judaism and Christianity at a time of inter-religious and inter-Muslim dialogue and its methodology.\textsuperscript{71}

Islamic bioethics is more than canonical rules, and Islamic ethics is more than the Muslim Law.

\textsuperscript{71} See a methodology proposed by Kemal Argon for the Inter-religious and inter-Muslim Dialogue: Kemal Argon, Strategies for Inter-Religious and Inter-Muslim Dialogue: A Proposed Methodology, Journal of Muslim Minority Affairs, Vol. 29, No. 3, September, 356-367.
ISLAMIC MEDICAL JURISPRUDENCE: SOURCES AND MODUS OPERANDI

Abul Fadl Mohsin Ebrahim

Abstract

Islamic medical jurisprudence is the science which particularly addresses bioethical issues within the context of health care and medicine. However, Islamic medical jurisprudence does not necessarily confine itself to what is right and wrong, but also serve as the extension of the Shari`ah (Islamic Law). Therefore, in view of the fact that modern biomedical technologies directly impact the lives of Muslims, it necessarily follows that these biotechnological innovations must also have legal implications.

The paper sheds light on the primary, secondary and tertiary sources of Islamic medical jurisprudence as functional tools which guide the fuqaha’ (Muslim jurisits) in reaching a solution or a rule (hukm) on such biotechnological manipulations and their categorization into what are termed as wajib or fard (required or obligatory), mandub (recommended), mubah (permitted, but morally indifferent), makruh (discouraged or abominable) and/or haram (forbidden or prohibited). The paper also touches on how these rules are expected to be enforced in any given Islamic society.

Introduction

The vast majority of Muslims who reside both within and outside the geographical confines of the Muslim world are well aware of the problems that modern medical technology poses vis-à-vis their world view. They are keen to implement their religious values in almost all facets of their lives and hence the relevance for the study of Islamic Medical Jurisprudence.

It is, however, important to note that Islamic Medical Jurisprudence has not as yet been fully evolved into an independent science and is not being taught separate from Islamic Jurisprudence at any given University or Islamic religious institution. Today, more than ever before, there exists the possibility for the evolution of Islamic Medical Jurisprudence into a vibrant independent science in view of the fact that adequate resources are now available and
this may well pave the way for facilitating the formulation of an exclusive curriculum for this discipline.

**Scope of Islamic Medical Jurisprudence**

The scope of Islamic Medical Jurisprudence is akin to what is termed as Medical Ethics in the West and covers an array of issues such as: (1)

- Doctor-patient relationship
- Medical confidentiality
- Medical negligence
- Control of fertility
- Organs and transplantation
- Abortion
- Prenatal screening
- Management of infertility
- Diagnosis of death
- Euthanasia

**Sources of Islamic Medical Jurisprudence**

*Primary Sources*

The Qur’an and Sunnah are the embodiment of what is known as the Shari’ah (Divine Law). The Qur’an is the Sacred Scripture of Muslims which is regarded to be the verbatim Word of Allah revealed to Prophet Muhammad over a period of approximately 23 years. It embodies the Divine Commandments which encompass all facets of human life. Muslims are required to uphold and implement these Divine Injunctions. This is evident from the following verses: “The hukm (jurisdiction) rests with none but Allah.” (Al-An`am, 6:57). “….Those who do not judge in accordance with what Allah has sent down, verily they are the deniers of the Truth.” (Al-Ma`idah, 5:44) From these Qur’anic verses, it is evident that within the Islamic system, Allah is regarded to be the only Law-Giver (Al-Shari`) and that in Him alone rests the supreme legislative power. (2)

The Sunnah is regarded as wahyun khafi (minor revelation) and includes all that has been reported on the authority of Prophet Muhammad and as such incorporates his authentic sayings (sunnah qawliyyah), his actions and personal habits (sunnah fi`liyyah),
and finally, his ρ tacit approval and explicit disapproval (sunnah taqririyah) (3). By virtue of the fact that Allah chose to reveal the Qur’an to Prophet Muhammad, it, therefore, becomes binding upon Muslims to follow his explanations and interpretations of the Divine Commandments. In other words, Prophet Muhammad explained, interpreted and demonstrated how the Divine Law ought to be applied (4). The Qur’an substantiates this as follows: “And We have sent down the Reminder (Message) to you (O Muhammad) so that you can make clear to humankind what has been sent down to them so that hopefully they will reflect.” (Al-Nahl, 16:44) The Sunnah serves to complement the Qur’an in the absence of a categorical Qur’anic statement on a particular issue in question. For example, the Noble Qur’an is silent on the issue of the permissibility or non-permissibility for Muslims to take certain precautionary measures for the purpose of frustrating pregnancy.

Secondary Sources

Ijtihad is derived from the root verb jahada, which means to endeavour, strive, etc. (5). Its technical legal connotation implies the exertion of the jurist’s intellect to determine the proper application of the teachings of the Qur’an and Sunnah to a particular situation with the aim of finding a solution for a case of law (6). In other words, the ruling of the mujtahid (i.e. the scholar who engages in ijtihad) would be inferential and thus probable (zanni) (7). Thus, all bioethical issues which are not addressed by the primary sources, namely the Qur’an and Sunnah, would be resolved on the basis of ijtihad. The two branches of Ijithad are Ijma` and Qiyas (8).

Ijma` is derived from the root verb jama`a which means to collect or bring together (9). As a legal term, it is defined as agreement of the jurists among the followers of Prophet Muhammad in a particular age on a question of law (10). In practice, Muslim jurists congregate and deliberate upon any particular problematic issue which affect Muslims and try to resolve it by agreeing and uniting in opinion. Once consensus has been reached, the ijtiyat of Muslim jurists shift from the realm of probability to that of certainty and becomes the basis for new cases to be solved (11). In other words, when ijma’ is obtained on a case of ijtihad, the issue in question does not remain at the level of opinion (zann), but gets elevated to the
position of a *hujjah* (a decisive verdict), thereby making it unlawful for Muslims to disregard it (12).

*Qiyas* (analogical deduction) is derived from the root verb *gayasa*, which means to measure (13). As a juridical term, it is defined as a process of deduction by which the law of a text is applied to such cases which, though not covered by the language of the text are covered by the reason of the text on the basis of the `*illah* (effective cause) (14). For example, the Qur’an (*Bani Isra’il*, 17:33) censures murder or killing of human beings. In the past, killing was carried out in the form of poisoning someone or stabbing a person to death, etc. The modality varied, but the `*illah* (effective cause) was similar, i.e. it ended in death. Thus, today, if an attending physician deliberately chooses to administer a lethal injection to the terminally ill, it would in effect cause death and the physician would be liable for the crime of murder on the basis of the common `*illah*.

**Tertiary Sources**

Legal maxims are theoretical abstracts, usually in the form of short statements, that are expressive, often in a few words, of the goals and objectives of the *Shari‘ah*. The actual wordings of the maxims are occasionally taken from the Qur’an or Hadith, but are more often the work of leading jurists (15). It is to be noted that some of the maxims are basically a reiteration of some of the broad principles that are found either in the Qur’an or Hadith compilations. For example, mention is made in a Hadith that “breaking the bone of a dead person is equal in sinfulness and aggression to breaking it while the person is alive” (16). In other words, it would be an act of aggression, tantamount to mutilation of the human corpse, to remove any of its organs for the purpose of transplantation. However, in this particular context, the maxim *necessity makes the unlawful lawful* (*al-daruratu tubihu al-mahzurah*) can be used as justification for the removal of the cornea from the dead for the purpose of transplanting it into another person whose vision could be restored through corneal transplant.

Islamic Juridical Academies have been established in a number of countries, for example, in Saudi Arabia, Jordan, India, etc. Muslims scholars who form part of these academies meet on
at regular intervals in order to deliberate on a variety of issues affecting Muslims in their social, political and economic spheres of life. In Saudi Arabia, there are two such academies, one based in Makkah and the other in Jeddah. The academy in Makkah functions under the auspices of the Muslim World League. Its resolutions are published in its bi-annual journal, namely, *al-Majma`al al-Fiqhi*. The academy in Jeddah is the organ of the Organization of Islamic Conference (OIC). Its members are drawn from member-states and some other countries. Its resolutions are also collated and published. Insofar as the Islamic Juridical Academy of India is concerned, it was founded by the late Qadi Mujahid Islam. The academy is based in Bihar and holds at least two seminars on Islamic juridical issues every year in different cities in India. Its proceedings are published in its quarterly Urdu journal, namely, *Bahth-o-Nazar (Research and Studies)*.

*Fatwa* (formal legal opinion) is derived from the root verb *fatiya*, which means to be youthful, to furnish with information and to expound (17). It is defined as a formal legal opinion given by an expert in Islamic Law (18). An expert in Islamic Law is known as a *mufti*, an inquirer (i.e. one who seeks the legal opinion of a *mufti*) is known as a *mustafti*, and the act of issuing *fatwa* is known as *ifta’*.

Muftis are usually consulted by members of the Muslim community to give their legal opinions on the new developments in the fields of economics, politics, science, technology and even on bioethical matters pertaining to family planning, abortion, cloning, euthanasia, organ transplantation, etc. It is to be noted, however, that the *fatwa* of a particular *mufti* is not binding and hence one has the option to approach another *mufti* for a second opinion. Moreover, one ought to realize that there are a number of conflicting *fatawa* (sing. *fatwa*), for example, on organ transplantation and other bioethical matters and thus, in light of this Muslims thus have the liberty to uphold such legal opinions which best appeal to their conscience without any qualm. After all, whatever legal verdicts they finally choose to follow would in essence be the *ijtihad* of the muftis.

**Enforcement of the Rules in the Context of Islamic Medical Jurisprudence**
One ought to recall here that Islamic Medical Jurisprudence, as was mentioned earlier, is the extension of the Shari‘ah (Divine Law). Insofar as the Islamic world view is concerned, the Shari‘ah embodies the Will of Allah I Who is regarded to be The Sovereign and Source of law and this is evident from the following Qur’anic verse: “To Allah belongs the dominion of the Heavens and the Earth and Allah has power over all things. (Al ’Imran, 3:189)

From the above verse, it is evident that the Shari‘ah does not recognize the liberty of legislation, for that would be incompatible with the ethical control of human actions and, ultimately, of society. Law, therefore, does not grow out of, and is not molded by society as is the case with the Western system. According to Islamic teachings, human thought alone cannot discern the true values and standards of conduct - such knowledge is complemented by Divine Revelation. Likewise, human actions are considered to be either good or evil depending on what has also been made known to humankind through Divine Revelation. Moreover, fear of punishment in the life hereafter, depending on the strength of one’s faith, serve as a deterrent for one not to indulge in such actions that are deemed prohibited by the Shari‘ah (19).

The Shari‘ah has laid down the penal code for perpetrators of crime (20). For example, the proviso for paying the diyyah (blood money) for the unintentional killing of a human being is on the basis of the following Qur’anic imperative: “Never should a believer kill a believer, but (if it so happens) by mistake (compensation is due): If one so kills a believer, it is ordained that he should free a believing slave and pay compensation (diyyah) to the deceased’s family….“ (Al-Nisa’, 4:92)

At this juncture, it is important to note that in light of Islamic Medical Jurisprudence, ensoulment of the fetus occurs after the fourth month of pregnancy on the basis of the following Hadith: “Each of you is constituted in your mother’s womb for forty days as a nutfah (drop of semen), then it becomes an ‘alaqah (something that clings) for an equal period, then a mudgah (chewed-like lump) for another equal period, then the angel is sent, and he breathes the soul into it” (21). Hence, any act of aggression against the fetus after the fourth month which results in the termination of its life would be tantamount to the killing of
an actual person. Thus the aggressor would be liable to pay the *diyyah* (blood money) in compensation (22).

In Muslim countries where the *Shari`ah* is implemented, for example, in the Kingdom of Saudi Arabia and Iran, the *Qadi* (judge) of the *Shari`ah* Court would be responsible to effect the appropriate punishments for the different crimes. But the primary aim of the *Shari`ah* is not restricted to the implementation of punitive measures, but rather to impress upon Muslims the fact that Allah is watching their every action and hence they should have an element of fear for Him at all times and not to shun His commandments. This is evident from the following imperatives of the Qur’an, bearing in mind that the Qur’an is in essence the foremost source of the *Shari`ah*: “O ye who believe! Fear Allah as He should be feared.” (*Al `Imran*, 3:102)

From the above Qur’anic verses, it may plausibly be inferred that prosperity of society depends not so much upon the rigors of the law, but rather upon righteousness inspired by the fear of Allah, i.e. *taqwa*. Thus while the *Shari`ah* is the code of moral conduct, *taqwa* is the standard by which human actions will be judged (23) as is evident from the following Qur’anic verse: “O humankind! surely, We have created you from a single (pair) of a male and female, and made you into nations and tribes that you may know each other. Surely the noblest of you in the sight of Allah is the one who has *taqwa* (fears Allah most).” (*Al-Hujurat*, 49:13)

**Conclusion**

Secular laws in the modern world depend to a large extent upon public opinion and can thus be altered according to changes that take place in society. But the rulings of Islamic Medical Jurisprudence being offshoots of the *Shari`ah* (Divine Law) are upheld by Muslims worldwide, depending on the level of their Allah-consciousness, even though there is no one to enforce them.

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12. *Islamic Law – Concept and Codification*, op. cit.: 71.
Abstract

The scope, methodology and tools of Islamic bioethics as a self-standing discipline remain open to debate. Physicians, sociologists, Islamic law experts, historians, religious leaders as well as policy and health researchers have all entered the global discussion attempting to conceptualize Islamic bioethics. Arguably, the implications of Islamic bioethical discourse is most significant for healthcare practitioners and their patients, as patient values interact with those of healthcare providers and the medical system at large leading to ethical challenges and cultural conflicts. Similarly the products of the discourse are of primary import to religious leaders who advise Muslim patients on religiously acceptable medical practices. However, the process and products of the current Islamic bioethical discourse contains gaps that preclude them from meeting the needs of healthcare practitioners, religious leaders, and their patients.

Within the medical literature, published works on Islamic bioethics authored by medical practitioners often contain gaps such as the failure to account for theological debates about the role of the intellect, ‘aql, in ethical decision-making, and a failure to address the pluralism within Islamic ethicolegal frameworks. [1] On the other hand, treatises authored by legal scholars and fatāwā given by traditional jurisconsults (muftis) often lack a practical focus and neglect healthcare policy implications. Multiple organizations have attempted to address these gaps through a multidisciplinary approach of bringing together various experts, healthcare practitioners and traditional jurisconsults when addressing questions of bioethical concern.

The purpose of this paper is to illustrate the necessary expertise when undertaking applied Islamic bioethical deliberation. By outlining who (and what expertise) should be brought to these deliberations we aim to aid the discourse in producing works relevant to its consumers. Our analysis begins with defining the consumers of applied Islamic bioethics and their needs. We then proceed to describe various individual and organizational participants. Based on Islamic bioethical discussions regarding brain death, we analyze how well selected
products meet the needs of consumers and consider what additional expertise might be needed at the table. Finally, we offer a general description of experts that must be brought together in collaborative efforts within applied Islamic bioethics.

**Introduction:**

“Islam” represents a cumulative religious tradition spanning fourteen centuries which Muslims have adapted in diverse ways to varied times, places and contexts. The Islamic ethical and legal traditions are defining features of Muslim societies and exert strong influence upon Muslim behavior. As some remark, this ethico-legal framework is extremely “extensive in the sphere of private, social, political, and religious life of the [Muslim] believer. The result is the totalizing character of Islam as a life system that interweaves religion and politics, the sacred and profane, the material world and the spiritual sphere.”[2]

The values and ethics of Islam and other faith traditions are increasingly challenged to express themselves in a post-modern world. The birth of a new discipline; “Islamic bioethics,” provides a means for Islamic ethico-legal traditions to be applied in response to social changes in health and medicine, new biomedical technologies, and understandings of human biology that challenge previously held assumptions.

As with other ethical traditions, the field of “Islamic bioethics” is growing out of the multiple needs and interests of a diversity of people. It is a subject on which a variety of experts and scholars engage including medical practitioners, health and health policy researchers, social scientists, historians, Islamic studies scholars, and traditional jurisconsults. Hence each group relies on its own knowledge and expertise to address questions of how Islamic values interact with, and influence, medical practice.

The typical discussions in Islamic bioethics occur within “silos” with little cross-talk across expertise areas, and seldom does the discourse reach, or incorporate, patients, their physicians and their religious advisors. Thus healthcare providers find that traditional *fatwa* and treatises do not address the realities of their practice. Meanwhile, Islamic studies scholars find medical professional societies’ ethics positions and those offered by traditional jurisconsults to lack intellectual rigor. Further, traditional jurisconsults struggle to adequately understand medical science and practice.

The scholars, practitioners, and consumers of Islamic bioethical discourse have an additional challenge: the centers of discussion and deliberation on these questions have
historically been segregated both geographically and intellectually. While the United States (US) has been the center of biomedical research and development, as well as the focal point of transcultural bioethical questions, the center of Islamic legal scholarship lies outside of the US. The unfortunate result is twofold: Islamic constructs of philosophy and ethics are marginalized in the general discourse of mainstream Western bioethics, while developments in medicine and biology, with their ethical, legal, and social implications, receive relatively little attention by traditional Islamic scholars. One possible solution to these challenges is to first acknowledge the shortcomings that result from segregated conversations and to work towards facilitating a more robust approach to applied Islamic bioethics through interdisciplinary dialogue. Such dialogue should produce products that are relevant and accessible to those who rely on them to guide their convictions and normative goals.

We propose that Islamic bioethical questions should be addressed through an applied, multidisciplinary process. We then consider the discourse on brain death through selected products, analyze its gaps, and offer additional expertise which may be needed.

**The Objectives of Applied Islamic Bioethics and Its Consumers**

“Applied Islamic Bioethics” as defined here is a devotional discipline that uses the Islamic tradition as the source of normative goals for health behavior and practice. This is somewhat separate from Islam and bioethics as the object of study, either as a “philosophical” or religious text (as in Islamic bioethics) or an empiric social science of studying Muslims (as in Muslim bioethics). Applied Islamic bioethics seeks to answer the questions asked by Muslim health care providers, religious leaders, and patients with practical implications. More specifically, it is the process of developing answers to important Islamic bioethical questions that, Muslims believe, impact one’s standing before God.

With this definition in mind, applied Islamic bioethics has several aims:

1. Islamic bioethics helps to inform the healthcare behaviors of Muslim patients and providers.[3] For Muslim patients, applied Islamic bioethics is the set of values that guide how they seek medical care and influence acceptance of medical therapies. For Muslim healthcare providers, applied Islamic bioethics guides the professions they seek, what therapies and procedures they provide, and how they interact with patients, hospitals, and peers. For Imams, chaplains, and other religious leaders, applied Islamic bioethics provides guidance when lay Muslims seek their advice on Islamically-valid courses of action in healthcare.
2. Applied Islamic bioethics is the process by which Muslim societies, and Islamic traditions, adapt and negotiate values within the modern context. As modern medical advancements have prompted a set of new ethical dilemmas, a renewed religious bioethical discourse takes place on the individual, community and societal levels in an increasingly pluralistic environment. Further, medical science and technology brought from outside Muslim communities must be reconciled with religious and cultural values within the recipient societies through applied Islamic bioethics.

3. Finally, applied Islamic bioethics provides a framework through which Muslims and their religious leaders can interact with academics, policy scholars, and others whose subject of study is Islam and Muslims.

The goals of applied Islamic bioethics are defined by its consumers. If a key goal of ethics is to meet the needs of the vulnerable and those most in need, the ultimate consumer of all bioethics is the one in the role of “patient.” However, few ethical constructs expect patients to come in having a completely thought out set of values. More commonly, they turn to “experts” on an ad hoc basis. So who, in the service of Muslim patients, looks for bioethical materials? There are at least four categories of stakeholders.

1. Muslim Health Care Providers and Allied Health Professionals (doctors, pharmacists, nurses, and others)

2. Health Care Institutions (hospitals, clinics) and Systems (medical networks and health insurance providers) who care for large communities of Muslims and/or who have Islamic practice as a central feature of their vision.

3. Policy institutes, both governmental and non-governmental, and individuals who serve and/or advocate for the needs of Muslim patients.

4. Religious leaders (Imams, chaplains and their professional organizations) who counsel and advise Muslims on bioethics.

These groups share an important feature in that they seek both a priori and posteriori guidance on best practice. They contain a professional morality with agreed upon standards of conduct. This shared sense of ethics develops out of the relationship between patient, professional, and regulatory bodies that are specific to that interaction. Taking physicians as an example, there exists a strong culture of professional ethics, in part defined by licensing boards, advocacy organizations and local regulations. The institution (#2) sets, or is the setting of regulation, and has its own best practice guidelines. The regulators (#3) who direct
best practice are themselves driven by normative goals, and finally, religious leaders (#4) are the patient advocates from a spiritual perspective.

The State of Islamic Bioethical Discourse: A Taxonomy of Scholars and Organizations

Having laid out the objectives and consumers of applied Islamic bioethics, we can now outline the producers of materials under some moniker of “Islamic” or “Muslim” bioethics:

Physician and Allied Health Professionals- These individuals are on the front line of Islamic bioethics. They care for patients in a medical culture that may be at odds with their religious values. Ethical challenges arise during the clinical care of patients, and often Muslim patients seek out Muslim providers with the hope of finding bioethical guidance that is religiously informed. This group physicians, and other allied health professionals. Their pronouncements on “what is Islamic” vary in genre, scope, and audience; some speak to patients, others to non-Muslim peers, and others within the Muslim community.

Academicians- These are individuals in university and academic circles, who see Islamic and/or Muslim bioethics as an object of study. We believe there to be at least three different sub-categories of academicians which are not mutually exclusive.

1. Social scientists- these scholars focus on the application and negotiation of Islamic values and identities in healthcare systems and society at-large. Anthropologists, sociologists, scholars of policy (economics, political science), scholars of race and ethnicity, and others all rely on empiric data obtained from and / or about Muslims.

2. Humanities scholars- these scholars analyze the classical and modern application of Islamic law and ethical values to medicine and medical care. They are historians, scholars of divinity or philosophy, and others whose discipline is not Islam per se rather they use tools from a particular intellectual disciplines to study Islam and/ or Muslims.

3. Islamic studies scholars- these scholars study the devotional jurisconsults output on Islamic bioethics and attempt to synthesize a global Islamic bioethics. Their academic focus vary but their venue is a non-devotional environment whose intended audience may or may not include adherents of the Islamic faith.

Devotional jurisconsults- These are individuals or groups of scholars whose primary concern is to serve Muslims by enabling their continued adherence to the faith. They are formally authorized muftis with advanced training in Islamic law or training issuing religious
decrees (fatawa) as opposed to mosque-based Imams who rely on fatawa of others. This category is not homogenous as these scholars are variably trained through Islamic seminaries focusing on different Islamic legal schools and theologies. Their service to the community is wide-ranging with some serving at mosques, others as jurisconsults within communities or on internet forums and academics, and others being leaders in Muslim organizations and governments. **Bioethicists** - this group of scholars are a diverse pool of experts comprised of clinicians, philosophers, lawyers and social scientists. The uniting feature of this group is that they are concerned with the practical policy and vocational implications of bioethics.

There also exist **organizations** involved in the Islamic bioethical discourse. Despite a diversity of goals and means, they also inform applied Islamic bioethics. A partial taxonomy is as follows:

**Professional healthcare societies** - Groups of Muslim healthcare providers working in pluralistic medical environments attempt to influence their practice with Islamic values. Organizations such as the Islamic Medical Associations around the globe provide a forum for the discussion and promotion of Islamic bioethics. Some organizations, such as the Association of Pakistani Physicians of North America (APPNA) may not have religion as their sole focus but share Islamic bioethical concerns. These organizations vary in scope from local to transnational. **Religious institutions** - These traditional seminaries, Islamic educational institutions or online academies serve as forums to bring together the mufti, devotional jurisconsults, and the mustafti, the lay person with a question about Islamic law. Internet forums such as Sunnipath.com serve in this capacity. Other organizations such as Al-Kawthar institute and Medi-Mentor in the United Kingdom bring together allied health professionals and devotional jurisconsults in educational forums related to Islamic bioethics.

**Academic Institutes** - these university-based institutes create academic forums for engagement with Islamic bioethics. For example the Markfield Institute of Higher Education offers an academic Diploma in Islamic Medical Ethics, and the Rock Ethics Institute hosted a conference on Islamic bioethics.

**Policy institutes** - These non-university organizations concentrate on the policy implications of Islamic and Muslim bioethics. For example the Institute of Social Policy & Understanding brings together medical experts and researchers in order to advocate for the needs of, and to inform medical policy towards, Muslim patients. Some organizations tied to transnational and state governments such as the Islamic Fiqh Academy in India, and of the
Organization of the Islamic Conference, inform Muslim nations, peoples and governments on the Islamic legal concerns pertaining to healthcare policy.

While these diverse scholars and organizations contribute to the Islamic bioethics discourse, the varied approaches and objectives leads to products that may or may not meet the needs of the consumers. It is hard for clinicians and patients to know whom to turn to for proper guidance pertaining to their concerns. Furthermore, not having sufficient diverse expertise at the bioethical table leads to palpable shortcomings in their products. In the next section we highlight examples of gaps within the discourse and its output.

The process of answering a bioethics question

The process by which a bioethics question is answered is a subject that deserves our attention (Figure 1).[4] It is against this process that the efforts of others writing about Islamic bioethics can be considered. These steps are as follows:

1. **Stating the issue or question.** The process of applied Islamic bioethics starts in response to a real-world or anticipated challenge with the ultimate goal of acting to enhance one’s standing before God. These can range from permissibility (halal/ haram) of simple acts, to complex policy decisions involving millions of people.

2. **Identifying and clarifying important elements,** such as
   a. Key terms and definitions,
   b. Relevant facts, such as the state of the known science, current and accepted practice, and an attempt to identify unknown or uncertain facts that might impact the discussion,
   c. Stakeholders, primarily those identified above, although there are others as well,
   d. Key issues and principles, especially those from Islamic tradition

3. **Re-examination of the question in the light of the key identified elements,** with the possibility of reformulating the issue or question, or perhaps examining other questions that need consideration before addressing the initial one that started the process,

4. **Generation of responses and solutions** based on a vigorous and thorough discussion with representation of relevant experts and stakeholders,

5. **Consideration of the implications and practical constraints** relevant to possible responses,

6. **Establishing consensus on a proposed solution,** that best reflects the values and realities established in this process,
7. *Reconciliation or acknowledgement of controversies*, such as the existence of equally appropriate solutions, irreconcilable differences, and the potential to compromise where possible and appropriate.

Using this process as a framework and reference, we can identify and consider pitfalls in other attempts to answer ethical questions, with a goal of better anticipating shortcomings as we attempt to build an applied Islamic bioethics.

*Illustrating the gaps in Islamic bioethical discourse: Brain Death*

**History of Brain Death**

Initially described in the 1930’s, the concept of brain death was popularized in 1968 by an Ad Hoc Committee of Harvard Medical School. This group of scholars was led by Dr. Henry Beecher, known as the father of academic anesthesiology and renowned for his expose on the human abuses in medical experimentation. The committee was charged with determining the neurological characteristics of patients upon which sustaining life support was futile.[5] The committee’s work and hence the concept of “brain death” was, and is, not without controversy. The report did not offer conceptual clarity on whether the criteria offered a *new means of diagnosing* death or rather was a *new definition of* death, and Dr. Beecher, in subsequent interviews and lectures remained ambiguous as to whether he believed the loss of consciousness and personality, “higher” brain functions, should be equated with the death of an individual.[6] Medical scientists and philosophers continue to debate whether whole brain criteria in other words attempting to ascertain more or less total brain failure, brain-stem criteria where one looks for lack of function in the brain-stem only, or higher brain criteria where an individual who loses function of those parts of the brain responsible for personality and cognition, should be the conceptual basis of brain death protocols. Nonetheless this landmark paper heralded the socio-cultural construction of a “brain-dead” individual.

Various Islamic juridical councils took up the issues around brain death after its establishment in the West. This discussion took on a new zeal after the 1981 United States President’s Commission crafted the Uniform Determination of Death Act (UDDA). This act was developed in collaboration with the American Bar Association, the American Medical Association and the National Conference of Commissioners on Uniform State Laws and adopted the whole-brain criterion signifying as dead any individual who has “irreversible cessation of all functions of the entire brain, including the brain stem.”[7-8] [9]
Case #1: The Islamic Fiqh Academy of the Organization of Islamic Conference and its efforts

To address brain death through an Islamic lens the Islamic Fiqh Academy of the Organization of Islamic Conference (OIC-IFA) held various conferences in the 1980s. The IFA-OIC comprises of a body of Islamic legal scholars appointed to officially represent their countries (43 out of 57 OIC member states are represented), in addition to scholars from various backgrounds and fields assigned to the IFA by recommendation of members. The institution grew out of the need to bring together scholars from different Islamic and scientific fields together to perform collective Ijtihad, or Islamic ethico-legal deliberation, as it was felt that on certain issues it is no longer possible for a single Islamic scholar to have comprehensive knowledge, or sufficient mastery of all disciplines relevant to the issue at hand, to perform an accurate assessment. The hope at the OIC-IFA is to increase unity and reduce discord and doctrinal disputes as all orthodox (both Sunni & Shiite) schools of Islamic law and theology are represented.[10-11]

A key conclusion of the OIC-IFA was that brain death was acceptable as legal death in the Islamic tradition.[11-13] When clarifying their position in 1988 they ruled that Islamic law permitted two standards for the declaration of death: 1) when all vital functions of brain cease irreversibly and the brain has started to degenerate as witnessed by specialist physicians 2) when the heart and respiration stop completely and irreversibly as witnessed by physicians.[11] These statements are widely cited within the medical community as support for brain death in the Muslim world. However the question of “brain death” as a concept, and as an acceptable criterion of death, remains controversial in the Muslim world and the OIC-IFA left many clinical and ethical questions unanswered.

Case #2: The Islamic Medical Association of North America (IMANA) and its efforts

The OIC-IFA council was not the only group of Muslims to consider the question of brain death. As has been the case in other faith-based traditions of bioethics, a parallel effort to consider bioethics questions grew not from the pantheon of religious scholars, but medical ones. Specifically, the Islamic Medical Association of North America (IMANA) also tackled brain death. Founded in the 1960s, IMANA’s mission is “to provide a forum and resource for Muslim physicians and other health care professionals...[and] to promote a greater awareness of Islamic medical ethics (emphasis added) and values among Muslims and the community-
at-large…” [14] Since its inception it attempts to speak on behalf of all Muslim physicians and Muslim patients in the United States.

In 2003, the IMANA ethics committee developed a primer ultimately titled Medical Ethics: the IMANA perspective.[15] There were 9 authors, including one of the writers of this paper, who met over a period of 6 months to develop the statement which was ultimately published online and in the Journal of the Islamic Medical Association (JIMA).[16] IMANA explains they developed the primer (referred from now as the Perspective) to provide “recommendations from the guiding principles of the Glorious Qur’an, the tradition of Prophet Muhammad (PBUH) and opinions of past and contemporary Muslim scholars.”[15] In public statements IMANA noted that while the ethics committee included no religious scholars they had consulted some prior to completing the Perspective. What they are not able to provide is a clear narrative of the process by which the perspective was developed. There is no history of the iterative process, no specific author attribution, and no explanation of how conclusions were drawn. The lack of this narrative leaves the reader without key tools to consider on his own the bioethical questions considered in the primer.

The Perspective has taken an authoritative position in Muslim bioethics, as it is cited throughout the medical literature and on medical ethics platforms such as the American Medical Association’s ethics education website Virtual Mentor, and the Society of Academic Emergency Medicine’s ethics committee frontpage.[17-19] Furthermore, Muslim physicians across the globe have written to IMANA indicating that their work serves a key role in their bioethical decisions.

IMANA’s support in the Perspective for brain death is difficult to fully review. They state, “the definition of the end of human life from the Islamic point of view has been previously discussed. IMANA has previously published a position paper on death,”[15] and then refer to two previous publications, from 1991 and 1996 in the Journal of the Islamic Medical Association (JIMA), as the basis of their statement. However, JIMA is not fully archived in the years 1991-1996, and as it is not an indexed journal, the citations are not widely available.

The statement offers little new insight beyond generally accepted criteria for the diagnosis of death, defining it as
“Permanent cessation of cardiopulmonary function, when diagnosed by a physician or a team of physicians, is considered death. The concept of brain death is necessitated when artificial means to maintain cardiopulmonary function are employed. In those situations, cortical and brain stem death, as established by specialist(s) using appropriate investigations can be used…It is the attending physician who should be responsible for making the diagnosis of death…A person is considered dead when the conditions given below are met…A specialist physician (or physicians) has determined that after standard examination, the function of the brain, including the brain stem, has come to a permanent stop, even if some other organs may continue to show spontaneous activity.”[15]

The Perspective does clarify previous ambiguities, notably from the IFA statement. The question of “who determines death” was answered in the Perspective’s embrace of the key role of the doctor, and the question of uncertainty in diagnosis is at least alluded to in the more detailed standard with added language on the physiologic changes and level of physician training needed to make a diagnosis of brain death.

What (and who) is missing from the deliberative process?

We can examine how well the products of Islamic bioethical deliberation meet our aims by asking two questions:

1. Do the products meet the needs of the stakeholders outlined above, and where and how they fail to meet the needs of those stakeholders?
2. Do the products adequately reflect the process of answering a bioethics question, and where do shortcomings in any of those products reflect failures to maintain fidelity to the process we outlined above?

Below, we identify multiple questions, shortcomings, and needs in light of these three questions.

Unanswered Questions and Unmet Needs

Gaps in the OIC-IFA verdict

The OIC-IFA statement accepted brain death as valid in Islamic law when all vital functions of the brain cease irreversibly and the brain has started to degenerate as witnessed
by specialist physicians. While on surface value this ruling seems clear and it has been widely cited by the medical community it suffers from conceptual and clinical ambiguity.

The OIC-IFA assessment seems to only implicitly defer to medical expertise on matters of brain death. The medical specialists where unanimous on their support for brain-stem criteria signifying death, yet in the verdict the OIC-IFA used the caveat of vital functions of the brain having ceased.[11] Hence for applied Islamic bioethics several questions remain.

1) What are, and who decides, as to the vital functions of the brain? A related question is there a conceptual basis within the Islamic tradition for brain death? 2) Do physician-scientists have to determine irreversibility of these vital brain functions as a matter of fact? Related to this question is what level of certainty of diagnosis is needed to stipulate brain death? 3) Similarly, is the degeneration of the brain necessary within the brain death conception according to Islamic law? These questions and related ones were left, and remain to this day, largely unanswered and without consensus. For those looking for clear guidance on brain death, the OIC-IFA statement is lacking.

Vital functions of the brain vis.a.vis the definition of personhood in Islam

Debates about the importance of the brain to personhood find grounding within many of the disparate traditions of western philosophy. Greek, Roman, Enlightenment and Judeo-Christian traditions contain debates on the importance of rationality, consciousness, sentience as essential characteristics that separate mankind from other life. Common to Aristotle, Descartes, Locke, Hume, Kant, Sartre is that some type of cognitive function is necessary for personhood.[20] With empiric neuroscience locating many, if not all of these distinguishing capacities within the brain, acceptance of brain death as a concept within western societies has been met with relative ease. Yet, the intellect is deemed error-prone and must be chained to revelation in the two dominant orthodox theological schools of Sunni Islam, Maturidi and ‘Ashari. Further the conceptualization of man, and personhood, begins not with his relation to animals rather his relationship to the Divine being is significant for conceptualizing brain death.

If the OIC-IFA meant for medical scientists to determine vital functions of the brain, they seem to overlook the passionate debates within the medical and philosophical circles around whole-brain, higher brain and brain-stem criteria. Generally, many philosophers find resonance with higher brain criteria by which they mean that once an individual no longer possesses the ability for cognition, perception, response to the environment, volition, and
similar abilities, they lose personhood and thus are effectively “dead.” The medical community seems to find brain-stem criteria appealing since they hold that while cognition, perception, volition and thought are functions of the higher brain, i.e. cortices, a functioning brain stem allows for such “higher” function; without a functioning brain stem one cannot do the things that make us human.[7] Another benefit of brain stem criteria is diagnostic simplicit; one is not required to test for total brain function, rather the clinician needs only to test for brain stem responses. It seems that whole brain criteria grew out of an attempt to compromise between these two camps. Notably most diagnostic protocols for brain death only test for brain stem functioning, since the law leaves the realm of diagnosis to the medical community. This fact has caused some to call whole brain death criteria a convenient fiction.[21-22] It remains unclear which camp the OIC-IFA intended to side with. Evidence exists that some legal scholars analogized brain dead individuals to beheaded persons.[11] Such an analogy is clinically false as the diagnosis of brain death does not equate to total brain failure. As one expert notes “the current condition of a brain-dead individual is likely to be that of continued retention of integrity and function in all organ systems, apart from the central nervous system. There is also likely to be persisting function in some…proportion of the brain.”[23] Furthermore Dr. Fred Plum, a world-renowned neurologist and world-authority coma states, notes “the physiological practicalities of functional brain death do not necessarily imply the immediate simultaneous death of the organ’s many minifunctions…only areas critical to survival and communication are tested in most standard clinical protocols.”[7] Hence, conceptual clarity for the determination of which are the vital functions of the brain, and some attention to the probability of residual brain function needs to be clearly addressed by Islamic juridical councils who opine on the permissibility of brain death.

This discussion brings forth a challenge that the concept of brain death poses for the Islamic tradition. Neuroscience tells us that the brain is the locus of integration where perception takes place and stimuli are interpreted. It also tells us that the brain is where commands are issued and the members of the body comply through motion. Motive force, perception, cognition and consciousness all are attached to brain functions. Since Islamic metaphysics considers death when the soul leaves the body, and located many of these similar functions (perception, motive force) within the soul, how do we reconcile brain death within Islamic metaphysics? The OIC-IFA assessment of brain death fails to address these other questions and it begs the question as to whether philosophers and Islamic theologians should have been given more voice.
Irreversibility of vital functions of the brain

The OIC-IFA’s stipulation of irreversibility is also problematic. Since brain death generally leads to withdrawal of life support or at least limitation of care, a natural history of what is the final clinical state of brain dead individuals is wanting. While we do know that the prognosis of those who are declared brain dead is abysmal, that none will likely ever recover any semblance of consciousness, we do know if certain functions of the brain may return. Given the lack of clarity around the vital functions of the brain, this becomes all the more important. Some researchers note that some brain stem reflexes may reappear after initial absence in brain dead individuals, and we do not know that some proportion of the brain may continue to function in brain dead individuals.[23] Are these important discussion points within Islamic deliberation?

While it may not be practical due to scarcity of resources to continue life support indefinitely for individuals who are brain dead, or the return of various brain functions may be trivial, these are different questions that require a separate clear framework to address. Furthermore there have been rare reports of individuals returning to life after being classified as brain dead which are dismissed by most clinicians as cases of improper diagnosis.[26] Nonetheless, these reports speak to difficulty of diagnosing brain death and the potential for misdiagnosis given the widespread variability in clinical criteria.[27] Should the inaccuracies of diagnoses and variability in brain death policies be considered when formulating religious rulings on brain death? The OIC-IFA ruling does not address these issues.

Degeneration of the brain

Lastly, the OIC-IFA ruling requires that the brain has started to degenerate as witnessed by specialist physicians. Again, a lack of clarity exists, leaving the clinician without adequate guidance on how to proceed with diagnosing brain death. While the medical community recognizes on a conceptual level, degeneration of the brain never do clinicians speak about an acute process of loss of brain cell function until the process is clearly severe and irreversible. In brain death protocols around the world there is no mention of verifying brain degeneration, at best a proxy where physicians measure blood flow to the brain is listed as an optional diagnostic test. No protocol asks one to look at cellular damage since ascertaining degeneration of the brain would require obtaining brain tissue for visual analysis. It is unclear as to why the OIC-IFA considered it important to add this caveat, and it is at best, clinically irrelevant and at worst, confusing to practicing doctors. This confusing criterion
begs the question as to whether health policy or appropriate medical expertise were given voice in the deliberation.

**Gaps in the IMANA statement**

The IMANA statement takes an opposite extreme to the OIC-IFA statement. They don’t venture into conceptual issues around brain death and simply put, brain death, to IMANA, is determined when the physician says so. IMANA bypasses or answers the questions to the OIC-IFA statement of who decides the functions of the brain; the question of irreversibility; and the diagnostic criteria for brain death in the same manner. To that end, the IMANA statement, which came out nearly 20 years after the OIC-IFA, fills a needed gap by deferring to physicians.

**Non-acceptance of brain death in Islamic circles abroad and the US**

This simplicity of their statement is not without its shortcomings. The IMANA statement raises new questions and potential problems that are no less important than those raised by the OIC-IFA statement. Unlike the OIC-IFA statement, which explicitly allows for non-acceptance of brain death, the *Perspective* does not offer a dissenting opinion and seems to cite uniformity within Islamic law that brain death equated to legal death. There exists a long history of non-acceptance of brain-death among prominent Islamic scholars beginning with the first recorded discussion of brain death at an International Fiqh conference where the conference attendees declined to issue a statement citing the need for additional study, consultation and consensus building to regarding brain death, to a 1994 decision by the the Majlis al-Ulama in Port Elizabeth South Africa where organ procurement from brain dead individuals was judged to be akin to murder, implicitly considering brain dead individuals as still living.[12, 24, 28] As there exists a substantial back-and-forth within the Muslim legal community that would ostensibly be important to Muslim medical practitioners and religious leaders such oversight is a failing of the *Perspective*.

The issue of not explicitly offering a dissenting opinion allowing for non-acceptance of brain death is key in the context of IMANA’s stated goal to speak to the needs of Muslims in North America. In particular, it ignores the Shiite minority denominations that had religious leaders present at the OIC-IFA table and are implicitly allowed to not accept brain death through recourse to the cardiopulmonary criteria. Grand Ayatollah Sayyid Ali al-Husayni al-Sistani, the grand Shiite mufti of Iraq, does not accept neurological criteria for death, noting
that every cell has a soul. His opinion carries significant weight within the American Muslim Shiite population, numbering in the hundreds of thousands, and most significantly for Muslims in Southeast Michigan. Southeast Michigan is significant for being home to the largest concentration of Arabs outside of the Middle East and the largest concentration of Shiite Muslims in the United States and they look to him for spiritual guidance in all realms of life.[29] Indeed, there are reports of Shiite Muslims who, even when presented brain death, seek all methods, including legal, to continue life support on a patient who is brain dead.[30]

Controversies in the bioethics community

Finally, the Perspective, being much more recently written, fails to deal with new questions raised since the earliest deliberations over brain death. Since the widespread adoption of brain death, there have been multiple issues in practice. New science further breaks down the levels of brain injury, complicating the diagnosis of brain death. Published reports suggest wide variability across medical centers in how brain death is determined.[27] These concerns remain entirely unaddressed by the source that one would expect to be able to most effectively comment on these medical challenges.

Discussion

We are examining the writings on brain death with the intent of comparing them to an asserted “gold standard” on how to best approach a bioethics question. With this in mind, we believe that to best measure the products of bioethical deliberation, we can and should hold them up to one or several referents:

1. We can ask if the products meet the aims of applied Islamic bioethics and elaborate on how, if it all, the products meet those aims and where they fail.
2. We can see if the products meet the needs of the stakeholders and where and how they fail to meet the needs of those stakeholders,
3. We can see if the products adequately reflect the process of answering a bioethics question, and where shortcomings in any of those products reflect failures to do so.

First, the challenges of dealing with the question of brain death as viewed from the Islamic tradition and Muslim peoples:

1. Brain death is controversial among Sunni Scholars and not accepted fully, or at all, by several Islamic scholars and juridical councils
2. There are other denominations in Islam, with large numbers of adherents in the US, who do not accept brain death at all,

3. Outside of Islam, there are prominent bioethics and clinical scholars who question the use of brain death clinically,

4. The definition of brain death is not uniform and varies from institution to institution and over time.

5. The Islamic legal considerations surrounding the question of brain death are complex and require substantial knowledge beyond that of physicians and Islamic jurists alone

Looking at the OIC-IFA and IMANA statements on brain death, they certainly attempt to grapple with bioethical issues that are new to the Islamic tradition. Arguably, the OIC-IFA statement does a relatively better job of dealing with the questions of its time than the Perspectives from IMANA. With regard to the second aim of applied Islamic bioethics, that of dealing with modernity, the OIC-IFA statement is clearly adequate in that traditional scholars attempt to deliberate on new challenges to Islamic tradition, although they fail to raise important existential questions raised above. The IMANA statement, on the other hand, makes comparatively little attempt to engage Islamic tradition or law. Finally on the third aim, both statements arguably set the stage for discussions outside their circles, but neither sets up a process to engage other intellectual, religious, academic, or professional disciplines.

Do the statements meet the needs of their stakeholders? The OIC-IFA statement certainly speaks to the community of Muslim religious scholars in understandable language. But it does not speak to doctors, medical centers, and other, non-religious people with an interest in brain death. Likewise, the Perspective gives its reader few, if any, tools to contemplate bioethical questions for his own practice. It also offers little to religious leaders, medical centers, and policy institutes to guide discussions on how to implement IMANA’s support of brain death. In this regard, both statements are good starts, but ultimately, incomplete.

Using the process outline above, both statements share similar successes and failures. It would seem at first glance that the statements all attempt to similarly State the issue or question: What, if anything, defines death within Islamic law; does God guide His servants as to how to define death? Furthermore, they make a good faith effort, within their own circles, to identify and clarify important elements: The OIC-IFA experts do a good job of identifying important terms and religious principles and the IMANA statement improves on previously ambiguous statements on the pathophysiology of brain death and the necessary qualifications of the doctors. However, none of them bring in a plurality of religious, medical, or ethical
perspectives, and none consider lay peoples and their possible response to pronouncements on brain death. From there, the next step in the process, *Re-examination of the question in the light of the key identified elements*, fails on its face because it cannot possibly occur without the previous step. The failure of IMANA to acknowledge the concerns of Southeast Michigan’s Shiite community suggests that the *consideration of implications and practical constraints* to have been incomplete. Finally, there exists no current *consensus on a proposed solution, or reconciliation or acknowledgement of controversies*, our ultimate goal.

To develop an omnibus statement to guide Muslims on the question of brain death, it would be necessary to have experts familiar with the following:

1. The physiology of the brain and clinical implications of varying levels of brain death,
2. The medical profession’s understandings of brain death,
3. Popular understanding and acceptance of definitions of death,
4. Social scientists familiar with communities, e.g. Shiite Muslims and Orthodox Jews, who do not accept brain death,
5. The debate among Muslim legal scholars across the Muslim World
6. Islamic arguments for and against definitions of brain death
7. Policy experts who would develop “conscience clauses” and other methods of grappling with patients and health practitioners who do not accept brain death,
8. Clinical, administrative, and other people from the transplant community who are most likely to interact with families of brain-dead patients and will be impacted by any change in definitions and clinical practice,

The above list of experts is evident from statements of brain death analyzed in this paper, and the shortcomings of the various statements on brain death are brought to light when measured against one another, and when considered in light of available information about the controversies and challenges of brain death. It is not intended to be complete. In the end, the OIC-IFA and IMANA statements, when considered as glimpses into the deliberative processes that led to their development, are valuable first steps. However, as we proceed forward with efforts to grapple with new bioethical questions, and continue to struggle with older ones, we believe the process would benefit from a well-rounded team of experts that will provide a richer, more excogitate response to complex bioethical and religious questions raised by medicine, biology, and health.

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References


OBJECTIONS TO EUTHANASIA AND ORGAN TRANSPLANTATION AND DETERMINING VALUES IN THE LIGHT OF ISLAMIC ETHICS

Müfit Selim Saruhan

Introduction:

In this presentation my main object is to find out principles and measures for discussions of bioethics in Islamic Ethics. Islamic ethics consists of manners and behaviors compatible with constitution, nature, essence and conscience of human beings. As grammar sets forth and imposes rules for logical thinking, ethics can be regarded as setting forth the ideal boundaries and condition of human behavior. Ethical virtues is being considered here as a source for deduction and dealing with ethical issues. Islamic ethics presents us with a knowledge of values. It justifies the existence of these values and identifies the epistemological foundation for these values. Ethics in Islam, utilizes knowledge to produce wisdom and responsibility. Knowledge becomes the foundation for making correct decisions, which produces correct actions. It takes us from a place of ignorance and leads us to a mature world view. Reason, sense, experience and intuition are broken down into four different types of knowledge. Ethics are viewed from these four different perspectives and evaluated as to how they can help in determining values. Thus within the context of Islamic ethics, it is observed that these different kinds of knowledge have a view. Reason, intellect, mind, soul, and spirit are all examined within the context of Islamic ethics. Wisdom, courage, justice, temperance, all of these are taken into consideration in light of their epistemological and educational connection with knowledge.

I intend to deal with the issue of objections to the subjects of euthanasia, and Organ transplantation on the basis of religious believes. This presentation also intends to attract new studies to this essential subject.

Keywords: Euthanasia, Bioethics, Islamic Ethics, Values, Virtues, Ethical issues, Organ transplantation
MATERIALS AND METHODS

Human life signifies constant change and development. Human actions are always open to questioning in terms of their value. The emphasis on "currency" in debates on morality should be understood as having a scope of meaning that does not lose its currency and that continues since the past and until today.

The moral philosophy is a field of values, and what comprises values is a kind of knowledge whichever its source may be. Values cannot exist without knowledge. Man can produce values and implement them if he has knowledge of them. A man who knows can base his raison d'etre on a foundation, trying to learn about what is good, right, and wise through rational, experimental and intuitive principles, and put them into practice.72

As for our actions, in the face of the question, "What should we do and what should be chosen?" it is possible to find answers based on reason, senses, belief, and experience.

The word "good" is used synonymously with "useful," "rational," and "beautiful." We tend to make up our mind about whether something is good only after obtaining a certain level of knowledge, and then make our assessment about it. The value judgment of goodness which we attribute to objects varies as above in magnitude.

Four Value-Defining Virtues

With external and internal resources on which it is based, the Islamic moral philosophy offers departure points or grounds for thinking and reasoning for the minds who mediate on issues and questions related to human life, good, evil, happiness, professional ethics, medical ethics, bioethics\textsuperscript{73}, etc. One such ground is the conception of virtue in the Islamic moral philosophy.

Given its underlying structure, this discipline has direct religious sources, such as the Kur'an and the hadith. Moreover, it has purely philosophical interaction with semi-religious and semi-philosophical disciplines, such as kalam (theology), tasawwuf (Sufism) and fiqh (jurisprudence). In this respect, the following questions are important in terms of the overall objective of our article.

The trends in Islamic thought have expanded the boundaries of Islamic moral philosophy. The literature on kalam, tasawwuf, philosophy and even fiqh form the infrastructure of Islamic moral philosophy. As its name implies, Islamic moral philosophy is a joint product of Islam, morality, and philosophy.

With its dimensions on belief, morality, worship and law, Islamic thought attaches great importance to five core values in terms of human rights and freedoms in this world. These five values emerge as the fundamental dynamics of Islam's philosophy on life, morality and law. The basic target is to protect and develop the dignity of people, individually and collectively, with mental and physical integrity.

Accordingly, Islam accepts five basic immunities as imbued from the Qur'an and the hadith. In a sense, these five fundamental rights imply that five basic characteristics of man must not be damaged in all actions and behaviors.

In Islam's legal and moral philosophy, five basic, sine qua non priorities or boundaries are the values of man that must be protected or preserved at all costs. Individuals or society must keep away from the actions that may inflict any harm on these values. In the second chapter of Kitab al-Huruf (The Book of Letters), al-Farabi, referring to the foregoing explanations, explains the relationship between a philosopher and a faqih (jurist) despite the different sources and principles they rely on:

"A faqih Jurist is like a practical philosopher. They differ from one another only with respect to the principles of reasoning they use in inferring the right idea in particular practicalities. Thus, a faqih uses principles as transmitted premises derived from the religion-maker in particular practical issues. A practical philosopher, on the other hand, tends to use principles as premises that are esteemed by all human beings."

Like the four virtues, five basic necessities are in a sense the fundamental priorities and bases that Islamic moral philosophy uses in approaching and solving problems. In our opinion, Islamic philosophy's notion of virtue is one of the main factors in identifying these five fundamental principles.

**The Role of Virtue of Hikmah(Wisdom) in the Making of a Moral Philosophy**

For Islamic philosophers, to recognize an object is to know it with causes and effects from a higher perspective. It is to participate in a process of maturity in the universe in the integration of knowledge and action. Accordingly, hikmah comprises the following:

- to know an object in its form as needed,
- to perform the behaviors in the most proper manner,
- to endow an individual with theoretical and practical maturity.

Knowing objects or things properly and in a comprehensive manner entails deep thought and multidimensional and versatile reasoning. In this respect, hikmah serves as a fundamental basis for a moral philosopher who sets out in a quest for values.\(^{75}\)

**The Role of the Virtue of Justice in the Making of a Moral Philosophy**

Through a general assessment, it can be argued that the notion of justice comprises "being right in one's behaviors and decisions, making one's judgments according to what is right, being equal and fair, and being regular."\(^{76}\)

The virtues of hikmah and justice keep people from making wrong judgments or assessments, and they are effective to the extent they are reflected in actions and held in focus.

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As suggested by the religious knowledge, God is the greatest Sage and Just One. Accordingly, to attribute compulsion to the causes of our actions would be to ignore His justice. Man is capable of observing, studying the divine veil of hikmah with his mind and heart, and of properly identifying causes and effects. But, he should not divert from knowledge, and he should not be tempted by conjectures and haste. From this perspective, justice, one of the fundamental principles of the Islamic moral philosophy, is a quality that is important in all intellectual human processes.\footnote{İbn Miskeveyh, \textit{Tehzibü'l Ahlâk ve Tathirü'l Arak}, (Beyrut 1398), pp. 118.\textit{(The Book of Refinement Of Character)}, translated by Constant K. Zureyk.}

**The Role of Virtue of (temperance) Chastity in the Making of a Moral Philosophy**

Chastity is a virtue that helps us in making judgments, producing ideas, and assessing events within the cause and effect framework. Kindi defines chastity as the virtue of doing whatever is necessary to protect and develop body and spirit and use them according to their nature, and of removing obstacles and ignoring the unnecessary things.\footnote{İbn Miskeveyh, a.g.e., s. 38-39; İbn Sina, \textit{Ahlâk, Mecmuatu'rIResail İçinde}, (Kahire 1328), p. 191-196; \textit{The Nasranean Ethics}, p. 70.}

Protection of the human generations is one of the five fundamental requirements as noted in the classical Islamic sources. This, in a sense, is intended for the protection of human generations and human dignity.

The Qur'an refers to the actions that are detrimental on human beings and nature as follows: "...works to create mischief on earth and destroy crops and corrupt generations. God does not love mischief."\footnote{Bakara, 205.} The main emphasis in this verse is on that the environment provides protection to all living beings, including man.

\footnote{İbn Miskeveyh, \textit{Tehzibü'l Ahlâk ve Tathirü'l Arak}, (Beyrut 1398), pp. 118.\textit{(The Book of Refinement Of Character)}, translated by Constant K. Zureyk.}

\footnote{İbn Miskeveyh, a.g.e., s. 38-39; İbn Sina, \textit{Ahlâk, Mecmuatu'rIResail İçinde}, (Kahire 1328), p. 191-196; \textit{The Nasranean Ethics}, p. 70.}

\footnote{Bakara, 205.}
Islam's emphasis on protection of generation can be understood from two perspectives. First, Islam seeks to ensure that generations of all living creatures should be preserved in terms of environmental and biological considerations. Second, Islam also intends to guarantee both the biological continuation of human species, but also the moral, religious and legal character of human generations. It is one of our major responsibilities to afford full protection to human beings and other living creatures.

**The Role of Virtue of Courage in the Making of a Moral Philosophy**

The virtue of courage is seen as a measure and power of knowing the balances among other virtues. People are afraid of things that they do not know. Courage is the virtue by which fears and feelings are balanced with reason.

Courage, as a virtue, is important in that with it an individual accepts the biggest fear of this world, i.e., death. Indeed, no one has experimental information about death. And there is lack of information at the core of human fears. Without knowledge, man cannot establish cause and effect relations, thereby is trapped within delusions and fears.\(^\text{80}\)

In the light of these four virtues, we can assert that these virtues can provide us with the decisive principles, guidance and principal bases for reasoning in the face of the most recent moral problems and developments. From the Islamic perspective, these virtues urge people to become mature, giving them the capacity for assessing the events with a universal, multifaceted perspective. These virtues also serve as assurances for maintaining a suitable

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environment for evaluating and accepting the problems and developments encountered in a wise, sober, fair, and bold manner.

**DISCUSSIONS**

**Euthanasia**

In the face of demands for euthanasia, we need to ask the following questions:

- Does the right to live belong only to the healthy people?
- Does medicine fail to relieve people's pains?
- To what extent can the preciousness and inviolability of life be protected?
- Does the society exclude ill people out of selfishness?

The moral philosophy of Islam suggests that human life should not be regarded as meaningful or precious only at times of happiness or tranquility. Thus, what makes man precious and

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81 For detailed considerations see:

meaningful is the very fact that she or he is created as a human being. A sick or wounded person does not deserve to be quickly discarded or ignored.

Does euthanasia save patients or society or relatives of patients?

Islamic teachings tend to portray these conditions as opportunities that have the potential to improve and enrich inner worlds of relatives of patients. In a sense, it can be argued that patients help their relatives develop their capacities for patience, tolerance, caring attitude, and beneficence. From time to time, people may encounter adverse conditions in life. The Qur'an draws attention to the fact that every living being is mortal and human beings will be tested under both positive and negative conditions during the time between birth and death. In this sense, life is nothing but an environment in which man will be tested while using his/her free will. The Qur'an also stresses that people tend to hold their Creator, not themselves, responsible for negative or adverse conditions. Noting that man will be tested by times of fear, hunger, economic hardships, or losing one's beloved or property, the Qur'an asserts that only those who can remain patient and steadfast can attain true peace and happiness.

Ibn Sina underlines this point in the middle of the metaphysical debates under a chapter titled "city and family contract" in his Kitab al-Shifa. In fact, his statements predicted centuries ago that at the heart of the demands for euthanasia are sociological and economic considerations.

"Some argue that those sick or disabled people, who are unlikely to recover, should be killed. This is a disgusting approach, because caring for them does not impose any extra burden on the city. If such people have relatives who will exert extra efforts in this regard, it is their responsibility to take care of them."83

A society where the weak and ill people are picked up and eliminated will turn into a mechanical society where people are dehumanized robots stripped of their human feelings. This eventually transforms life into an environment of crisis instead of an enjoyable


83 İbn Sina, Kitabû’s Şifa, el İlahiyat, II,Ekrem Demirli,Ömer Türker,İstanbul,2005, p.196.
experience. The Qur'an attaches great importance to the institution of kinship, since it is seen as an assurance for the continuation of social life and humanity.

**OBJECTIONS FOR ORGAN TRANSPLANTATIONS**

An overview of claims and objections raised by those who oppose to organ transplantation\(^\text{84}\) on religious grounds

1) **Objections based on the belief in the Hereafter as the place for reward or punishment**

**Objection**

An organ, say the heart or the kidney of Person A is transferred upon the death of Person A, to Person B. Person A has strong religious beliefs and his or her practice follows them. Person B, on the other hand, does not have religious beliefs and does not practice according to them. When Person B suffers from the divine punishment in the Hereafter, s/he will experience it together with the organs of a devout person. Thus, it can be said that organ transplantation is a medical practice that should be avoided with respect to reward and punishment in the Hereafter.

**An overview of the objection in terms of Islamic thought**

In the face of debates concerning organ transplantation, the devout people in society tend to raise their objections within the above-mentioned framework. What does resurrection mean?

What will be the scope of reward and punishment in the Hereafter? Will we be resurrected in our current bodies, or will we be equipped with bodies that are more suited to the sensations that we have not experienced yet?

Fazlur Rahman, a distinguished Islamic scholar of the recent years, describes Hereafter as "targeted high purposes," and asserts that Hereafter constitutes the basis of morality and justice.  

The Qur'an points out that man will be resurrected from his/her body that has turned into dust, in such fine details, that even his/her fingertips will be the same. However, some commentators suggest that these phrases may be used as metaphors to help people visualize in their minds how resurrection may occur. Man does not consist only of physical qualities such as bones or blood. What makes people morally responsible is not his or her tongue, by which she or he tells a lie, or his or her hand, by which a theft is committed. Accountability of man relies on his/her will and reason, by which man chooses between good and evil. Will and reason, as abstract concepts, constitute the true personality of man. In this regard, it can be said that it is not a particular organ of human body that deserves to be punished. Organs are like officials working according to orders given by the brain. They do not have their own will.

In this regard, contrary to widely held beliefs, individual organs cannot be considered as accountable from a religious standpoint. Rather, human beings as a whole are held responsible for their actions.

The Qur'an tells us that the human body will decay. During the process of resurrection, human beings will be resurrected will all their memories and deeds, but their organs will be re-created. What will be the case of the people whose hands or feet were amputated in an accident or a fire? Our body and our organs are continuously renewed. If our facial structure, hands or feet remained the same since our birth, then we would never grow. In this regard, it

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may be a mistake by religious reasons to suggest that our organs are our eternal or unchanging characteristics.

Elmalılı Hamdi Yazır says: "Our body is continuously dying and being resurrected. Life becomes possible only thanks to divine re-creation through renewal based on precedents." His words are a good description of the indistinct border between this world and the Hereafter.

Kalam scholars tend to depict immortality referring to "creation" or "restitution of creation." According to the Ash'ari school, arad (accident) cannot continue to exist between two times or two moments. Therefore, one's spirit at this moment is not the same as the spirit a moment earlier. That is, the spirit is continuously re-created to exist. In a sense, they maintain that creation never ceases.

There are a number of verbs used to describe creation. All of them refer to recreation, yet with some differences or nuances. To translate these concepts into a single concept of creation will deny us the wealth of senses and meanings we can obtain from these nuances. Any reflection on these concepts will enrich our understanding of ontology and moral philosophy.

The Qur'an imposes special responsibilities on the people of science in general, and on philosophers in particular. Man should first observe himself within the integrity of body and spirit. He should rely on knowledge and he should not be biased. He should be guided by reason, experimentation, observation and multi-dimensional question-asking techniques. He should disclose his results for the benefit of humanity with an awareness of protecting humanity, the universe, and the living beings.

From the Qur'anic perspective, we realize that it endows our minds with diverse interpretations about existence. The points stressed in the following texts play a role in preparing human mind to accept diverse interpretations. Whether these events happened in the past or whether they are mental endowments that help us widen our horizons, will lead to serious philosophical debates.
"If He wills, God may create a human being without a male sperm and a female egg (ovum), and indeed, this is how He created Prophet Adam. If He wills, God may create a woman without a female egg as this is how He created Eve. If He wills, God may create a man without a male sperm—this is how He created Prophet Jesus. If He wills, God may allow an aged man and an aged woman to have a child although they lost their capability of producing neither sperm nor egg. Indeed, this is how He created Prophet John."86

In his Tahafut al-Falasifa (The Incoherence of the Philosophers), which he penned mainly to criticize philosophers, including al-Farabi and Ibn Sina, Ghazali provides interesting examples to discuss the relations between man and his body. Actually, his primary intention was to emphasize that characteristics of human beings cannot be reduced only to physical or corporeal ones.

Example: "...As this is customary in some countries or as it can be seen elsewhere during times of famine, a man may eat another man, and in this case, it is impossible to think of these two being resurrected together. This is because the matter which was the body of the man who was eaten has been transformed in the form of nutrients into the body of the man who ate him. In such a case, it is impossible to return two souls into the same body."87

2) Objections based on the problems it may cause with respect to kinship

Objection

Suppose the hand of Person B was transplanted to Person A. Will Person A be able to continue to act as a father or a husband as he caresses his child or touches his wife, or will he be perceived as such?

What sort of problems concerning inheritance or kinship will arise between a person whose heart, kidneys, or other organs were removed because doctors decided that she or he cannot recover, but who actually did not die. What about his/her relations with their spouses? With relatives who are born or who die or who are married to another person at that moment?

**Evaluating the objection**

This objection is actually the reincarnation of the religious beliefs in a legal form. The human mind is capable of thinking of all sorts of details even without respecting any consistency. Can organ transplantation, according to this view, result in the creation of bonds of kinship among the donors and receivers of the transplanted organs? Can this lead to drawbacks in terms of religious permissions?

In the face of such an objection, we should first examine the concept of human integrity. What essentially distinguishes one man from another: their individual organs or their personalities shaped by free will and mind?

The answer to this question is that this claim or objection cannot go beyond being just another interpretation. In this regard, an organ taken from a dying person does not render the person to whom this organ is transplanted entitled to any of the legal and economic rights of the donor. Such a situation may only lead to the creation of an emotional approach in the relatives of the person who died and whose organs were transferred to other people. Thus, these people may feel the need for establishing a close contact with the person who now has the organs of the dear one they have just lost.
If that were true, a person would attempt to donate organs in order to benefit from the kinship and inheritance rights. Eventually, organ transplantation may become widespread among the healthy people. Human life may be deprived of its true meaning, because of commercial considerations. A healthy person who is not expected to die any time soon cannot donate his organs if this would jeopardize his own life. While it is reasonable for a person to donate, say, one of his kidneys, it is not correct from an ethical and legal perspective for him to donate one of his vital organs in a way that terminates his own life. To put an end to a life in order to save another is out of question.

3) Objections based on the argument that a person loses his/her right to his/her body upon death

Objection

A person who died has no authority over his organs after death. A person loses his rights over his body. For this reason, that person cannot donate his organs or give permission to such a donation, because he is no longer the owner of those organs. The heirs of a dead person cannot donate his organs either. They do not own the body of the dead person, and they cannot perform actions concerning this body.

Evaluating the objection

The objection mainly relies on the assumption that a person loses his will upon death, and therefore, he cannot make a decision about his body after death. In fact, it is generally accepted that a person has the right to donate his organs with his free will while he is alive and healthy, and this is the least challenged argument. There are fewer objections raised on religious and moral ground, against the use of the organs donated by a person who voluntarily
donates them while he is alive and healthy. However, from another perspective, one may even question whether the decisions taken by a person when he was alive and healthy will still apply after he dies. According to the view which sees death as a person's losing the right to use his body, organ transplantation is not acceptable.

Actually, this objection is internally flawed and not self-consistent.

This argument is a good answer to the above-mentioned view that raises objections to organ transplantation with reward and punishment considerations. If we assume that the organs of a person no longer belong to himself after death, we can also conclude that human organs can be used for medical purposes, regardless of their being donated or not before death. Thus, organs of people who died can be used for transplantation whether they are voluntarily donated, or not.

The Qur'an emphasizes the sanctity of life by saying that saving a single soul means saving the entire humanity. In this regard, it is clear that human organs should be used for ensuring the health of the living people, irrespective of organs donated while living or after death.

**Objection**

Organ transplantation demonstrates irreverence to the dead human body. Actions such cutting off or removing from cannot be performed on the human body. This is what is inferred from the religious knowledge we have inherited. There are hadiths indicating that this is the case. For instance, 'Aisha reported the Prophet's saying "Breaking the bones of a dead person is like breaking them while he was living." Accordingly, not only cutting a person's abdomen or throat or taking his eyes out is not allowed, but also doing these to a dead body is forbidden. It
is equally sinful to break a dead body's bones or to do this on a living body. The Prophet forbade it.\footnote{Muvatta, Cenâiz 45; Ebu Davud, Cenâiz 45; Ebu Davud, Cenâiz 60; Ibn Mâce, Cenaiz 63; Mûsned, VI/ 58,100,105,169, 200, 264}

**Evaluating the objection**

Deeds are evaluated based on intentions. Urgencies ward off objections.

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*CAN'T WE BUILD OUR TODAY IF WE CANNOT FIND EXAMPLES IN OUR PAST?*

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In order to answer this claim and objection, we need to resort to the principle of assessing actions with respect to intention. This is one of the key principles in the Islamic thought. It underlines the importance of sincerity, truthfulness and consistence in the actions of individuals.

According to this principle, human behaviors can be defined as good or bad, or as correct or wrong, based on the purpose or intention by which accompanied them. Thus, the purpose for which an action is performed becomes a decisive factor.

A person who has planned or intended to do a good deed cannot be blamed for the unfavorable consequences of his action in practice. A closer examination of the above-mentioned hadith will reveal that the prophetic prohibition is intended to prevent people from unnecessarily mistreating a dead body, or for pleasure, or out of hatred.
Another key principle of the Islamic thought is that urgencies eliminate prohibitions. Thus, the Qur'an tells us that in a life threatening urgency, a person may eat from the flesh of forbidden animals, without exceeding limits or humiliating religious or moral values. Thus, we understand that Islam essentially tries to ensure the continuation of human life and happiness of people.

At this point, it should be noted that it is flawed to scan the body of Islamic knowledge just to find evidence supporting a particular view in the current Islamic or actual debates, which are intended to be settled through a process of reasoning. Thus, a religious scholar or a mufti who seeks to find out whether euthanasia or organ transplantation is forbidden or allowed in religion, will first refer to the basic sources of Islam. If he cannot find a clear provision in the Qur'an or in the Sunnah, he will study the similar cases in the major fiqh books and classical Arabic religious sources. He will resort to analogy (qiyas). When a clear provision cannot be found in these sources, a preliminary reaction is to offer negative answers to the debates on bioethics. We cannot always expect to find perfect analogies to our current problems or challenges. However, we can search for and find the principles in the Qur'an that can guide us with respect to applied ethics. The term, fiqh means knowing, understanding and having a good understanding, and it is frequently used in the Qur'an and hadiths in this sense. The verses in which this word is used call upon people to have a good understanding, with emphasis on man's capability for knowing, understanding and making sense of things. Thus, man should think about and examine every situation he encounters. An examination of religious prohibitions and permissions within the framework of fiqh methodologies reminds one of moral philosophy that deals with what is good or evil.
The Bioethics Looks on Abortion in Islam

A special case: Egypt

Elisabetta Necco

Introduction

We cannot separate the bioethical deliberation from the religion itself; actually, the Quran and the traditions of the Prophet have laid down detailed and specific ethical guidelines regarding various medical issues, such as the human embryological development, which informs discourse on the ethical and legal status of the embryo and fetus before birth\(^1\).

In spite of the different position of the Sunni juridical schools, there is a consensus among theologians that abortion after 120 days is categorically prohibited except to save a mother's life. The 120 days limit is based on the tradition of the 'forties' in which the Prophet informs that the fetus is held as 'nutfa'\(^2\) for 40 days, as 'alaqa'\(^3\) for another 40 days and as 'mudgha'\(^4\) for an additional 40 days. In about 120 days ensoulment takes place. Today the major position of Islamic ethics permits abortion if it endangers its mother’s life or health, however, would not allow abortion due to social or economic reasons. Even damage to the fetus is not accepted as a reason for abortion; a legal position emphasized by a fatwa that says that "it is impermissible for the mother to induce abortion [even] if it is proven that the fetus is deformed or suffers from mental retardation ... It is not a justifiable excuse\(^5\). Considering the position of the Shari’ah and the views of religious about abortion, we can now get into the issue and that is how abortion is discussed today in Egypt, through the analysis of actions undertaken in recent years either by the Government and either through researches carried out at national, supranational, or purely academic level.

Materials and Methods

The most important instruments used in the preparation of this work were compiled by surveys conducted by Egyptian and International NGOs and by academics, press release regarding the Cairo International Conference on Population and Development, and the analysis of the most recent actions taken by civil society. I mentioned briefly the views of religious leaders, in the light of the provisions of the Quran
and the major Islamic juridical schools. I then analyzed the incidence of non-therapeutic abortions in rural areas as in urban areas and the sadly widespread practice of abortion after rape. Very significant is the paragraph dedicated to “data access”, which underline the lack of official data on abortion and the references to the Egyptian Penal Code on abortion.

The conclusions, finally, have the purpose of proposing different strategies to improve access to information on miscarriages as well as the incidence of abortions in the Egyptian society. In both cases, it is necessary the accountability of the Egyptian government, in the decision-making process regarding abortion and in the management of the reproductive health services.

Results

Because of its political and religious implications, abortion is a subject that is frequently ignored and the current challenge is bringing it into the public light as a human drama and a health problem that is not difficult to solve if the 1994 International Conference on Population and Development recommendations are taken seriously by the Government and the non-Governmental organizations.

In paragraph 8.25 of the Programme of Action dedicated to Reproductive Health the Governments stated that: "All Governments and relevant intergovernmental and non Governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services...In all cases, women should have access to quality services for the management of complications arising from abortion." However, the Islamic Research Academy of Al Azhar specified that its duty (in addition to its responsibility) was to "promote the conservation and protection of Islam and Muslims" and to guide the Law of Egypt to the Shari'ah. The Islamic Research Academy showed a certain pride in the statement of President Mubarak: "No doubt that Egypt will never agree to something that contrasts with the divine law".

Egyptian law criminalizes abortion in the Penal Code, according to articles 260, 261, 262, 263. Abortions performed by doctors are regulated in article 29 of the physicians' Code of Ethics which states that physicians are allowed to perform the procedure to protect the pregnant woman's health if they obtain written approval from two other specialists. The stipulation that two specialized doctors must sign the procedure could hinder a woman from
receiving necessary medical attention in time, when it is not clearly an emergency. Egyptian law also finds a woman guilty if she willingly chooses an induced abortion, which carries a prison penalty (six months to three years imprisonment) according to article 262 of the Penal Code.\(^{11}\)

**Access to Information**

In Egypt it is impossible to calculate the number of unsafe abortions or the resulting deaths because very little quantitative information exists at governmental level. Estimations, however, can be made based on studies carried out by international bodies and non-Governmental organizations and none of them are considered official by the Government.

- In 1996, in a study on abortion in rural areas in Egypt, Dr. Ragab and Dr. Serour found that 14% of subjects performed an abortion on themselves at least once. The sample size was 623 of married women in reproductive age with at least one living child residing in lower rural Egypt.

- A 30-day study conducted in 1997 in Egyptian public hospitals by the Egyptian Population Council, in cooperation with the Egyptian Fertility Care Foundation concluded that the abortion rate in Egypt is 19% of admissions in hospitals.\(^{12}\)

- The situation is dramatic either in the urban either in the rural areas, as confirmed by a study conducted by Khaled Yassin in 2000, using a sample of 1025 women, to determine the determinants of abortion in rural Upper Egypt. The results were that 40.6% of the interviewed women had aborted at least once; of them 24.6% had aborted more than once. The incidence of abortion was estimated to be 265 per 1000 live birth. Only 21.9% of women received medical care for the last abortion. The vast majority of women (92%), who did not seek medical help received help from traditional and domestic sources.

- On the other hand, according to the Ministry of Health's current database about maternal mortality rates, the number of deaths resulting from abortion for the years 1992, 2000 and 2006 are 4.6%, 4%, and 1.9%, respectively. These figures, clearly low, do not indicate whether these abortions were spontaneous or induced and, because of a growing cultural and religious sensitivity and controversy over reproductive health issues, particularly abortion, this area remains relatively unexplored in Egypt.
Access to information and education programs about the sexual and reproductive health and rights of individuals in Egypt remains limited, too. A small number of national and international non-Governmental and Governmental organizations working in Egypt have integrated awareness-raising programs; nevertheless, there has been a sort of advancement in the region regarding the number of women’s organizations that has grown considerably during the past 20 years, and their efforts have diversified.

The important role that Egyptian NGO’s are playing in this field is confirmed by a qualitative study conducted in June 2009\textsuperscript{14} in cooperation with many Egyptian NGOs & CSOs\textsuperscript{15} (which is not yet published). It investigates the dynamics and meaning of the induced abortion in a fully purposive sample of women who previously had the experience of induced abortion, to understand the contextual influence on women's decision making to terminate their pregnancies. The study consists of interviews made to 42 women, classified under 4 categories: 27 married, 9 unmarried, 2 girls living on the street and 4 sex workers. According to this study, there is evidence that there are immediate circumstances that lead to decision to terminate pregnancy such as:

**Economic reasons** - Unstable economic circumstances are a very powerful factor influencing the decision to seek abortion, especially when the woman is the breadwinner for the family. Unmarried women cannot keep the pregnancy whether their economic status allow that or not. Girls living on the street may have the same reasons to abort as they have no resources to rise up a child.

**Social reasons** - They reflect the value system of the society and what is accepted and what is not. For instance, pregnancy outside marriage institution is the only reason for abortion for all unmarried women in this study, as the society will not accept any child outside the marriage institution, and if an unmarried woman decided to keep such a pregnancy, society will stigmatize her as a sinner. As the concept of single mothers does not exist in Egypt, the unmarried women and the sex workers are the most stressed category which demanded to abort. Despite that economic cost represents a big challenge; women manage somehow to get the needed money. The abortion operation ranges from 40 USD to 600 USD depending on the quality of the clinic, qualifications of the provider and the social and economic rank of the woman, which can be determined easily by the physician. Local methods are quite affordable and very dangerous; actually herbs and medications cost from 1 to 10 USD. Unfortunately, safety is expensive and it happens that wealthy women can literally buy safety, while poor women's lack of financial resources put their lives at great risk.\textsuperscript{16} The landscape in which the decision of a spontaneous abortion becomes even bleaker if we look at the Egyptian health...
premises where the operations take place: backyard clinics which are narrow, not clean, and not equipped. Moreover, in most of cases there is no nurse or doctor for anesthesia, no appropriate counseling before or after the operation.

**Abortion and rape**

For what concerns the case of a pregnancy which results from a rape, according to the current Egyptian legislation, expectant parents have two options: either carry out the pregnancy and then give it up for adoption or abort. The first option is impracticable for a Muslim woman because the adoption is not allowed by Islamic law. Regarding the second option, according to many jurists, a child born by an act of rape like a child born in adultery, retains the right to life and is considered legitimate by the Shari'ah. If his parents-to-be had to choose an abortion, they would commit another sin. In these cases the lawyers are asking "what sin is met by the fetus?" Sheikh Atiyah Saqr totally opposed to abortion of fetuses born as a result of rape, explaining that the child, once born, either will take the surname of the father either that of the mother. This solution to the problem seems downright hypocritical and simplistic considering that it is well known that a woman abandoned by her husband or by the man who abducted her after giving birth to an illegitimate child, would face not only to a terrible trauma, but also to social marginalization - perhaps even more terrible – without mentioning the near certainty of not being able to remarry. Moreover, once the child of rape will grow up, will inevitably become subject to severe discriminations within his own family and, certainly, society.

The contemporary position of Islam regarding this issue was summarized in a memorandum issued by the Committee on the Legal Rulings of the University of Al-Azhar and the Islamic Research Academy, shortly before the 1994 International Conference on Population and Development: "The interruption of a pregnancy, even if the result of an extramarital relationship or a rape is prohibited, unless there are medical reasons related to the defence of life of the mother. The mother can not be sacrificed for the fetus, which does not have an independent life and is regarded, in the complex, part of the maternal body. Outside of this case, abortion is in contrast to the principles of Islam, either under the aspects of family planning, either under a healthy reproductive and sexual life.

The issue is very complex because sexual violence in Egypt remains severely under-researched and the Government has refused access to the report since 1997 to journalists, researchers, academics or members of the general public. According to non official statistics, sexual violence against women is very widespread, occurs across all geographical
areas, all social classes and against women of all ages. The penal code defines rape as sexual intercourse with a woman without her consent, an act punished by imprisonment (or by the death penalty in cases of rape with abduction). While the law provides an acceptable definition to protect women from rape, the judicial interpretation of the law is problematic on a number of points because:

In practice, marital rape is not criminalized; the complainant must prove her lack of consent by providing evidence that she was physically forced into sexual intercourse (verbal expression of her refusal to engage in sexual intercourse is not considered sufficient); victim's marital status, reputation and 'morals' are key factors considered by judges when using their discretionary power in sentencing decisions. In 2007 a proposed amendment allowing for abortion in cases of rape was submitted to the People's Assembly and was approved by the Parliament's Committee of Proposals and Complaints and the Ministry of Religious Endowments' Supreme Council for Islamic Affairs.

The debate over allowing rape victims to undergo abortions in the case of pregnancy following attack has become fraught with tension in the Egyptian Parliament. As MP Mohamed Khalil Quetta called on passing a law that allows victims of rape “to have the right to abortion,” following calls from human rights activists to pass the law, which is being led by the Egyptian Initiative for Personal Rights. Quetta stressed that rape has turned into a “dangerous phenomenon” in Egyptian society (around 20,000 victims annually, only 10% of the total number of victims reported being raped to the police).

Conclusions

In order to develop a frank and serious debate on abortion in the region and in Egypt, grassroots organizations are asking for encouraging initiatives to promote professional advocacy, to support the proposals of progressive religious leaders, to engage community leaders and to make bigger efforts to increase women’s rights. In order to do that, it is necessary to adopt a holistic approach for the reform of laws and policies, to have a long term action plan, to support advocacy and lobbying efforts with research and awareness raising, capacity building, education and training activities; national, regional, international networking. Regarding the Egyptian reality, what has been brought to my attention are the many points of weakness in the management of the services of reproductive health, such as inadequate family planning services, deficient adolescent reproductive services, deficient interest toward the sexual violence against women, high maternal mortality rate, in spite the
fact that many organizations and medical forum advocate for a sexual and reproductive health as a matter of urgent global concern. In fact they state that the tremendous burden of mortality that women are experiencing is unacceptably high, yet substantially preventable. Sexual and reproductive rights imply a need to inform public opinion and to promote a respectful public dialogue, including different ethical and religious perspectives and underlying that freedom of religion includes the requirement that a certain religion or belief cannot impose its values on other ones. The Government should conduct national surveys on the rate and reasons behind induced abortions, and on the methods used, amongst married and unmarried women. Awareness campaigns are extremely important and often efficient; an example is the successful campaign recently conducted in Egypt against the practice of the Female Genital Mutilation and Cutting (FGM/C), which reaffirmed the various different strategies that can be carried out to bring radical changes in laws, policies and habits. It is only through a strong political commitment and holistic approach to the issue of abortion that concrete results can be achieved because each part has the right to defend its opinion and position within a free and democratic debate.

References

2 Drop of sperm
3 Clot of blood
4 Lump of flash
5 Fatwa issued by Late Grand Sheykh of Al Azhar Gad Al Haq Ali in 19925
6 The ICPD held in Egypt from 5 to 13 September 1994 involved delegations from 179 States, to give shape to a Program of Action on population and development for the next 20 years
8 Necco, E. Argumentos de Bioética en el Islam: Aborto, Planificación Familiar e Inseminación Artificial. Madrid: CantArabia Ediciones, 2010
Egyptian Penal Code: Article 260- Anyone who intentionally aborted a pregnant woman either through beating or other means of harm is punishable by imprisonment; Article 261- Anyone who intentionally aborted a pregnant woman by giving her medication or other means causing this or assisting her, whether with her consent or not, is punishable by incarceration.

Article 262- A woman who willingly accepts taking medication or the use of previously mentioned methods or enables another in using these methods resulting in an abortion is punishable by the above mentioned penalty. Article 263- If the person performing the abortion is a doctor or surgeon or pharmacist or traditional birth attendant he will be sentenced to imprisonment.


Case No. 167/66, Court of Cassation, 4 November, 1998

Egyptian public hospitals treat about 336,000 cases of abortion every year


The study entitled “Why do women abort? The Determinants of Induced Abortion in Egypt.” has been conducted by Dr. Hala El Damanhour and it is not published yet.

Bashayer association, Bent El- Neel association, El-Nadeem center for rehabilitation of victims of violence, The Typical Center for Family Planning, Kelmetna association, Nour El-Hayat association, El-Bouhy Youth Center, El-Shehab Organization, Center for Egyptian Women legal's assistance, Egyptian Association for Family Development , El-Galaa Educational Hospital, Private counseling offices.


The adoption – tabannī - very common in pre-Islamic Arabia, was forbidden by Islam and took the form of acknowledgment of paternity (istilhāq). This recognition or declaration may be issued only by the father because he is the only one that has the right to say who and
whether to admit someone in his household. Santillana, D., “Istituzioni di Diritto Musulmano”, Roma, pp. 239-240

18 Rispler-Chaim V: The Right Not to be Born: Abortion of the Disadvantaged Fetus in Contemporary Fatwas. The Muslim World 89/2: 130-143, 1999

19 Former Head of Fatwa Commette at Al Azhar


ASSISTED REPRODUCTIVE TECHNOLOGY (ART): The Islamic Law Perspective
Abdul-Razzaq Abdul-Majeed Alaro

ABSTRACT

The use of medical techniques to enhance fertility is a topical issue that cannot be overemphasized, as recent studies show that Assisted Reproductive Technology (ART) is responsible for between 219,000 and 246,000 babies born each year worldwide.

Islam acknowledges that infertility is a significant hardship. The pursuit by barren spouses of a remedy to infertility should, therefore, not be seen as rebellion against the fate decreed by God. Nevertheless, for the Shariah (Islamic Law)'s tolerance not to be misconstrued as carte blanche for indiscriminate adoption of any method or technique, there is a pressing need to assess certain processes involved in Assisted Reproductive Techniques (ART) which often raise questions bordering essentially on moral, ethical and legal issues. This paper therefore provides an Islamic law perspective on issues relating to the use of ART. These include, the use of ART by lesbians and choice mothers to reproduce without conventional sex; gender selection through ART; sperm and egg donation, and the Islamic view of third party reproduction; the Islamic perspective on parenthood vis-à-vis surrogate parenting; sperm retrieval by masturbation for the purpose of assisted reproduction; and the use of cryo-preserved sperm of an ex-husband or a jailed spouse.

1. INTRODUCTION

Assisted Reproduction/Reproductive Technology (ART) is any technological procedure that helps infertile women to conceive\(^1\). Several methods are employed to achieve this goal, some of which are:

i) **Gamete intra fallopian transfer** (GIFT), when eggs are retrieved but not fertilized. Instead, they are mixed with the sperm and immediately placed into the fallopian tubes. (GIFT) was developed in 1984 for women with unexplained infertility.

ii) **Zygote intra fallopian transfer** (ZIFT), which is a procedure where fertilized egg (zygote), in its pronuclear stage of development, is transferred into the fallopian tube.

iii) **In-Vitro Fertilization and Embryo Transfer** (IVF-ET). Under this technique, an egg is removed from one of the infertile woman's ovaries, fertilized outside her body, and then replaced in her womb. A baby that develops from IVF procedure is called test-tube baby. The world’s first test-tube baby, Louise Joy Brown was born in Great Britain on 25\(^{th}\) July, 1978.

iv) **Surrogacy.** This is a method of reproduction whereby a woman agrees to become pregnant and deliver a child for another party, usually through a contractual arrangement. She may be the child's genetic mother, if only the sperm is used to fertilize her ovum. The sperm and egg of a married couple may also be fertilized in vitro, and subsequently placed in the
womb of a surrogate mother as a gestational carrier who is paid simply for leasing her womb and giving birth to the baby.

v) Artificial Insemination (AI) This is the process by which sperm is placed into the reproductive tract of a female for the purpose of impregnating her by using means other than sexual intercourse. The sperm used in this method can be from the husband (AIH) or from a donor (AID). Modern techniques for artificial insemination were first developed for the dairy cattle industry to allow many cows to be impregnated with the sperm of a bull with traits for improved milk production\(^2\). According to some experts, Artificial Insemination is a form of medically assisted conception and not that of assisted reproduction, which stands only for treatments that include the handling of human oocytes and sperm or embryos outside the body for the purpose of establishing a pregnancy\(^3\). However, we shall take a broader view of ART in this work to include any technological or non-conventional procedure that enhances fertility or boosts reproduction, as this will allow us to dwell on all issues concerned from the Islamic law perspective.

2. An Overview of the Shariah (Islamic Law)'s Position on ART

Assisted Reproductive Technology today is being used for two different objectives. First is the employment of ART as a succour to childless/infertile couples, through this technologically advanced medical intervention to assist them have issues of their own. However, other classes of people who may not necessarily be barren are also availing themselves of the ART opportunity. A very conspicuous example of this is the use of ART for baby gender selection.

The Islamic law’s position on ART is informed by its perception of the cause of the usage itself. Thus, if the cause for using any assisted reproductive technique is to cure the couple’s infertility, the act is utterly permissible, provided that no other law of Islam is contravened in so doing. The Noble Qur’an attests to the curability of infertility when it states,

And (remember) Zakariya, when he cried to his Lord: "O my Lord! leave me not without offspring, though You are the best of inheritors. So We answered his call, and We granted him Yahya (his son). We cured his wife's (infertility) for him. (Al-Anbiya’ 21: 89-90).
Furthermore, Muslims are allowed and even encouraged to seek lawful cure of any form of illness or disorder they may have. The hadith narrated on the authority of Usamah bin Shuraik succinctly put it as follows, "The Prophet (salla Allah alai wa sallam) said, "Seek remedy (of your illnesses), for Allah has never created an illness unless He has also created a cure for it, save the (illness of) old age".

With the exception of surrogacy, all other known Assisted Reproductive Techniques are, in principle, in keeping with the Shariah norms; as they all constitute one form of medical intervention or another, to cure a barren woman of her infertility. The early quoted hadith of Usāmah bin Shuraik clearly establishes that 'For every illness there is a cure’, and taking advantage of such a cure, which is not in itself forbidden, is in total keeping with the law of Islam'. Based on this premise, Artificial Insemination (AI), In-Vitro Fertilization (IVF), GIFT, ZIFT, ICSI etc. as remedies to infertility are adjudged by Muslim jurists as permissible, provided these are not predicated on frivolous medical reasons, and are devoid of any introduction of a third party donor.

2.1 The Use of ART by Fertile Men and Women
Apart from using ART as a cure of infertility, it is also increasingly used to enable women without a male partner (single women/choice mothers and single or coupled lesbians) to have children by using sperm provided by a donor. Furthermore, assisted reproduction is equally being employed for baby gender selection and the quest for a particular sex (male or female) by fertile couples who resort to IVF just to be able to have a preferred gender.

Islamic law frowns on any use of ART with no medical justification. As explained above, the only legal ground for permissibility of ART procedures is when they are resorted to as a therapeutic approach to assist couples with one form of reproductive disorder or another. Any ART process predicated on superfluous reasons is therefore an illegality in the eyes of the law.

Self-imposed single motherhood or fatherhood, as with lesbians or gays longing for children, is a sharp negation of Islamic law provisions, as contained in many statutory authorities. In two separate authentic hadiths, the Prophet (Salla Allah alayhi wasallam) declared that refusal to enter into a union through a valid marriage contract, despite ability to do so, is defiance of a
divine order and a show of contempt for the Prophetic Sunnah. The hadiths have been narrated on the authority of Ibn mas'ud and Anas bin Malik respectively.

Moreover, the Noble Qur'an unequivocally affirms that, "He (Allah) creates what He wills. He bestows female upon whom He wills, and bestows male upon whom He wills". Hence, it could be safely argued that gender selection on its own constitutes unacceptable interference in the divine demographic order and, ipso facto, a nullity under the law of Islam. In addition, Muslim jurists are of the opinion that ART procedures are occasionally accompanied by some psychologically devastating practices with far reaching consequences; hence, they should remain a closed gate, accessible only on the grounds of unavoidable necessity (al-darurah al-quswa). An example of such practices is the possible mixing up of sperms, eggs or embryos, which is sometimes detected only after delivery of the ART baby.

3. Legal and Ethical Issues in ART
As we have posited in the previous section, Islamic law does not, in principle, disapprove of medical remedies to infertility. Nevertheless, the processes involved in assisted reproductive techniques often breed controversy, not only among scholars or experts in Shariah, but even among the rank and file of any Muslim community. Many questions bordering, mainly, on ethical, legal and psychological issues have also been raised. Any objection to a process, technique or procedure of Assisted Reproduction, as we may later observe in this paper, must therefore not be interpreted as Islam's opposition to technological advancement. Rather, it is an attempt to put every issue discussed in the right perspective, and to ensure uncorrupted compliance with the dictates of Shariah, the God-given law, in our search for remedies to human predicaments.

3.1 Sperm, Egg or Embryo Donation, and the Islamic View on Third Party Reproduction
Sperm or egg donation happens when due to certain diseases, the husband is unable to produce sperm or the wife is unable to produce an egg for fertilization. When both the husband and wife are suffering from fertility problems, then an already fertilized egg (embryo) from another woman could be transferred to the uterus of the wife. The implication of all these is that:

- In the case of sperm donation, the woman will bear a child with half of the genetic identity of herself, but none of her husband;
- in the instance of an egg donation, she bears a child with half of the genetic identity of her husband, but none of her own!; while
- in the case of an embryo donation, the child would have the genetic complements of neither herself nor her husband!

The common factor among the three cases is the involvement of a third party in the ART procedures, and this brings us to researching the Islamic law's position on third party reproductive techniques generally.

Under the law of Islam, marriage is a contract between a woman and her husband, and throughout the span of their matrimonial life no third party should intrude into the marital functions of sex and procreation of a married couple. Hence, the unmistakable provision of this law is that a third party donor is not allowed in reproduction, whether he or she is providing sperm, egg or embryo. This is the position of mainstream jurists from different schools of Islamic law.
Although third-party donation neither involves the sexual ‘‘body contact’’ of adulterous relations, nor, presumably, the desire to engage in an extramarital affair, it is nonetheless considered by many Shariah scholars to be a form of adultery, by virtue of introducing a third party into the sacred bond of husband and wife. According to them, it is the very fact that another man’s sperm or another woman’s egg enter a place where they do not belong that makes donation of any kind in procreation inherently wrong.

While the unacceptability of sperm, egg or embryo donation form the Shariah viewpoint is incontrovertible, equating same with the crime of zina, as posited by those scholars, is devoid of any decisive authority. Many jurists, especially from the Shafii school, stipulate natural lust for the opposite sex as a condition for application of zina punishment on the culprit. Hence, according to this school of Islamic law a culprit of zina crime would not be subjected to the statutory punishment if the other party is either a dead human being or a non-human being, on the grounds of lack of natural lust for such an opposite sex. The element of sexual sensuality is undeniably missing in any ART procedure. This is perhaps the reason why even those scholars who see in third party donation an analogue of zina are silent on whether the involved parties would be liable for punishment or not.

What further aggravates the issue of third-party reproduction from Islamic law perspective is the fact that the so-called donors may be either anonymous or non-anonymous, and in most cases, they choose to remain anonymous. Thus, when a donor's sperm is repeatedly used for impregnating one or more women, numbers of siblings and half-siblings are produced, and that suggests strongly the potential for incest among the offspring of unknown donors. It equally constitutes an affront to human dignity and disrespect of lineage, the preservation of which is a fundamental objective of Sharī'ah (Maqāsid al-Sharī'ah).

More alarmingly is that donation of sperm, egg etc. has now turned into a lucrative business. A medical anthropologist, Marcia C. Inhorn once wrote that American women usually troop into a country with a very large Muslim community, simply to sell their eggs anonymously to infertile Muslim couples. The writer even jested wittingly that, those who are most likely to receive these ‘‘American eggs’’ are either members of or sympathizers with an organization which the United States administration still tags officially 'a terrorist organization'!
Another important legal question in respect of third party donation in ART is the legitimacy of the child. In other words, could the sperm donor, despite being the genetic or biological father of the child, stand as a legitimate father? The answer to this is an emphatic NO; any child resulting from intercourse or insemination outside the bond of valid marriage contract is an illegitimate child (walad al-zinā) who is ascribed only to his/her mother. This exposes further the illicit nature of such a practice that is capable of inflicting permanent psychological damage on an innocent child.

3.2 The Shariah Perspective on Parenthood vis-à-vis Surrogate Parenting

The bone of contention here is the Islamic law concept of paternity and maternity, especially as it affects the identity or family affiliation, inheritance and unmarriageability (mahramiyyah) of an ART-surrogate child.

Besides the third party reproduction involved in surrogate parenting, which, as discussed earlier, is absolutely prohibited in Islam, surrogacy poses some other ethical and legal problems, and this has informed the unanimous position of jurists and scholars that all forms of surrogacy, except one, are forbidden under Islamic law.

In the opinion of some scholars, the only exception that may be legally tolerated, although in cases of dire need or necessity, is if the surrogate mother happens to be another legitimate wife of the same husband in a polygamous family. They posit that the danger of mixing up the lineage or that of the husband's sperm getting into the uterus of a woman not married to him is thus averted, and thereby paves the way for the legality of surrogacy of this sort.

In any case, the vast majority of scholars still believe that surrogate parenting of any form has no place in the Islamic legal system. As it is possible for the surrogate mother in such a polygamous home to conceive if there is intercourse with the husband around the same time the embryo of the other wife is being transferred to her uterus. This will certainly result in confusion of lineage and parentage on the part of the mothers, the effect of which may influence other spares of the law, such as inheritance and marriageability (mahramiyyah) of the child, or children in case of a high-order pregnancy (i.e., twins, triplets, or more).

Another area of concern to Islamic law experts is the issue of maternity and parentage in surrogacy. Whom does Islam recognize as the legal mother, genetic mother or surrogate mother?
In some verses of Al-Qur'an, it is declared that the mother of a child is that who carries it and gives birth to it. Allah says, “We have enjoined on man kindness to his parents: In pain did his mother bear him, and in pain did she give birth to him”. (Al-Ahqāf 46: 15); “And when you were foetuses in the bellies of your mothers”. (Al-Najmu 53: 32)

Surrogate mother is therefore, in the opinion of the majority of modern scholars, the natural and legal mother of a child born through surrogacy. Others favour giving the legal-motherhood status to the biological mother who provides the genetic identity of the surrogate child. The issue, in my humble opinion, still needs further research and brain storming before it can be conclusively resolved.

On the issue of paternity, a child born under the surrogate contract is illegitimate in the eyes of the law, since the mother is not legally married to the contracting husband. However, if the surrogate mother is a married woman, can her husband lay claim to the child? Some contemporary scholars have answered in the affirmative, on the premise that "a child is for the (matrimonial) bed", as provided in an authentic Prophetic hadith, narrated by both Bukhari and Muslim.

To sum up, surrogacy is an alien practice to Islamic culture, law and ethics. Furthermore there are many inherent evils and anomalies in surrogate parenting that outweigh any of its purported benefits to the human society. Some female intending parents today simply opt for surrogacy or 'womb leasing' because they are unwilling to undergo pregnancy, despite being fertile and healthy. Male homosexual couples are also engaged in surrogacy contract to have children of their own, even as the institution of marriage and family life is further undermined through womb leasing for monetary benefits!. Surrogacy is also a potential factor of confusion in blood ties; a woman in South Africa, Pat Antony, carried to term the children of her own biological daughter, Karen.

3.3 Sperm Retrieval by Masturbation for the Purpose of Assisted Reproduction

Sperm is an essential ingredient of any ART procedure, whether it is IVF, GIFT, ZIFT, ICSI or AI. Even though Islamic law may be favourably disposed to permitting a particular ART process, the question however is how the sperm in such a case is to be obtained.

The prevalent practice in the ART clinics worldwide is to collect the semen through masturbation. According to Robert H. Glass, MD., and Ronald J. Ericson, Ph.D., "Attempts to collect the semen by withdrawing during intercourse are usually unsuccessful, because the first few drops which contain the greatest concentration of sperm frequently are lost, thus
making the sperm count falsely low. Collection into a condom also does not work, because condoms contain certain spermicidal agents, and the laboratory will find only dead sperm. Whether this claim still holds in the modern time is left to our medical experts to judge, but the issue of concern to us here is to explore the Sharia's position on masturbation itself.

Masturbation is forbidden in Islam in the opinion of jurists from various schools of Islamic law, even though there is divergence of opinion as regards details and severity of this prohibition. While the act is pronounced haram, in toto, in both Maliki and Shafi'i laws, the Hanafis and Hanbalis are of the view that masturbation only becomes forbidden in the absence of necessity or genuine reason for same, such as when one is afraid of committing zina and finds solace in masturbation as an inexorable necessity. The Malikis' and Shafiis' stern opposition to masturbation is premised on the Prophetic hadith which ruled that,

He who is able to marry among you should do so, for it (marriage) keeps the gaze low and guards one's chastity. But he who cannot (marry) should resort to fasting, as that will curb his sexual passion.

They posit that if masturbation were permitted under the Sharia, the Prophet (salla Allah alai wa sallam) would have pointed it out, more so that it is arguably easier for one to perform than fasting.

Masturbation is thus a forbidden act under the Shariah, which may only be allowed, according to some legal schools, in cases of necessity. Necessity on the other hand is never without limitations, as says a principle of Shariah (Adarurat tuqaddar bi qadariha). One of such limitations is that a necessary act could only be the last resort in lieu of any other permitted alternatives. Hence, before a Muslim resorts to masturbation for the purpose of semen collection for ART, all other possible avenues must be explored, and we can suggest at least two here; one is medical compatible, and the other is Shariah compliant. According to Drs. Glass and Ericsson, "For those males who cannot, or will not, masturbate to collect a specimen, there is a special sheath that does not contain spermicide, and it can be used for collection of the specimen during intercourse." The Shariah compliant alternative is masturbation performed by the hand of a man's wife, as this is unanimously adjudged to be lawful. Jurists have argued this on the premise that the husband has a right to the enjoyment of his wife's hand, just as other parts of her body.
3.4 Cryopreservation and the Use of Preserved Sperm of an Ex-husband or a Jailed Spouse

In medical terms, 'cryopreservation' is the freezing and storage of gametes, zygotes or embryos\textsuperscript{35}. Essentially, cryopreservation is used for two purposes. Patients that have been diagnosed as having a disease where treatment from the disease may result in infertility. The sperm is processed and is kept and thawed at a later date, and with the patient's consent, is used to fertilise the ovum from the wife. Similarly, ART procedures often result in the availability of numerous spare embryos that are not transferred into the uterus of the mother. Cryopreservation or freezing techniques are able to store embryos up to a few years which can be thawed and returned to the uterus of the same woman whenever she decides to have a child. The advantages of freezing embryos would be that the woman might not have to undergo the drug stimulation cycle again, and to save her the side effects of the stimulant drugs that are used\textsuperscript{36}.

Cryopreservation in itself entails no infringement of the law, but scholars have cautioned that the frozen embryos are the exclusive property of the couple who produced the gametes alone, and may be transferred only to the same wife in a successive cycle, restrictively during the duration of the marriage contract\textsuperscript{37}. In other words, storing the husband's sperm for the purpose of impregnating the wife in the event of his death is illegal. Under Islamic law, death terminates the marriage contract, and the widowed wife is free to remarry after the mandatory waiting period (\textit{al-\textacute{I}ddah})\textsuperscript{38}. The cryopreserved sperm of an ex-husband in case of divorce should not be used either, as divorce equally renders the union void, legally.

Even in non-Shariah jurisdictions, a number of disputes have arisen in recent years over the status of non-transferred embryos cryopreserved during in-vitro fertilisation. One of such cases is that of Natallie Evans, a British woman who in 2007 lost her final attempt to prevent the destruction of embryos created with the sperm of her former partner. On 10\textsuperscript{th} of April, 2007 Ms Evans lost the final stage of a four year protracted legal struggle, which culminated in the European Court of Human Rights' rejection of her case. The court's position was predicated on the fact that people should not be forced to become parents, other things being equal\textsuperscript{39}.

However, if the husband is serving a prison term but still maintain the union with her wife, there is a ruling by some contemporary Muslim jurists that the stored sperm of the jailed husband can be used to impregnate his legitimate wife through artificial insemination\textsuperscript{40}. This
is obviously premised on the presumed continuity (istishaa'ab) of the marriage contract, until and unless the contrary is proven.

This could be pertinent succour to women who would like to bear legitimate children during long incarcerations of their spouses. Furthermore, it may provide in future a solid ground for the protection of conjugal rights of wives of prisoners, particularly in civil cases.

Another topical issue concerning cryopreservation is the fate of frozen embryos, if eventually they are not used or are not needed by the owners, for one reason or the other. If human life begins at conception, are doctors thereby killing potential human beings when they discard fertilized eggs? This in my view may constitute another research interest, as it is related to the legal –cum- medical continual controversial question of 'when does human life begin and when does it terminate?' Another alternative for spare embryos, being proposed by some researchers, is to donate those embryos to childless couples. This however is untenable in the light of our earlier argument regarding the Shariah's stance on embryo donation.

**Conclusion**

Islam is one religion that takes into account the need to accommodate the necessities of life. However, as we attempt to obtain these necessities, we should beware of contravening any rules of Sharia which have been put in place by our Creator for our common good, dignity and probity. There is nothing wrong in seeking lawful means of having children as long as nothing forbidden is involved in the process. It is of importance for those who practice assisted reproduction of any form to learn about the religious and legal issues related to the problem of infertility and its therapeutic approach.

The development of new and sophisticated techniques that aim to give reproductive technologists and scientists a better understanding of reproductive biology is raising new religious and legal questions, some of which are still awaiting conclusive answers from different academies and iota bodies around the globe.

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4- An authentic hadith narrated by Tirmidhi vol. iv p. 383; Abu Dawud vol. ii p. 396; and Ibn Mājah vol. ii p. 1137.


7 “Sex Selection Clinics Engender Controversy" in *The Egyptian Gazette" of April 2, 2010, p. 1


9- *Al-Shura* 42: 49.

10- *Resolutions of Islamic Fiqh Council*, Makkah, p. 151

11- A very pathetic case of a woman has been recorded. She wrote to Iftaa authorities asking for the way out as she and her husband got to know, after delivery, that another man's semen was mistakenly used to fertilize her egg in an IVF clinic! See the story at: www.islamonline.com. Accessed on 26th August, 2009.

12- A sperm donor may donate his sperm directly to recipient women, at a clinic known as a sperm bank or through a third party which brokers arrangements between sperm donors and
recipient women, known as a 'sperm agency'. Sperm provided in this way is known as donor sperm.

Sperm donation commonly assists couples unable to produce children because of 'male factor' fertility problems, but it is increasingly used as a means to enable single women (termed choice mothers) and single and coupled lesbians to have children. http://en.wikipedia.org/wiki/Sperm_donation. Accessed on 26th August, 2009.


16 - Ghazali, al-Wasit vol. vi, p. 441; Al-Majimu', vol. xx, p. 31; Mughni al-Muhtaj vol. iv, p. 144


22 - Resolutions of Islamic Fiqh Council, Makkah, p. 16o; Journal of International Fiqh Academy iii, 1, p. 516


24 - vol. ii, p.724 and vol. ii p. 1080 respectively.

25 - Ebrahim, Abul Fadl M. (op. cit.) p. 63


28 - The basis for prohibition is found in the Quranic verses:" (The believers are those) who abstain from sex. Except with those joined to them in the marriage bond, or (the captives)
whom their right hands possess, for (in their case) they are free from blame. But whoever seeks beyond that, then those are the transgressors. (Surat al-Mu’minun 23: 5-7).

29 - See *Al-mawsuat al-Fiqhiyyah vol. 39*, for details and more references.

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35 - Vayena, Effy et. al. (op. cit.), p. ix


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Theo-Ethical Admissibility and Limitations of Tampering with Human Nature in Islamic Theology

Mahmut Ay

Introduction

In today’s world, all sorts of scientific advancements are not limited to discussions carried out in sciences and by scientists, but –willingly or unwillingly– enter into the realms of theology and ethics. Theologies, and ethical systems connected to them, examine and evaluate especially the contents and methodologies of bio-ethical problems. The relationship between dogmatic theology and science has been a controversial issue within the context of diverse concepts and questions. While dogmatic theology sees God as the direct efficient cause of everything that happens in the universe, science argues that the universe and the happenings and movements in it depend on natural causes and they possess a type of progress that grows within themselves.

In modern times, the possibilities that human being has achieved through biotechnology and the problems resulting from these possibilities have brought along certain political, sociological, economical, legal, theological, and ethical issues; the issues all reach a certain point of intersection. In this study, I present a point of view with regard to the possibility and boundaries of interference in human nature from the perspective of Islamic theology. I will do this within the context of the project of human genome, a project that is one of the most interesting and important scientific advancements carried out by man in recent years. The project of human genome aims at determining the boundaries and

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possibilities of the members of human species. This project appears to religions and theologies as a highly interesting and new question. Specialists describe the project of human genome as a key to clarify the very essence that makes us human being. By means of this project, they aim at explaining the genetic knowledge that DNA molecules contain; mapping human genome and making a distinction between that which is normal and abnormal; and clarifying the etiologies of many hereditary diseases.\(^3\) One may argue that through genetic design, we reach quite a vast open space for theo-ethnic possibilities to interfere in human nature. It is a fact, on the other hand, that this vast area of possibilities is limited by vital ethical concerns. Before speaking of the terms and principles that help us develop a concept regarding the boundaries that are dependent upon this area of possibilities and ethical concerns, I would like to touch upon a number of points.

First of all, I need to mention that Muslim theologians have not been able to develop a systematic and comprehensive intellectual perspective with respect to scientific advancements in relation to interfering in human nature, such as studies on stem cells, cloning and genetic modification. Muslim theologians have basically been striving for getting rid of consequences resulted from scientific advancements. The fact that in Islam there is not an unquestionable religious hierarchy and absolute authority on religious rulings makes it harder to find a common link between newly-arisen scientific questions and theology with regard to taking an affirmative or negative position. At the same time, however, the nonexistence of such an authority prepares the way for the appearance of various non-binding approaches and perspectives, and thus provides extensive advantages and opportunities for scientific developments. We need to underline the fact that Muslim theologians of modern times take a reactionary position against many scientific innovations in relation to the discussions on bio-ethics, especially in the case of the project of human genome. They put a distance between themselves and these innovations. At this point, while on the one hand Muslim theologians feel concerned with falling in a position that would critically be contradictory to their cultural and traditional experience, on the other hand they are in serious doubt about the reliability of sciences and scientific knowledge, which come from a world that is foreign to their cultural nature. A certain type of theological and metaphysical worldview feeds these concerns and doubts. According to this worldview, as far as their methodology, aims, and practices are concerned, such scientific innovations and projects cannot be considered independent from

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the socio-cultural, theological, and metaphysical conditions out of which they grew. Those who support this thesis believe that the scientific innovations that emerged in the modern period, came into existence on a secular ground. Therefore, such innovations naturally house secular effects and bear incompatibility with Islamic culture. This approach makes it harder for Muslim thinkers to reach a trouble-free decision on scientific advancements, and to take a straightforward position against them.

**Sphere of Admissibility Based on the Act of Creation**

The concept of creation holds a central position in formulating a comprehensive theological perspective with regard to the project of human genome. In Muslim dogmatic theology, the act of creation is peculiar to God exclusively and is considered a divine action. According to this theological approach, if we attribute the quality of creation to man, we would restrict the quality of God’s creation. The fundamental basis of Islamic theology, the Qur’an, uses the word creation for both God and man. In addition, the Qur’an speaks of many forms and types of creation (*ibdā’, khalq, inshā’,* etc.). In the case of Jesus, for instance, addressing him the Qur’an says, “…when you created, with My permission, out of clay the likeness of a bird, then you breathed into it, and it became a bird with My permission…” (Q. 5:110) Many Qur’anic verses describe God as “the best of creators” (Q. 37:125; 23:14). The word “creators” in these verses indicates the possibility that there might be some other creators in addition to God. When we examine the verses of the Qur’an on creation within their collective usage, we see that the act of creation is not restricted to God alone. On the other hand, one of the paradigms of Islamic thought, rational theology, clearly attributes the act of creation to man, and argues that man is the creator of his own actions. Furthermore, according to this theological approach, if we do not regard man as the creator of his actions, then taking him responsible for them would be meaningless.

In its depiction of man’s coming into being, the Qur’an says that God fashioned man, then He breathed into him of His spirit (Q. 15:29; 38:72; 32:7-9). Muslim theologians interpret this sequence as the transition of man from material and physical existence to spiritual existence.⁴ The Qur’an portrays the material existence of man as follows, “Has there not been over man a long period of time, when he was nothing (not even) mentioned?” (Q.

76:1) This transformation of man from material existence to full human being became through God’s breathing into man of His spirit. One should not, however, interpret the phrase “breathing of spirit” as a literal indication that man carries a part from God. Instead, this phrase refers to the special status of man in this world and to his qualifications and capacities that distinguish him from other beings. It is in this spirit that man’s potential efficiency, responsibilities and the source of fulfilling them in this world are hidden. The Qur’anic concept of spirit relates principally to intellect/reason and the source of knowledge. For instance, Gabriel, who is known as the angel of revelations, is named “The Spirit” (al-Rūḥ) (Q. 26:192-193; 16:102; 19:17). In this context, Gabriel is responsible for bringing knowledge from God to His messengers. The notion of breathing of spirit into man signifies that during the creation God made an epistemological coding into man’s existential composition. This means that this spirit is the source of every kind of thinking and acting that man performs on the basis of his intellect/reason and knowledge. The concept of breathing of spirit into man, and making him a being worth mentioning by God, constitutes the basis of the self-consciousness in man. God possesses the qualities like spirit, intellect, knowing, and creating in an absolute form, but man possesses them in a relative form. In other words, man has these qualities that constitute his self-consciousness as enveloped by laws of scientific necessity, environmental and natural conditions.

The fact that in Islamic theology the divine act of creation and the formation of the universe and man – being concrete indications of this act – have not come to a completion, as they are considered an open process, makes it possible for man to participate and interfere in this process through his own act of creation and capabilities. According to this theological understanding, the process of the formation of the universe and man, i.e., the process of creation, goes on. One should not see the realm of existence as an object open to the interference of a single agent only. Equipping man with special capabilities, God enables man to interfere in the realm of existence. Though, in a sense, this situation might be interpreted as God would set limitations for Himself, He trusts man and gives him authority in this context. Muhammad Iqbal explains this capacity and power of man as follows,

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5 The notion of God’s breathing of His spirit into man does not mean that there is an ontological partnership between God and man or that man carries something from God. In this context, there is not a breathing and breathed one in an ontological sense. In a symbolic style, the verse refers to the things that make man alive, and the ways he received these things. The expression of breathing of spirit figuratively indicates that God gave man life, conscience, and sensitivity, i.e., a soul. See al-Zamakhsharī, Maṭḥūṭ b. Umar, al-Kashšāf, Cairo, 1987, III, p. 577; Asad, Muhammad, The Message of the Qur’an(Kur’an Mesajı), İstanbul, 2002, p.518.

When attracted by the forces around him, man has the power to shape and direct them; when thwarted by them, he has the capacity to build a much vaster world in the depths of his own inner being, wherein he discovers sources of infinite joy and inspiration. Hard his lot and frail his being, like a rose-leaf, yet no form of reality is so powerful, so inspiring, and so beautiful as the spirit of man! Thus in his inmost being man, as conceived by the Qur’an, is a creative activity, an ascending spirit who, in his onward march, rises from one state of being to another.\(^7\)

In mystical tradition, this potential is regarded as the spirit, which is the source of self-consciousness. Intellecting, creation, and guidance are the real functions of this spirit.\(^8\) These functions are graces that God bestowed upon man. Being the constitutive parts of the human self, these functions are not completed things, but an activity that is continuously in motion, affecting, willing, heading towards a certain goal, and demanding change and progress.\(^9\) According to Iqbal, with all of its variety and complexity, life is not a mere appearance and manifestation of the reality of God. Life has a reality that moves and represents itself, develops and includes the sense of self in its center. For this reason, one of the fundamental objectives of man should be discovering and improving the inner richness of existence, through displaying the consciousness of the self and attaining a self-understanding and self-explanation.

Muslim theologians formulate the concept of "efficient man" or "perfect man" as the object of a continuous process and search. As an ego-centric being, man has not accomplished his completion, but still is within the process of his perfection. The Qur’an states that man is not able to make use of his potentially available intellectual and spiritual qualities in a sufficient and desired manner. God placed these qualities in man’s nature, and they make man that which he is. The Qur’an emphasizes that man has not been able to actualize these qualities in an effective way (Q. 80:23). The only way for man to reach this completion and perfection is his becoming equipped with divine qualities and his activating these qualities. This mission can only be accomplished through awakening the divine dimension within man’s self. We may summarize this operation saying that in this context, the functions of the


\(^{8}\) *Ibid*, p.120.

Infinite Self are activated within the finite Self.\textsuperscript{10} From theological perspective, we may regard a genetic interference that ensures and enhances the activation and efficiency of these intellectual and spiritual qualities potentially available in man’s nature as God’s expectation from man within the scope of his responsibility for actuating his conscience of self-construction.

**The Sphere of Admissibility Based on Human Autonomy**

The answer to the question whether man – with his peculiar existence in the universe – is a part of God or an autonomous being that emerged in the realm of existence by the act of God’s creation by His will and power, will help develop a theo-ethical perspective regarding the possibility and limits of interference in human nature. The perception of man as an autonomous being, dependent on or independent of God, not only determines all sorts of theological and ethical ways of thinking, but also shapes how to render meaningful the life and the practices relating to it. One may argue that there are two main approaches regarding this matter in Islamic theology.\textsuperscript{11} While one approach, relying on the notion that man is God’s image (ḥūra) and viceroy (khalīfah) on earth, underscores the objective aspect of man, the other highlights the subjective dimension of man, arguing that man, having qualities such as reason, freedom and responsibility, is an autonomous being independent of God.

In Muslim dogmatic theology, everything that exists and everything that will happen in the future occur according to God’s pre-determination and programming. Everything happens within an eternal plan of God’s. Everything that is good or bad, useful or harmful, occurs through God’s will. It is as if God appears as a tyrant that behaves despottically and arbitrarily. As for man, he, with everything he possesses, is a part of God’s pre-destined plan. He is a passive being that submits unconditionally to a set of rules determined by God. He is a part of God’s determinist sphere that has to fulfill the role that is pre-destined for him in God’s plan of creation.

In Muslim rational theology, on the other hand, just as God is an efficient being in an absolute sense, man is also an efficient being. He is not a passive being dependent on God’s will; on the contrary, he is an active being responsible for building the universe and himself

\textsuperscript{10} Iqbal, pp.125-127.

\textsuperscript{11} What “man” signifies in the realm of existence, i.e., in God’s plan of creation and in purpose of creation, has also been discussed in philosophical and theological systems other than Islam. While philosophical and theological systems that are based on the objective dimension of man draw attention to his status in God’s plan, systems that are based on the subjective aspect of man highlight his expectations from life and the life he will create with his own effort. See Düzgün, *Sosyal Teoloji*, p.73ff.
with faculties God gave him at creation. In rational theology, man is not the viceroy of God that acts on His behalf; he is the viceroy of earth who acts on his own behalf. When God made man as the viceroy of earth as an agent, He equipped him with abilities to carry out that task. The entire set of man’s equipments – from rational abilities to freedom and responsibility – is oriented towards realization of the reconstruction of earth in accordance with the purpose of his existence and of becoming a source for a life in which what is right, good and beneficial, is dominant. Reason, freedom, and responsibility in Muslim rational theology are regarded as the principal parameters that constitute the nature of man. By equipping man with reason, freedom and responsibility, God provided a proper structure in order to guarantee that man is able to realize his creative energy at the highest level and continue this creativity in an ethically correct manner.

It could be argued that heteronomy, one of the central concepts of Kantian ethics, corresponds to the perception of human in Muslim dogmatic theology, while autonomy corresponds to that of rational theology. In heteronomy, the agent may act dependent on a will or power of an authority rather than his own. In this type of relationship, agent has no efficiency whatsoever, and all of his actions are under the control of an outside authority. Just as in Kant, in Muslim rational theology, this form of relationship is considered non-ethical. In the type of relationship that Muslim rational theology designs, the agent is free in all kinds of its willful acts and accommodates in its self the faculty of contributing to the process of working of the existence. It is asserted that this autonomy has been given by God, but it does not necessitate a total dependency on Him. God, who is the agent in the absolute sense, has made an agent, other than Himself, efficient. This efficiency is based on the faculties of reason, freedom and responsibility. Man, with these faculties, is not a being dependent on God’s will; rather, he is a being in communication with Him. Here, there is a relationship between two agents. Man, in this relationship, assumed a responsibility for participating existentially and cognitively in the process of working of the existence. The Qur’an calls this responsibility “the trust” (al-amānah), and informs that with this “trust” man differs from all other beings in the universe, and is made privileged.

One of the strongest theological arguments for the interference in the universe and the human nature is that all beings in the universe were created in a design that man could discover and control. In many verses of the Qur’an, God wants men to think about the act of

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creation and creatures and to investigate the quality of these phenomena. In other words, God makes man responsible for reflecting on the universe and everything that happens in the universe, and for examining them (Q. 88:17-19; 2:29; 22:65). At the base of this responsibility lies the fact that God placed everything in the universe in man’s use and under his control. The Qur’an expresses this sovereignty of man over the earth with the concept of “taskhīr” (Q. 14:32-33; 16:12; 31:20; 45:13). The word taskhīr, which means subjection and subjugation, indicates that man was created to govern and dominate the universe and everything in it. The Qur’an sees the universe and man as well as every other being in the universe and every natural event that takes place, as a sign (āyah) of God (Q. 30:22). In this context, any activity concerning the universe and events and phenomena in the universe should be considered an enterprise towards understanding God’s signs, directly or indirectly. Even, these enterprises should be accepted as the fulfillment of the most important responsibility God has burdened man with.

The Limitations Based on Measure and Balance of Existence

In Islamic thought, particularly in the mystical tradition, it is accepted that God created the universe and man as a measured and orderly whole at macro and micro levels. The main qualities and principles of the macro-cosmos are gathered together synoptically in the micro-cosmos. In this respect it is supposed that the harmony and concord between reason and laws of the nature come from a common source. This harmony resting on the measure between the universe and man is expressed in the Qur’an as follows, “You cannot see imbalance and lack of proportion in God’s creation.” (Q. 67:3) “And God has raised up the heaven and He has set up the balance in order that you may not transgress in the balance. So establish weight with justice and do not fall short in the balance.” (Q. 55:7-9) So it is understood that God expects man to observe in his acts the balance and the measure that He decreed in creation for the universe and man. God demands from man to observe, in his act of creation, wisdom, measure, and balance as a whole, just as He does, at both theoretical and practical levels. In Islamic theology, observation and preservation of the measure and balance is conceptualized as justice (sadālah), while transgression and neglect thereof as injustice (ʿulm).

Actualization of Common Sense/Conscience

The theo-ethical principle “lā ʿarar wa-lā ʿirār” (there shall be no harming of one man by another and there shall be no requital) which was formulated by the Prophet Muhammad, points out the consciousness of responsibility in individual’s actions regarding
protection of both his own and other people’s rights. The principle in question is considered within the scope of the purpose of the greater good of people, or “al-ma‘la‘ah al-‘āmmah”, the source of which is the spirit of the Qur’an. Improvement and enrichment that could be realized in human nature through genetic interference have to consist of mercy and benefit, and to be distant from every kind of political and commercial concerns. God, in this context, has bestowed upon man two major sources, one general and the other particular, in order to reach the truths and to determine universal ethical principles. The general source that is embedded in human nature is the “reason”; and the specific source that came from God under historical circumstances is the “revelation.” These two main sources show that man is able to determine for himself his decisions regarding his own future. In other words, man himself is the one who determines the measures and principles in interfering in human nature. The capacity to determine these measures and principles potentially exists in human nature. The duty entrusted to man, here, is to activate this potential without any political, ideological, and commercial interests, and to search in the ultimate sense for mercy, affection, benefit, rights, and dues.

Another theo-ethical boundary of the interference in human nature is to avoid transgressing the laws peculiar to all kinds of beings in nature (sunnat allāh) and causing a chaos and corruption (fasād). Regarding this matter, God urges man to follow these biological, physical and social laws, and warns him against transgressing certain boundaries (Q. 4:13-14). Therefore, the duty man has to perform is to uncover humanity’s common sense and conscience potentially found in human essence in creation. These common sense and conscience also indicate that man, as a genus, has the faculty of creating measures and values by himself. Unfortunately, humanity has not succeeded in the test concerning the functional use of this common sense that ensures that man has been distinguished from other beings, and made the viceroy on earth. The common sense and conscience have often been covered and wrapped up tightly by religious dogmas, and local, historical, cultural and social elements. In no way was this common sense able to turn from potentiality into actuality, and it could not be actualized where and when it was necessary. The common sense and conscience that are the most important components of the universality of humankind will have to play a dominant role in preventing the possible abuses and misuses in interfering in human nature.

Conclusion
The Enlightenment created a paradigm change that resulted in sovereignty of science. Religious circles in the West interpreted this as the loss of God and of what is sacred. In modern times, Muslim intellectuals appropriated this approach to a great extent and frequently articulated and defended it. If we could manage to ignore any reactionary attitude against science, from an Islamic point of view, it is possible to consider every kind of scientific activity aiming at discovering man and the universe as a step that leads us to better understand God and what is sacred, and that brings us closer to God.

It is not a coherent and consistent approach, from the perspective of Islamic theology, to relate to God’s will any discovery that has been achieved as a result of a scientific endeavor, to reduce this discovery to a moral test category, and to form a religious judgment about it. An attempt to interpret religious notions and principles in a way that would hinder the discovery of the universe and man and to prevent improvement and enrichment of the quality of human life will make self-conscience defunct, and will contradict natural laws and natural disposition (fiqrah). In short, to do so will signify the loss of being human.
I begin my speech by giving my regards to all participants and my gratitudes to those who organized this symposium. As might be seen in the schedule, I will try to analyze the issue of sterilization and chemical castration according to Islamic law.

When I was informed about the bioethics symposium, a draft of regulation prepared by two female PMs from the governing party was on the agenda, suggesting chemical castration of people sentenced for rape if they repeat the same crime.

Media reported a similar draft regulation in Italy in those days. Following conviction of a 19 year-old by rape of many, as the second time after he had been released from jail for the rape crime, this regulation was brought to agenda by a minister.

In England too a new measure is taken to prevent sexual crimes when two prisoners conceded to be castrated when their imprisonment ended. This would be executed either by taking pills for a certain duration, or monthly injections, so that their testosterone levels are lowered to the pre-pubertal level.

Castration is applied in some other European countries as well as in eight states in the US. It is known that convicts of sexual crimes and pedophilias are given options of castration by hormone medicines or imprisonment.

The PMs who prepared the above mentioned legislation declared that their suggestion is limited to rape crimes towards children, but it can be extended to others who are sentenced for any kind of sexual offense as well.
It should be noted that the subject is discussed among legal scholars in Turkey. While some think that it is legal, provided that procedural mistakes are minimized, others argue that such a conduct is against human rights and it is not an effective way to prevent crime.

Before handling the subject according to the religion of Islam and its legal system, it is necessary to briefly explain the terms of sterilization and castration for those who are not familiar with them.

Sterilization means tube ligation for women and vasectomy for men. In other words, it is a medical operation whereby the ability to reproduce is removed forever by disrupting the tubes that carry sperm or the eggs. In everyday language it is referred to as neutering.

Castration is the extermination of the ability to reproduce by making one incapable of sexual activity. To put it differently, it is “a medical intervention which aims at terminating the abilities of sexual intercourse and reproduction by removing glands”. It is called eunuchizing in daily language, and is a kind of biological castration.

As for chemical castration, it is realized either by preventing hormonal activity without lowering testosterone production, or by lowering testosterone production, or totally putting it to an end, or by reducing libido.

According to Islam, the property right over human body belongs to Allah (swt). That is why one is not entitled to full possession on his/her body. For non-living things which we describe as articles or properties in Islamic law, the rule is their being halal (permissible) and usable for the service of men.

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2 See (in Quran) Bakara 2/284; Mâide 5/120; Müminûn 23/84–85.
Possession over and use of an object in nature is halal, unless there is a nass – an obvious rule brought by an ayah of Qur’an or hadith of the Prophet (pbuh) – requiring otherwise.  

For human beings, the opposite is the case. Human life and blood are sacred and any act on human body requires a divine permission. Therefore, it is not legitimate at all to give harm to others or to one’s self. Halting the ban can be permitted only in cases where there is absolute necessity.

Having broadly explained these general principles, we can summarize the issue in following items:

1. If there is no crime, an involuntary sterilization or castration is illegitimate for both men and women. Actually it is itself a crime towards the human body.

2. Again in the absence of a crime, voluntary sterilization is regarded as legitimate by some scholars of Islamic law, provided that it is revocable, even if it is not favored. This legitimacy is based upon the legitimacy of azl, by deducting that any act which prevents meeting of sperms with egg is permitted. But it should be underlined once again that this legitimacy is there only when it is exactly possible to undo. It is medical doctors who would decide on that. It should also be noted that the permission of the spouse is another requirement for this legitimacy, when the subject is married. It is not legitimate to make sterilization or castration a custom conduct in society either, because it means changing the natural disposition, which is a religious crime. Besides, 

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6 Bakara 2/174; Mâide 5/3; En’âm, 6/118–119, 145, 151; Isrâ, 17/33; Muhammed eş-Şenkîtî, Ahkâmû ‘l-Cerâhati’ t-Tibbiyye ve’l-Âsâr el-Müterettibe Aleyhê, Mektebetü’s-Sahâbe, eş-Şârika-el-Emârât 2004, s. 78–79.


* Withdrawing during intercourse - coitus interruptus.
nobody can know what he/she will face in the future. Hence, to attempt such an operation with the aim of providing contraception can cause irreversible damages.

3. We said that involuntary sterilization is a crime. As an exception to this general rule, it is discussed in several occasions whether to sterilize a mentally ill woman in order to protect her from ill intentioned people. Still the dominant view is the illegitimacy of that too. It is not a healthy way of protection to destroy, either directly or indirectly, those who need protection.

4. Biological castration is totally forbidden too, in Islam. Prophet Muhammad (pbuh) was asked for permission for this for the sake of a mystical life, but he openly rejected it by stating that it is against Islam.\(^8\)

5. Chemical castration is not accepted legitimate under normal conditions either, as it is against human nature. It is claimed that a person chemically castrated can perform sexual activity if aroused by spouse; but he/she can’t have such pleasure on his/her own. Such a person can experience serious marital problems in time that might yield to the destruction of the family.

6. As for application of chemical castration as a punishment for crime, first it should be said that if the situation of the guilty person is defined as an illness that needs to be cured by physicians, and if that treatment is possible only through chemical castration, there is no doubt that it is a legitimate operation then. Simply because there is an illness which must be cured. This situation is in the framework of the absolute necessity we mentioned above.

7. In cases where chemical castration is seen as a pure punishment, rather than a treatment, there are several points that must be paid attention to. First of all, can castration be considered as a punishment as it is a harmful conduct itself? In other words, can it be an effective solution in fighting crime? Here a comprehensive legal effect analysis should be made. As well known, punishments are meant to have multiple aims in criminal law. Punishments must be deterrent on third persons. They must provide both punishment and reparation. They must be able to prevent repetition. They must not yield to greater problems. They must also mitigate the anger of the victims. If the victim or his/her relatives think that the punishment is less than fair, they could attempt to punish the guilty by themselves. In this case the guilty would be

\(^8\) Buhari, K. Tefsîru’l-Kur’ân, 5/9, K. Nikâh 8; Müslim, K. Nikâh 11.
punished twice. All these factors serve as obstacles against the realization of the expected aims of the punishment.

8. In Islamic law, punishments for sexual crimes are obvious as they are mostly directly defined by Qur’an and Sunnah.⁹ As suggested with the proposed bill, punishment is repeated if the crime is repeated. Notwithstanding, the court can impose additional sanctions if predefined punishment is not adequate for a special case.¹⁰

9. Scholars of Islamic law declared the view that those who have the habit of committing some kind of crimes can be punished ex ante for the sake of public good. This is required to achieve order and safety in society. This measure also has a deterring effect on those who have tendency for the same or similar crimes. Therefore, such criminals could have been punished without waiting for the realization of the criminal offense.¹¹

10. Finally, the society resembles a human body. If health of the whole body necessitates removal of a gangrenous tissue, that part of the body can be sacrificed for the sake of the survival of the whole, in so far as such a decision is given only after serious consideration. Otherwise, it would cause some greater negative consequences with irreparable damages.

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⁹ For kinds of sexual crimes and their punishments see Âmir, 185-188, 317–320; Emîr Abdülazîz, el-Fıkhu’l-Cinizî fi’l-İslâm, Dâru’s-Selâm, Kahire 2007, s.271–272, 423. For sources of mazhabs see footnotes of relevant pages.

¹⁰ Âmir, s. 305–308; Emir Abdülazîz, p. 423.

¹¹ Âmir, p. 89, 287.

¹² Âmir, p. 296.
Cloning: Philosophical Arguments on the Moral Implications - an Islamic Perspective

Mashhad Al-Alla

Abstract
Cloning humans would ultimately allow a state of genetic determinism to emerge in which the phenotype of the clone can be genetically determined. This generates an issue of personal identity which will be discussed carefully based on the arguments of some Muslim philosophers such as Ibn Sina and Ibn Baja. Since personal identity is often related to uniqueness, then uniqueness and dignity will be also discussed through the perspective of Islamic Philosophy as compared with some Western philosophers such as John Locke and Kant in relation to the idea that respect due to a person is related to autonomous action based on rationality and free will.

This paper covers the discussion of the bio-medical methods of cloning, as well as the moral implications of cloning. Both reproductive and therapeutic cloning will be outlined in detail and the pros and cons of each will also be addressed.

I finish my examination of cloning by considering what the implications would be of using clones as means to an end, and the cloning of extinct species. After concluding my discussion I have included case studies with questions in order to allow the reader to reflect further on the issue of cloning.

Introduction

In February 22, 1997, scientist Ian Wilmut of the Roslin Institute in Roslin, Scotland reported that he was able to clone a sheep called Dolly. Dolly represented one success among 277 attempts to produce a viable, healthy newborn. In fact, out of the 277 only 29 of the infused cells began to divide. These dividing cells were implanted in ewes. Out of the 29 ewes implanted with dividing cells, 13 became pregnant and out of the 13 only one lamb, was born. She was named Dolly. Since then, scientists have been able to clone sheep, mice, cattle, goats, cats, and pigs. Because the cloning of mammals was successful, the cloning of humans is
possible, too. Our concern in this paper is the moral implications of cloning a human being. However, we have first to touch on the biological methods of cloning.

The Bio-Medical Methods of Cloning

To clone someone is to create an exact genetic replica of a person. Cloning works on the division and multiplication of the somatic cells, which carry the DNA. Human cells in regards to multiplicity are of two kinds:

Sexual cells, also called germ cells, are sperm and eggs. These cells differ from other bodily cells such as the somatic cells, in that germ cells have a genetic make up of 22 unduplicated chromosomes and either unduplicated X or unduplicated Y chromosome. If the sperm fertilizes an egg, the cells will multiply and a zygote is formed. Subsequently, an embryo is formed, which eventually develops into a fetus, which then grows into a baby. This is known as sexual reproduction. It is the traditional type of reproduction. It requires two parties in order to be successful.

Asexual cells, is the second type of cells we will discuss, which are called somatic cells. In general, these are the cells that compose the rest of the bodily cells. They contain a full set of 46 chromosomes—22 duplicated chromosomes and one pair of sexual chromosomes. A somatic cell is not sexual. Thus, it cannot be fertilized. But, if it can be divided and multiplied in cloning, then it will form a zygote and, eventually, it will grow to be a fetus. In this situation, there is no traditional sexual intercourse involved.

Cells for cloning can come from a variety of places in the body. The best cells are those from the early embryo, because they can develop to become any tissue. Such cells are referred to totipotent. Cells for cloning can also be harvested from adult animals. These cells generally come from the bone marrow. Bone marrow stem cells are, however, more limited in their possibilities, and are referred to as pluripotent.
Now how could we make a cell divide by itself in order to produce a clone? Next, we will discuss the two methods of cloning.

**The first** type of cloning is **reproductive cloning**. This is the method that Ian Wilmut followed to clone Dolly. The first step in this procedure is taking an egg cell from a female sheep. The nucleus of this cell is then removed and replaced with the nucleus of a cell taken from another female sheep. An electric shock is applied to stimulate fusion and growth. The cell is then implanted in the uterus of a third female sheep, which will eventually give birth to the clone of the sheep providing the nucleus.

![Cloning Procedures Diagram](image)

While the *genotype* of the clone and the DNA donor will be the same, the phenotype (physical appearance) will vary between the two. The genotype is the genetic makeup of an individual. The *phenotype* is the physical expression of these genes. The phenotype can vary as a result of differences in gene expression and environmental factors. For instance, even natural clones, monozygotic (identical), twins have different fingerprints, as would clones.
One issue that arises with reproductive cloning is that the clone is not an exact genetic copy of the donor of the nuclear DNA. Some of the DNA of a cell is found in the mitochondria, which is found in the cytoplasm of a cell. This mitochondrial DNA is provided by the emptied egg because it provides the majority of the cytoplasm for the cell to be implanted.

Problems: The problems that arise with reproductive cloning include Large Offspring Syndrome. The clone is usually larger than normal size; this is why many clone fetuses were delivered by cesarean section. Dolly was born at a normal size but soon was overweight. A group of cloned mice weighed a few months after birth weighed 72 percent more than mice created through normal reproduction.

Another problem that arises is the early-onset of diseases traditionally associated with older individuals. Dolly suffered from early-onset arthritis. Recently, two reports indicated that cloned mice also suffer from early-onset obesity and the cause is yet unknown. This suggests that clones are more likely to have the same diseases as the DNA donor much earlier in life. This could be due to the genetic errors that accumulated over the years in the DNA donor.

Another factor to take into consideration is the possibility of early death. Dolly died at the age of 6 years, while the normal life expectancy of sheep is 12 years. There are several reports on newborn clones of mice and cows that died shortly after birth. While we do not fully understand the effects of aging on cells, we do know that normal cells have a limited capacity to undergo mitosis (cell division) before dying. The possibility exists that these older cells could account for these disorders and early death. Another explanation for the occurrence of these errors is that current cloning methods ignore the other machinery involved in making proteins. In addition to DNA, several other molecules, such as transcription factors and ribosomes, are needed to make the proteins. Genes are worthless if they are not expressed to construct proteins. Since the protein-building machinery is not transferred in reproductive cloning, the conversion of genetic information to proteins could be hindered and result in a limited life and/or the development of degenerative disorders.

The second type of cloning is therapeutic cloning; the cells, or blastomeres, of an early multicellular embryo are split before the cells have begun to differentiate. Because each blastomere at this stage is, in theory, totipotent (capable of producing an entire organism
itself), the separated cells can become new embryos, all of which have the same genome. This is the form of cloning now practiced in the cattle industry. Cloning by blastomeric separation is limited to the number of cells that can be separated before cell differentiation, because differentiation destroys totipotency. This type of cloning would require using cells from an aborted embryo. In addition to forming a cloned being, these cells can be harvested and used to create specialized cells.

In addition to the two types of cloning mentioned above, we can still refer to the oldest form of reproducing protein or DNA recombinant cloning in which a protein of a gene removed from some chromosomes and implanted into a vector (i.e. plasmid) this type of cloning does not produce tissues, only proteins, this type by no means comparable to the type of cloning that we are discussing.

**The Moral implications of Cloning**

**Philosophical Arguments**

The cloning of human beings challenges the very traditional way of procreation, and thus challenges the sacred unit of the society i.e., family. It also raises many moral issues related to religion, human rights, identity, uniqueness, dignity, moral worth, and related issues. These issues will be the main discussion and the philosophical focus of this section.

1. **Human Rights**

**Genetic determinism and the Existential Right to Ignorance:**

Genetically speaking, children are born independent from their own parents simply because they have their own DNA. Cloning creates a state of *genetic determinism*, in which the phenotype of the clone was genetically predetermined. In the traditional way of procreation the beauty of a formed embryo and fetus resides in the unknown diversity of how the baby is going to look, which gives the parents enough room to exercise imagination, dreams, and hope. While in cloning this right seems to be taken away. Hans Jonas argues that cloning is always morally wrong because it deprives the clone his or her existential right to be, especially the *right to ignorance*. The clone cannot become himself or herself.\(^1\) Life is beautiful because we discover, realize, and actualize ourselves through it. To the question:
Who am I? Every one has a different answer, and this is what we enjoy in life—the process of exploring. Life is a process of discovering and knowing ourselves, it is an activity of becoming. But, to the clone, the question “who am I?” is already answered, and the “right to be” of the clone is already predetermined. We clone for certain and specific reasons, and therefore that determine what the clone has to be.

David Elliott thinks that the problem of producing clones exists in “too many manufacturing choices…that push us to the point where we would be treating a potential child as an object of his or her parents’ desires and goals, rather than a person in his or her own right.” Setting goals is an essential process of a human life. It is the making of the future of any person. Although parents are involved in setting goals for their children to a certain extent, gradually the freedom to set goals is given to the child. Unfortunately, this does not seem to be feasible with the relationship between the parent and the clone. Some writers question “whether that parent is capable of valuing or loving a child unconditionally, or loving him for the person that he might become through self-development.” We can even imagine a worse scenario where the conflict of setting goals between the clone and the parents will develop into a state of hatred.

Short life Sentence:

Another issue related to human rights is that the life expectancy of a clone is questionable. Almost every clone (Dolly, rats, etc.) dies before his or her average life expectancy. The beauty of life resides in the horizon of future expectation of growth. Sadness arises with the realization that one is shortening our life. Is it right for us to clone, even though it could be an early death sentence for the clone?

2. Personal Identity: John Locke, Ibn Sina, and Ibn Baja

There is no doubt that identity is related to uniqueness, and the latter is the real cause of work, production, and creativity; simply because benefits and results of such work will be attributed to you and only you. Then reputation will be uniquely attributed to you too, not to someone else. This is only possible because you preserve your identity and you are not a replica of
someone else. According to the Law of Identity, A is identified to itself, meaning A is A and not something else. John (as a person) is John, and cannot be James. Also John is John and cannot be John and James at the same time; due to another law of Aristotelian logic called the Law of Non-Contradiction. A major philosophical question comes from the continuity of personal identity in space and time: what keeps John identical to himself in space? Whether John is in Canada or China he is still the same person—John. Also what keeps John identical to himself in time, so he is John at the age of 20 and he is the same person at the age of 65? In order to answer these questions I have to discuss what philosophers think of identity. Scientists and philosophers have developed some methods by which we can identify a person, these methods are: mere appearance; physical characteristics, photo, fingerprints, DNA, one’s iris, dental records, and finally cognitive factors such as thoughts, ideas, memories and consciousness. But which one of these makes personal identity? Is Identity genetic related to the DNA and fingerprints? Or is it related to consciousness? Or is it related to the phenotype?

**Limbs and identity:** The flying man: Ibn Sina

In order to answer the above questions let's take this example: John in Canada is identified as John, if he travels to China then he will preserve the same personal identity, i.e., he will be the same person (John). Why? Because, he preserved the same physical appearance, same fingerprints same image, same memories, and same consciousness. Now, let us imagine that John lost an arm in an accident. Would he be the same person? According to Ibn Sina (a Muslim philosopher 980-1037), even if he lost all of his limbs, or even if his image changed, then he would still be the same soul preserving, the same thoughts and feelings and thus, preserving his personal identity. Consider for a moment Ibn Sina’s well-known example about the flying man or a man in a vacuum: if we imagine a man hanging in space in a situation in which he loses sensation about his organs, he will still feel something about himself; he will feel that he is the same person. This identification is achieved by the soul. In other words, identity according to Ibn Sina is neither genetic nor related to the genotype or phenotype, it is beyond both; it is based on the soul. The reason that Ibn Sina dismissed the idea of physical body, rationality, and consciousness for identity, is because physical bodies change. Thoughts and ideas are even less concrete than the body; images of the memory might fade away. Regardless of what happens to the body or the consciousness, still there is a
more substantial and unchangeable core for identity which is the spiritual entity called soul that is immune to changes according to Ibn Sina.

**Self Conscious Transplant: John Locke**

Now let us imagine a more complicated example in which the consciousness of John was placed in the body of the king of China and the consciousness of this king was put in John’s body. Is John going to keep the same identity inside the king’s body? An example similar to this was given by the seventeenth century philosopher John Locke, who discussed the issue of personal identity in his book: *An Essay Concerning Human Understanding*, Book II Chapter 27. Locke thinks that John will stay as the same person (John) and not be the king even though his consciousness is inside the body of the king. Why? Because Locke thinks that if we can preserve the consciousness of a person (although inside another material body or substance) then we can preserve personal identity. Locke said: “For the same consciousness being preserved, whether in the same or different substances, the personal identity is preserved.” Then, personal identity, according to Locke, must be defined in terms of consciousness. Consciousness alone constitutes such identity. In the same section Locke went a little bit further to suggest (in relation to religion) that if God would resurrect that king, then who is going to be held accountable for punishment or reward, the king or John? Locke thinks it will be John and not the king, because Locke thinks “that consciousness . . . draws Reward or Punishment with it.”

**Ibn Baja (Avempac)**

The Spanish Muslim philosopher Ibn Baja (Avempac) (1106-1138) made another articulation of Ibn Sina’s argument based on the idea of continuity and discontinuity. He thinks that while the physical body (organs and limbs) discontinues existence, the person continues to be the same being. The physical body changes but the soul does not. (This could be called the Continuity Argument)

**Discontinuity Argument:**
In regards to cloning we can offer an argument reversing that of Ibn Baja. While Ibn Baja thinks that what makes a person’s identity in the first place is the very continuity of his soul in spite of the discontinuity of his biological body. In cloning, the bodily genetic information of one person continues to exist in the clone, while the consciousness and memories of that person discontinues its existence in the newborn clone. Cloning works on duplicating the biological DNA and not the environmental personal experience. In other words, there will be genetic determinism for the clone, but there will be no psychological determinism. If we would accept Locke’s idea of personal identity as based on unique consciousness, then we have to assume that the clone is not identical to the person cloned. Memories and consciousness both remain as mere psychological experience related to many environmental elements. But is it true that the genetic aspects exist separately from the rational?

**Problems in Locke’s Theory of Personal Identity:**

Unfortunately, Locke’s theory of personal identity does not answer this question nor does it solve our problem with cloning. In cloning we are talking about a living biological three-dimensional reality that is not abstracted, or reduced to mere conceptualization. It is duplicated genetically and thus loses its identity on the level of DNA. This very replica is what is going to host and produce consciousness. It is true that consciousness is related to experience and environmental factors. However, in human biological existence, the consciousness might transcend the ability of the body, but it cannot exist without it. Locke’s empiricism is usually presented as contrary to Descartes’ philosophy. However, one cannot dismiss Locke’s theory of personal identity without noticing the underlying dualistic presumption of it.

The issue of personal identity as related to the clone himself or herself, is much more serious and tragic than just being an identical replica. It is, indeed, the suffering caused by the conscious transplant that is continuously exercised over the clone in order to align the clone with goals, objectives, ideas, etc. of the person cloned, in order to reach the destination that was predetermined.

In fact, Locke’s theory raises further problems related to those patients who are in a persistent vegetative state (PVS) or a coma state. If a person is in a coma state for two years, does the
loss of consciousness nullify her personal identity? How could doctors then still refer to the same identical patient? Imagine two identical patients in a coma state and their records were lost, the only thing left is the following data: they are very similar to each other in appearance, have the same name and both have lost consciousness. How are doctors going to identify them? They can simply identify each one based on identifying their chromosomes. Thus genetic identity is used here, because it has more stability (it is always there) than consciousness that can be lost. Aristotle thinks that a seed of an apple has in potentiality the whole tree. Scientists think that a cell to be cloned potentially contains all that is needed to qualify it as a person. But to this Locke might reply: that what you identified is not a person. Indeed, it is a man. According to Locke, man is a living organism, thus a man’s identity is biological or genetic. While a person, according to Locke, is that thinking, intelligent being or rational psychological being that can reason and remember. Thus, a person’s identity is consciousness. As Terence Penelhum noticed that the Lockeian usage of “the two notions in this way is a radical departure from ordinary usage, in which the two words are often interchangeable.” It seems that there are two problems with Locke’s approach, circularity and the concept of Person.

Circularity: Consciousness identifies John, and if we ask Locke why is that, Locke would answer: because John conscious differently. This is circular reasoning.

The concept of Person: (a person from Latin persona = mask or action.) If Locke takes person as consciousness and leaves man as biological, then he generalized and abstracted humans by elements of their psychological activities. But we know that these psychological activities are what make them different in the first place; then why is a person defined by a universal concept called consciousness. The consciousness of a child is different from that of an adult and the latter from the consciousness of another adult. The consciousness is used here for more particular differentiation than for generalization, however, Locke seems to elevate and abstract different living organisms into universal psychological conceptualizations or substantial generalizations called “person” then he used it for identification and differentiation. Thus Locke contradicts himself.
Identity and the Soul: Is DNA more stable than Consciousness for Identity? Phenotype and Consciousness

There is no doubt that we usually and practically appeal to both criteria (the genetic one and the other related to consciousness and memories) to identify a person. It seems that the first one is used more by some people to identify us at the first glance, while the second one is used more by us internally to identify ourselves. The conflict between the two has been suggested by some philosophers, but it seems that it exists only on an imaginary level, as in the example of transferring the consciousness of John to the body of the king. What John recalls is not a life of a king but basically the life of a student. So his consciousness solely constitutes his personal identity. I think consciousness does not work in a vacuum; the genetic aspect imposes on it certain impact. The body as an undeniable host for consciousness that contributes essentially to the modification and making up of the present and future consciousness. This consciousness will alter the past in order to fit the new situation. People will treat John as a king and he will be consciously aware of that later on. He will develop the consciousness of a king. He will not only act as a king but he will represent all his memories and past experiences to himself and reinterpret them to fit his new pattern of consciousness which is as a king. If identity is based on DNA only then it seems that we are reducing humans to a mere quantification. No doubt that numbers single out material identity; for example, the atomic number of gold 79 in the periodic table of chemistry is different from that of silver. But humans are more than a material collection of cells or mere quantity; they must be identified by essential things, such as a soul. The clone is a genetic replica but a unique soul.

3. Uniqueness: The Qur’anic argument on Dignity and Value:

Humans are unique per se. From a religious approach, God created people uniquely. This uniqueness exemplifies God’s creativity. All that we see in nature, such as snowflakes, leaves, etc., we see as copies because of our inability to see things on a microscopic scale with the naked eye. Yet, each and every snowflake and leaf is unique, just as God created each and every human as a unique individual. Because of this uniqueness everything human has no equivalence value. In the Qur’an God gave human beings (Children of Adam) a rank that goes beyond value, which is dignity, God says:
“And We have certainly honored (dignified=Karramna) the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.” (Qur’an, 17: 70)

When God dignified human beings, then every human becomes invaluable by the action of God Who gave the intrinsic worth through uniqueness. If Qur’an had given only value to human, then human become valuable but at the same time replaceable by equivalent value. Since we know that there is no equivalent value for any human being (because of uniqueness), then man is irreplaceable. Thus man has the intrinsic worth that is called in the Qur’an Dignity. In Islam the duty not to duplicate oneself revolves around the internal absolute worth and dignity of each person as such; which is related to uniqueness and creation of God.

Ian Wilmut himself realized the danger of interfering in this uniqueness he thinks that the more you interfere with reproduction, the more danger there is of things going wrong.

Kant: Why should we respect a person?

Kant, in his book *Groundwork of the Metaphysics of Morals*, discussed price and dignity: “In the kingdom of ends everything has either a price or a dignity. If it has a price, something else can be put in its place as an equivalent; if it is exalted above all price and so admits of no equivalent, then it has a dignity.” Kant considered value to be, that which bears equivalence in the process of exchange. The problem with this definition is that it does not make a distinction between the essence and the attributes. Human life is unique and invaluable. It is the very essence of attributes and values that we can possess. Life cannot be a subject of exchange simply because there is no equivalence to it, because everyone is unique.

The discussion of dignity and uniqueness, in the light of Kant’s philosophy, revolves around the idea that respect due to a person is related to autonomous action based on rationality and free will. This action must submit to the universal laws of ethics. But if this is the case, then lack of rationality means lack of dignity by default. This cannot be true. Consider a mentally
challenged person. Although he or she may not have the capacity for rational decisions we still respect that person, and he or she still possesses dignity. One might argue that the lack of privacy eliminates dignity. Unfortunately, the lack of privacy does not necessitate the lack of dignity. If rationality and privacy are not a major component of dignity, then what is dignity?

I think a better definition of dignity must exist. Dignity of a person resides in the very control of the self, before it is even manifested in moral or legal actions. A simple example exists in the desires of the soul that have the least connection to morality and legality, such as the desire to eat. If the desire for food becomes the controlling factor in the personality to the extent that there is no concentration on social life, it is only on food, a person has not violated any moral universal law according to Kant. They will not be punished legally either. However, they will not be respected morally. The inability to control the self caused the repetition of fulfilling the desire. The desire is irrationally cloning itself. The more repetition, the less dignity. Cloning is the mere repetition of genes multiplied repeatedly. Thus, cloning eliminates dignity.

4. Infertility

Many people think that cloning presents a moral conflict in relation the traditional way of reproduction, while many other people think that it represents a great solution to the problem of infertility. A reply to the latter opinions can be presented along this line of logical reasoning:

- People usually approach cloning as a solution to infertility.
- We know that cloning works on somatic cells.
- But every human being has somatic cells.
- Therefore, no one is infertile!

5. Cloning for Organ Transplant: Using clones as means to an end

In regards to organ transplantation, the purpose of cloning is to raise a clone for its organs. Some philosophical points can be discussed here. One of the most famous, as related to
Kant’s Ethics, is to abide by the moral rule that people should not use others as a means to their ends. Every single human being has an infinite worth. To use people as means to our ends is basically to hold oneself special without justification. Since, morally speaking, there is no reason for a person to single himself or herself out as better than others; people should not use other humans as means to their ends. In cloning it seems that it is impossible to avoid the issue of means and ends simply because people clone to achieve a goal or purpose. The preset goals and purposes of cloning predetermine the very future of the clone, which deprives him or her of many basic human rights, such as the one previously discussed, the right to ignorance (the right to create your own future).

6. Parental Responsibility:
A human being by biological definition is a being who comes into existence from two parents. Both parents participated in the procreation of a child, therefore, both feel biologically, morally, and socially obligated to support the child. Cloning destroys this participation of reproduction from the beginning. This raises the question: to what extent is the other parent ready to hold responsibility for a child that is not biologically his or her own? Because cloning uses the female as a surrogate mother, the mother is more likely to treat clone as a daughter/son; but fatherhood might be eliminated. The father may not take responsibility for the clone because it is not his child genetically/biologically speaking. There is also the single parent issue in which cloning devalues humans by depriving the clone two genetic parents. George J. Annas said: “using the bodies of children to replicate them encourages all of us to devalue children and treat them as interchangeable commodities.”

7. Identical Twins
Supporters of therapeutic cloning say that cloning is a natural occurrence. In several instances in nature organisms reproduce by a process called fission. This is quite similar to therapeutic cloning. An example found in nature is the earthworm. If a single earthworm is cut in half, two viable earthworms result, both with an identical genetic make-up. In regard to human beings, a twin is something natural. However, there are two types of twins, monozygotic and dizygotic. Dizygotic twins result from the fertilization of two eggs. These twins are not identical. Identical twins come from the very division of the cell itself. Although they are very similar, and almost identical, they still have different fingerprints. Is a clone just a time-
delayed twin of the donor of the DNA? Even if the inserted DNA comes from the father, the mitochondrial DNA will be from the mother. The “emptied” cell contains the majority of the cytoplasm. Mitochondria are found in the cytoplasm. Therefore, the information (genes) found in mitochondria will be provided by the donor of the “emptied” cell. Thus, both of the parents will be contributing to the life of the clone and the clone will not be a true time-delayed twin of the DNA donor.

8. The Loss of Functionality of Males
The traditional way of procreation is a social, cooperative one; it requires a sperm and an egg, or male and female. This is how humans are able to reproduce themselves. Cloning challenges our own ideas of procreation. In cloning, a male is not required because somatic cells are not sexual, so women do not need a sperm for fertilization. Cloning works on the multiplication of the cell, not on fertilization. In regards to females, cloning seems to be unable yet to undermine the need of women, simply because in cloning we still need a surrogate mother to carry the fetus to its full term.

9. The Cloning of Extinct Species

Animals survive because elements of living are available to them. The environment is supportive to them. If they die, then an uncontrolled environmental element is the cause of death. The natural instinct of survival is so strong, that for an animal to die, it must be caused by something that is out of their control, thus to clone an extinct animal is not an easy task, because it requires the bringing of many environmental elements for survival.

Cloning and Legislation

In the United States, human cloning has been debated for many years. There is still no consensus. Some states have laws related to human cloning such as Michigan, California, North Dakota, South Dakota, Virginia, Arkansas, Iowa and Rhode Island. These states prohibit reproductive cloning. The state of Missouri prohibits the use of state funds for
reproductive cloning. Legal regulation in Rhode Island does not prohibit cloning for research. In fact, in California and New Jersey human cloning for the purpose of research is legally permissible.

*Europe* has passed strict legislation on the subject and has derailed the advancement of this technology. The EU has determined that human cloning goes against the public order and morality. Thus, they have denied the ability of researchers to patent or continue their research. The three items that have been outlawed in Europe are the development of a process for cloning human beings, the development of changing the genetic makeup of human beings, and the uses of human embryos for industrial or commercial use. They have also banned therapeutic cloning because it could potentially lead to the same dangers of abuse as reproductive cloning.

In addition to Europe, Latin America also has a broad ban on research cloning. No Islamic nation has a policy on cloning. The United Nations has no consensus on its stand on cloning.

*In Islam* the legislation of cloning is still under study, most of the Muslim Scholars (Fuqaha’) don’t have final opinions. Cloning is an issue that falls under the unregulated benefits (al Masalih al Mursalah) which means that there is no definitive text to regulate its legal value, to search for the aspect of legislating it as legal or Halal is more difficult than finding reason of its prohibition, for example, cloning is prohibited (Haram) if the cell was taken from the mother herself because the baby will have no legal father, or if the cell was taken from a man other than the husband, because the clone can be considered as the son of the husband. Legally speaking, in Islam many difficulties arise from issues related to parenthood, inheritance, marriage and blood relationships.

**References**


Ibid: p. 338. This will give rise to the issue whether rewards and punishment in the hereafter are physical or non-physical. The teaching of Islam is that resurrection, at the Day of Judgment, is for both body and soul together.


David Elliott: “Uniqueness, Individuality, and Human Cloning,” p224 for further discussion

Brain Death: Ethico-legal and Metaphysical Challenges for Modern Islamic bioethics

Aasim I. Padela, Mohammed Amin Kholwadia, Ahsan Arozullah

Introduction

Modernity and its technological advances have forced traditional cultures and value systems to compete for relevance within the “free market” of ideas. Nowhere is this more apparent than in medicine where science and technology have rendered fuzzy what were traditionally clear categories of life and death. Although brain death as a clinical entity was first reported in Europe in the 1930’s, popularized in the United States in the 1960’s and subsequently written into legal statutes and variably adopted globally in the years that followed, Muslim societies and Islamic scholars still struggle to place brain death within their ethico-legal framework and tradition.

Beginning with the seminal debates on the whether neurological criteria for death were permissible within Islamic law at the Islamic Fiqh Academy of the Organization of Islamic Countries (IFA-OIC) in the 1980s, Islamic scholars and Muslim medical experts have used the primary sources and subsidiary tools of Islamic law, Shar’iah, to examine brain death. Given that some form of neurologically-based criteria for ascertaining death is present in the legal statues of many Muslim nations, it can said that these efforts to bring make the Islamic tradition harmonious with modern neuroscience have been successful.[1]

However, translating brain death into the idiom of the Muslim juridical tradition raises multiple ethico-legal and metaphysical questions. Authors of the published juridical responsa (fatawa) have given scant attention to these more knotty and complex theological and metaphysical questions. Have Islamic jurists addressed or ignored the medical uncertainties surrounding brain death in their ethical analyses? Are the frames of debate used by legal scholars appropriate ones and true to the medical science? Reasons for the lack of scholarly examination of these issues are complex and unclear. For one, the authoritarian structure of society within Muslim nations may present an obstacle for open intellectual discourse and free debate. In addition, the paternalistic medical practice style within these countries may not allow for patient level concerns to be brought forth to Islamic scholars.[2] One could further hypothesize that given the globalization of medical education where medical practitioners are
predominately trained through medical curricula patterned on Western educational systems, Muslim physicians may see little conflict between the values of modern medicine and those of the Islamic tradition vis-a-vis brain death. Lastly, Islamic bioethical discourse suffers from a “silo problem” where medical practitioners, physician professional societies, academic Islamic scholars and traditional jurisconsults engage and attempt to reconcile value conflicts and ethical challenges with little cross-disciplinary input. As a result, published works of applied Islamic bioethics may not fully address questions of relevance, nor meet the practical needs of, medical practitioners and patients.

In this paper we outline some of the tensions that arise within the Sunni Islamic tradition from the acceptance of brain death. We start with a brief history of brain death and current trends and challenges within the definition for the medical community. Next we analyze the Islamic ethico-legal debates and arguments for and against brain death. Throughout our analysis we pose several questions that need to be addressed by future Islamic juridical councils in order to meet the needs of Muslim bioethicists, religious leaders, medical practitioners and patients.

**Brain Death**

**History**

Although initially described in the 1930’s, brain death was popularized in 1968 by the Ad Hoc Committee of Harvard Medical School. This group of scholars was led by Dr. Henry Beecher, known as the father of academic anesthesiology and renowned for his expose on the human abuses in medical experimentation. The committee’s charge was to determine the neurological characteristics of patients upon which sustaining life support was futile.[3] Importantly, they did not consider whether such a criteria was needed, nor which medical, religious or policy experts should define it, rather their practical motivation was to outline a “new way of diagnosing death.”[4] However, the committee’s report has been criticized as it does not, in fact, offer conceptual clarity on whether the criteria offers a *new means of diagnosing* death or rather provides a *new definition of* death. Further confounding the issue are Dr. Beecher’s interviews and lectures where he remained ambiguous as to whether he believed the loss of consciousness and personality should be equated with the death of an individual.[4] Nonetheless this landmark report heralded the socio-cultural construction of a “brain dead” individual.
Another area of controversy revolves around how much organ transplantation considerations weighed upon the committee’s deliberations. While medical advancements in transplantation science were being made at that time, and a prominent transplant surgeon was on the Committee, the report mentions transplantation only briefly. Committee member and historian Evert Mendelsohn and his student Gary Belkin note transplantation to have been a peripheral concern.[3] However others cite Dr. Beecher’s comments about hospitals having patients stacked up waiting for suitable donors to support claims that organ procurement was a major motivation for the committee. Additionally, the use of the term “brain death” as opposed to “irreversible coma” is argued to have enabled the cultural acceptance of dissecting bodies for still functioning organs. These opposing views can be reconciled in two ways; firstly, Dr. Beecher’s concern for facilitating transplantation could have been his own view and not the primary thrust of the entire committee. Secondly, Dr. Beecher held that brain death was the point at which continued medical therapy was wasteful but was also the precise moment when the potential benefit to others through experimentation (read transplantation) became ethically appropriate. Hence the pragmatic utility of the brain death criteria validated the construction of a “brain dead individual” but did not spawn it.[5]

This messy history regarding the clinical questions that led to the creation of brain death as a clinical entity, and the substantial questions that are debated today regarding brain death as a concept are key to our examination of brain death through the Muslim lens. The lack of conceptual clarity in the West may, or may not, have been deemed relevant by Muslim ethicists leading some to wonder if key ideas and concepts were lost in translation.

**Variability of Brain Death Criteria**

The Ad Hoc Committee advanced the concept of a brain dead individual as someone who demonstrates total unawareness to external stimuli, unresponsiveness to painful stimuli, absence of all spontaneous muscular movement, absence of spontaneous respiration, and no elicitable reflexes and described diagnostic means to ascertain whole-brain death.[6-7] Other experts, most notably those in the United Kingdom, confine brain death to brain-stem death, restricting explicit diagnostic testing to the brain stem only.[8-9] The advocates of brain stem death argue that although the brain stem is not where consciousness comes from “the brainstem holds the critical nerve centers that make brain life possible…in the brain stem lie the structures that wake us up, the sensors that allow us to hear (and) sense touch (and) taste.”
Furthermore “through the brainstem descend all the neural wires that move our bodies and...without a brain stem we could neither chew...nor breathe.”[8]

In 1981 the United States (US) President commissioned a committee to craft the Uniform Determination of Death Act (UDDA). Their aim was to standardize a legal definition of death across the US that was supported by the medical, legal and ethical communities. Accordingly the act was developed in collaboration with the American Bar Association, the American Medical Association and the National Conference of Commissioners on Uniform State Laws.[8, 10] The UDDA adopted a whole-brain criterion, signifying as dead any individual who has “irreversible cessation of all functions of the entire brain, including the brain stem.”[11] The act further specified that “a determination of death must be made in accordance with accepted medical standards” leaving the regulation and application of the clinical parameters of death within the purview of the medical community.[12]

Even though the UDDA attempted to bring uniformity in the legal criterion of death by not specifying the diagnostic means of ascertaining neurological death, discrepancies between American hospital policies in brain death are substantial and the variability in practice standards is a cause for concern.[13] Outside of the US the variability is even more prominent; there is no global consensus on which type of brain death, brain stem or whole brain, should form the basis of clinical guidelines nor which diagnostic tests should be utilized for either formulation.[1] The reader is referred to the following tables which illustrate different criteria and policies for brain death. Table 1 illustrates the whole-brain death criteria suggested by the President’s commission. Table 2 notes the practice guidelines for brain-death diagnosis offered by the American Academy of Neurology. Table 3 represents the United Kingdom Code which restricts brain death to brainstem death by testing for the absence of brainstem reflexes only.

For the purposes of the rest of the paper we will use the term ‘brain death’ to refer to whole-brain death and restrict our discussion to the criteria applied to adults.

Table 1: Proposal by President’s Commission for Diagnosing Death
An individual is dead who suffers:
I. Irreversible cessation of circulatory and respiratory functions
II. Irreversible cessation of all functions of the entire brain, including the brainstem
   A. Deep coma
   B. Absence of all brain stem function, including the capacity to breathe spontaneously
III. Absence of confounding factors
   A. Cause of coma unequivocally established and sufficient
   B. Heavy sedation, body temp <32°C, severe neuromuscular blockade, shock ruled out
   C. Sufficient observation to confirm irreversibility
      1. No clinical change for 6 hours plus EEG silence or no cerebral perfusion
      2. No clinical change for 12 hr
IV. Consultation with an experienced physician to confirm the diagnosis


| Table 2: American Academy of Neurology – Gold Standard Guidelines (1995)[14] |
|-----------------------------|---------------------------------------------------------------|
| **Coma**                    | Clinical examination                                          |
|                             | Evidence for cause of coma                                   |
|                             | Absence of confounding factors like hypothermia, drugs, electrolyte or endocrine disturbance. |
| **Reflexes**                | Absence of Brainstem Reflexes: Pupillary, caloric, or gag reflex responses |
| **Motor function**          | Absent Motor Responses                                        |
| **Test**                    | Apnea test                                                    |
| **Evaluation**              | Repeat evaluation in 6 hours but time period is arbitrary    |
| **Confirmatory Tests**      | These lab tests are only required when specific components of the clinical testing cannot be reliably evaluated |
Table 3: Diagnosis of Brain Death- The United Kingdom Code

<table>
<thead>
<tr>
<th>Preconditions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comatose patient, on a ventilator</td>
</tr>
<tr>
<td>Positive diagnosis of cause of coma (irremediable structural brain damage)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exclusions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary hypothermia (&lt;35°C)</td>
</tr>
<tr>
<td>Drugs</td>
</tr>
<tr>
<td>Severe metabolic or endocrine disturbances</td>
</tr>
</tbody>
</table>

3. Tests (should be repeated, 1982):
   - Absent brainstem reflexes
   - Apnea (strictly defined)


**Brain Death in the Islamic Tradition**

Within Sunni Islam, where religious authority is not vested in a single body, multiple opinions regarding the application of brain death criteria exist. Some consider whole brain criteria sufficient to consider an individual dead, while others accept the brain-stem criteria, and a few even repudiate the notion of brain death altogether. This plurality is held to be a positive feature of Islamic ethico-legal deliberation allowing the tradition to adapt to circumstance and context on both an individual and societal scale.

**Muslim Juridical Councils’ Opinions on Brain Death**

Various Islamic juridical councils took up the issues around brain death after the 1981 U.S. President’s Commission report. The discussions within these councils were largely framed by the pressing needs of organ transplantation. Hence, the validity or invalidity of neurological criteria for brain death were entwined with rulings on the permissibility or impermissibility of procuring organs from individuals whose respiratory and circulatory systems were stabilized with mechanical assistance.[15] A case in point would be that since there remains reticence to accept cadaveric organ transplant by prominent Hanafi jurists, in countries where Hanafi law is dominant the discourse on brain death has been limited.[16]
While the Shiite Muslim community represented by Ayatollah Khomeni allowed organ transplantation from brain dead patients in Iran as early as 1964, Sunni Muslims addressed these issues much later. In 1981, the Religious Rulings Committee in Kuwait indirectly considered brain death impermissible by ruling that an individual remained alive as long as one’s circulation and respiration continued even if mechanically assisted.[17] Yet its neighbor Saudi Arabia viewed neurological criteria for death with less skepticism. In 1982 the Senior Religious Scholars Commission permitted cadaveric organ transplant and allowed brain dead individuals to be organ donors.[18] Similarly Jordan accepted brain death in 1985.[19] While the formal position of Kuwait remained unconvinced of brain death, during a 1985 meeting of the Islamic Organization for Medical Sciences (IOMS) in Kuwait, Islamic scholars and medical scientists equated brain stem death with al hayat ghair al mustaqirr, unstable life within Islamic law, and allowed for removal of life support when brain stem death was declared. Yet, they did not equate brain death with legal death rather the official time of death to be when cardio-respiratory function ceased. In 1988 The Islamic Fiqh Academy of the Organization of Islamic Conference (IFA-OIC) judged whole-brain death to be legal death, and noted that Islamic law permits two standards for the declaration of death: 1) when all vital functions of brain cease irreversibly and the brain has started to degenerate as witnessed by specialist physicians 2) when the heart and respiration stop completely and irreversibly as witnessed by physicians.[17,20,21]

Islamic juridical councils in South Africa had conflicting opinions in 1994. The Majlis al-Shura al-Islami in Cape Town gave total jurisdiction of determining the occurrence of death to the physician community, thus when physicians state an individual is brain dead he is legally dead. The Majlis al-Ulama in Port Elizabeth on the other hand ruled that organ procurement from brain dead individuals is akin to murder, implicitly considering brain dead individuals to be alive.[20] In 1995 the United Kingdom’s Muslim Law Council ruled that determining criteria for death is the domain of medical professionals and brain stem death is sufficient to consider individuals dead for the purposes of organ procurement.[20, 22] Lastly, the Indonesian Council of Ulama have stated that legal death occurs when the brain stem ceases to function and irreversible breakdown of heart and lungs has began.[22]

With consideration of these varied rulings an Islamic consensus on brain death is lacking. Some equate brain death to cardiopulmonary collapse both being legal death. Others hold brain death to be a state between life and death where life support need not be continued, and still others reject the concept totally. Further confusing the issue is the lack of consensus,
and at times clarity, on which neurologic criteria; whole brain or brain stem is accepted or rejected.

In the next section we highlight some tensions that arise when the Islamic ethico-legal tradition assesses the use of brain death. Focusing on addressing these tensions in future deliberations may enhance dialogue on brain death within Islamic circles. We use the OIC-IFA debates as representative of the various juridical councils for our analysis. As the OIC-IFA is widely cited in the medical literature for Islam’s support of brain death the discussions are captured in accessible form for the medical readership.[15, 23] Before this analysis a brief overview of the clinical state described by brain death is necessary as proper conceptualization of the clinical state described as brain death is essential to framing ethico-legal arguments.

**Brain Death: A Misnomer?**

Brain death is defined as the *irreversible* loss of *all critical functions* of the brain. Ascertaining the presence of such a state rests upon three principal abnormalities: (1) severe coma of known cause, (2) absent brainstem reflexes and (3) sustained lack of spontaneous respiration. [Table 1] Great importance is placed on excluding conditions such as hypothermia that could confound the diagnoses or render the testing invalid. From attributing the coma to a known cause, to testing brainstem reflexes and conducting spontaneous respiration trials, each diagnostic test has an inherent error rate. Hence clinical policies, as illustrated in the Tables above, often recommend confirmatory testing. These confirmatory tests include testing for brain wave activity via electroencephalograms (EEG), ascertaining blood flow to the brain via doppler ultrasonography or radioisotope studies, and conducting further brain response tests through brainstem auditory evoked potentials or motor and somatic evoked potentials. In addition some centers mandate repeated exams at various time intervals to ensure correct diagnoses. Yet, as with all empirical observations none of these tests are 100% sensitive and specific.[8]

Therefore, the current ability to diagnose brain death represents an estimation of complete cessation of *all* brain functions without absolute certainty. The scientific community has demonstrated that some residual brain function may be present in individuals classified as brain dead. For example, the pituitary gland may continue to release hormones; the hypothalamus may continue to regulate body temperature in greater than 50% of brain dead individuals; in response to surgery, blood pressure changes regulated by the brain stem
are similar in brain dead and non-brain dead individuals; esophageal contraction mediated by the brain stem may occur in brain dead individuals; and some brain dead patients have even demonstrated a breathing response.[27-28] Furthermore, there are cases of brain-dead pregnant women giving birth.[29] As one expert has noted “there is…likely to be persisting function in some…proportion of the brain” in those classified as brain dead. [27]

In other conditions involving severe neurological impairment, such as persistent vegetative state (PVS), reported recovery of consciousness has occurred and traces of brain activity in individuals with PVS in response to physician commands noted by using newer techniques in diagnostic imaging.[24-26] Therefore future technological improvements may facilitate a more accurate determination of brain death.

Brain death formulations require that all critical functions of the brain cease based on the fact that one cannot ascertain complete brain failure with one-hundred percent accuracy. However, deciding which functions of the brain are critical to assess remains controversial. Some experts cite brain-stem functions as the critical functions of the brain while others argue for the brain centers associated with cognition and personhood. Aside from conceptually and clinically deciding upon the critical functions of the brain, challenges also arise with respect to applying the criterion of irreversibility. Since brain death generally leads to withdrawal of life support or at least limitation of care, a natural history of what is the final clinical state of brain dead individuals is wanting. While we do know that the prognosis of those who are declared brain dead is abysmal; that none will likely ever recover any semblance of consciousness, we do not know if certain functions of the brain may return.

It is important to note that while certain brain functions may continue or return within brain-dead individuals, brain death appropriately signifies patients who have an infinitesimal, if not nil, chance of recovery to a conscious state. To the best of our knowledge if continued on life support brain-dead individuals may survive weeks or months but eventually will have cardiopulmonary system failure. Although, brain dead individuals may exhibit spontaneous movement thought to arise from intact structures within the spinal column such as hip flexion, unilateral arm extension-pronation, and even complex body motions such as the Lazarus sign where the arms rise above the body and one may flex into a semi-sitting position, these motions are held to be responses of a dead brain.

In conclusion, brain death is a misnomer because the criteria do not conclusively signify that the entire brain and all its functions are lost irreversibly (dead). Brain death criteria provide prognostic rather than diagnostic assessment. It is difficult to ascertain from the juridical resolutions what the conception of brain death was for jurists. Evidence such as
analogizing brain death to a beheaded individual suggests that Muslim jurists equated brain death with total and irreversible brain failure.[23] We argue that such analogies may not be totally accurate, and wonder if a different conception of brain death would alter the rulings, are these important discussion points worthy of renewed discourse within Islamic deliberation?

Legal (Fiqhi) Tensions

Certainty of Medical Testimony

As we have seen explicitly in the OIC-IFA ruling jurists noted brain death was acceptable within Islamic law when “all vital functions of brain cease irreversibly and the brain has started to degenerate.”[23] Similar councils required multiple physicians to corroborate the diagnosis of either brain-stem or whole brain death, before declaration of death. These statements reflect the delegation of ascertaining death to the medical profession, as the jurisconsults welcomed expert testimony on brain death. However the question remains: what level of certainty did the Muslim ethicists require of medical experts? Did the Muslim ethicists understand brain death to be a prognostic diagnosis rather than a descriptive one? Were they aware that there may be residual brain function or perceptive and motive ability within the body even when brain death is declared? Is such a distinction important?

The question of what level of certainty of is required from specialists who determine matters of (scientific) fact is heavily debated within Islamic law, and highly contextual. To overturn normative prohibitions or to establish capital punishments a higher degree of certainty may be required than for establishing defects in merchandise. Islamic jurists also recognize the impossibility of mastering all the relevant sciences for every case presented to them; that requiring definite certainty of content experts can paralyze ethico-legal deliberation. Some legal scholars even call into question whether the historical formulation of the Islamic legal sciences gave adequate consideration to the myriad fields of knowledge and these experts propose a reconfiguration of the sources of Islamic law, usul al-fiqh.[23, 30] The proceedings at the OIC-IFA in 1988 lend insight into the issues around medical certainty.

The scholars who accepted brain death as permissible argued that in the absence of clear textual evidence (nass) or tacit consensus (‘ijma al-sukti) about the moment of death, its ultimate determination falls within the realm of juridical and ethical discretion (ijtihad). The moment of death is not determined by any directive normative sources but by the guidelines
of medicine and customary practice. From the perspective of Islamic ethics, death only requires indicators that meet the criteria of what Islamic scholars describe as dominant probability (ghalabat al-zann).

The responsibility therefore to determine when life ends lies with specialists, ahl al-takhassus, and they need only bring forth the best probabilistic evidence.[23] Proponents of this argument found support in the historical record of Islamic legal debates. One group of scholars found an analogy for brain death in Islamic criminal law. Criminal culpability decreased if the assailant killed someone who was already in an advanced state of injury bordering on death or whose clinical indicators suggested unstable life. Classical juridical debates led to the classification of two definitions of life: “stable life” (al-hayat al-mustaqrirrah) and “unstable life, hayat ghair al mustaqrir.[23, 31]

So if medical specialists testify with dominant probability that the vital functions of the brain have irreversibly ceased then continued life support measures are not required and brain death is legal death with all the ramifications thereof. Similar to the way Dr. Beecher at the Ad Hoc Committee justified using brain dead individuals as cadaveric organ donors, Islamic scholars felt that if some tangible benefit can come of these brain-dead individuals it is permissible to try to obtain that benefit. These scholars then seem to strengthen their position on the basis of public benefit, maslaha, a secondary consideration within Islamic law for declaring individuals brain dead.

Opposing brain-stem death at the OIC-IFA conference on the grounds of Islamic law, certain scholars invoked secondary sources and legal maxims and principles, qawa’id, in support of their argument. Citing istishab, the doctrine of presumption of continuance, these scholars claimed that definitive proof of death was necessary to declare as dead an individual who still has a heartbeat and intact respiration. They also invoked the legal maxim that “certainty is not eroded by doubt,” al-yaqin la yuzalu bi al-shakk. Since intact respiration and/or circulatory systems were seen as proofs for life within most schools of law, a new definition or criterion for death required certainty.[23] Practically, for this group brain death was not permissible as death proper but they did permit the removal of life support upon this diagnosis. Legal death occurred when cardiopulmonary collapse occurred thereby rendering most organs unusable for transplantation. purposes. This group felt that medical uncertainty rendered a new legal definition of death invalid.
While a debate on the level of medical certainty required for the formulation of a new definition of death several issues were left unaddressed. Is dominant probability needed about the prognosis of brain dead individuals or is it needed for diagnosing the cessation of all brain activity? Was it understood that variability existed around the world on which criteria to follow (whole-brain vs. brain-stem) and uniformity even from hospital to hospital in the same locale is not present.[13] Further councils would do well to clarify what level of certainty is required of medical testimony, on what particular question (prognosis vs. diagnosis).

Which sources and principles are used to frame brain death in Islamic law?

Proponents of Brain Death

After arguing that physicians need only dominant probability when declaring a person dead, acceptance of their testimony that brain death was indeed death proper became a formality. The jurisconsults shifted scope to be concerned with the moral considerations and obligations attached to brain dead individuals. Oft-cited within this discourse is the Qur’anic verse “…and whoso saveth the life of one, it shall be as if he saved the life of all mankind (5:32).” Using this verse as a basis, proponents of organ transplantation created a Qur’anic mandate to exert all effort to save another’s life. This creeping of a communitarian ethic into the juridical processes is analogous to the mode in which the Christian concept of agape was used within the Protestant Christian community such that organ procurement and subsequent donation was viewed as the embodiment of selfless love and sacrifice for others as opposed to an assault on the sanctity of the human body (as viewed by the Catholic Christian community).[32] Recourse to this communitarian ethic was substantiated through using the secondary consideration of Islamic law, Maslaha.

Maslaha or istislah, commonly translated as considerations of public interest or public utility, is the juridical precept that allows greater considerations about the higher objectives and purposes, maqasid, of the law to enter the deliberative processes. The types of considerations that can enter into the legal foray, masalih, are divided into three types: essentials or daruriyyat which cover the essential objectives mentioned above, the complementary categories or needs, hajiyyat, and the cosmetic improvements or tahsiniyyat. The essential objectives are five in number protecting life, religion, property, lineage, intellect/sanity with some scholars adding protection of honor/dignity as a sixth essential. The four schools of Sunni law accept the use of maslaha to protect the essentials, daruriyyat. [33-34]
Proponents of brain death note that saving life is promoted by the Qur’an by the aforementioned verse. Hence securing life should be the primary consideration during deliberations around brain-death. Brain dead individuals, they argue, will never regain consciousness and thus physicians need not continue life support on brain dead individuals whether seen as dead or nearly dead by Islamic law. However, there may be some benefit to be had from the still working organs of brain dead individuals, so why not procure them for the benefit? Since individuals are custodians and not owners of the human body within Islamic law those within the community with failing organs could benefit from the still working transplantable organs in brain dead individuals. On the basis of considerations of public benefit tacit approval of a brain dead state occurred. Subsidiary principles such as the living take precedence over the dead and securing benefit is prioritized over removing harm strengthened this argument. Interestingly physicians are integral to the entire debate. Medical experts are given leave to define a new analogue of traditional cardiopulmonary death, are absolved of continuing life support they deem futile, and based on their calculation of benefit to others from the still functioning organs in brain dead individuals allowed to continue life support to procure said organs.

While appealing such an argument is not without its problems. The use of *maslaha* is governed by certain conditions. Firstly the benefit must be genuine, conjecture at potential benefit is not sufficient for its use. Thus there must be a reasonable probability that benefits outweigh harm. The question about brain death then becomes a more specific one-- would a particular organ will be of definitive benefit to the recipient? Each organ is different in terms of rejection rates and longevity. Further transplantation of some organs “increases” the life expectancy of individuals and for others the benefit is to quality of life. More importantly for successful transplantation to occur one must take costly, and potentially harmful, medications that suppress the body’s ability to fight off infection and in this case suppress organ rejection. Some of these medications may not be affordable for certain individuals, thus are we benefiting a particular segment of the population? A question thus issues forth: Should *maslaha* be restricted to a general category of organs or should finer granular detail be used when applying this legal principle to brain death? Since, one effective cause for accepting brain death in Islamic law lay in its tie to organ transplantation, this is an important distinction to be addressed.

Lastly, the proposed benefit secured by using *maslaha* must not conflict with a principle or value that has been explicitly stated in the source-texts or upheld by ‘*ijma*. The
final condition may not be fulfilled either. Just as the Qur’an equates saving one life as saving all of mankind, it equates the killing of one life to the murder of all mankind. In the context of declaring individuals as brain dead we attempt to apply a criteria of death to individuals who may serve as organ donors specifically for the purposes of procuring organs. If organs were not needed one could easily allow the brain dead individuals to expire using traditional cardiopulmonary cessation. Unfortunately when respiration ceases and the heart stops the body’s organs quickly decay leaving them unusable for organ transplantation. Are we thus quickening a diagnosis of death or the benefit of others? This view was held by the Majlis al-Ulama in Port Elizabeth when declaring organ procurement from brain dead patients akin to manslaughter.[20]

Detractors of Brain Death

The detractors of brain death as legal death used the principle of Istishab as a basis for their argument. Istishab is one of the secondary sources of Islamic law which declares that facts or rules of law that have been proven to exist or not-exist in the past remain in that state until evidence determines a change has occurred. Hence the state of marriage is presumed to continue until a definitive declaration of divorce is noted and a missing person is assumed to be alive when gone missing. The presumption of continuance presumes things are in their natural state of existence and is operable when the higher sources of law fall silent. Hence it is called the “last ground of a fatwa.”[33] All four Sunni schools of law recognize the validity of Istishab to further the presumption of original presence (al wujud al asli).[33] Using this principle one could argue that since death here is not definitive, i.e. that while brain death patients eventually die the time period for expiration varies, one should presume the original presence of life until clear evidence of the physical manifestation of death occurs. A hint of this cautious approach is seen in the IOMS declaration that while removing life support from brain death patients was permissible, the official time of death was when cardiorespiratory function ceased. Hence they considered brain death as an intermediate state between life and death and not legal death as the OIC-IFA did. Further bolstering an Istishab-based argument is the legal principle of al yaqin la yuzulu bi shakk, certainty is not eroded by doubt. Here one could argue that brain death is a doubtful state and that death must be ascertained through unequivocal and certain means.

Additional arguments advanced by dissenters included the concept of human dignity or hurma. Used effectively by Mufti Muhammad Shafi, the late Grand Mufti of Pakistan,
against organ transplantation he argued that the human body deserved respect and should not be violated after death. The concept of *hurma* is well substantiated within the source-texts and this camp referenced *hadith* where the Prophet equated breaking the bones of the living to the dead and statements forbidding mutilation. By disallowing organ transplantation an effective cause for categorizing individuals as brain dead was removed. As far as the duty to maintain life support for those individuals who were brain dead it was a non-issue. Medical care is not mandatory to seek, nor obligatory to maintain, especially if futile. Another stream of argumentation is grounded in the legal principle that removal of harm takes precedence over bringing of benefit. Here potential harms included “early” diagnosis of death, impinging upon the dignity of the human body, potential organ trafficking, among others; the *maslaha* did not seem to outweigh the harm.

Moving from the legal principles and texts, another argument can be advanced based on the spirit of the classical opinions when ascertaining death. The classical jurists were very cautious in their approach to ascertain the occurrence of death. Within Islamic law multiple obligations and duties ensue once a person dies; a communal obligation to perform the funeral prayer and burial with haste, the ability for heirs to inherit from the deceased, a waiting period for the widow before she can marry, among others. Given the importance of these matters classical legal manuals list palpable physical signs such as rigor mortis as the determinants of death. If any doubt existed some jurists waited until the stench of body decay was present before commencing with burial and division of the estate.[31] As noted previously, proponents of brain death advance that these “classical” signs were always based on probability and were within the domain of physicians. Lost in translation within this argument is the ethos of the classical indicators. A cautious approach was the spirit of law when jurists chose indicators of death. While the specific criteria may have been the domain of the experts, the indicators chosen were recognizable to the laity. In brain death we have criteria that can only be ascertained by specialists. Furthermore criteria vary widely across the globe and adherence to strict protocols is wanting.[13] It is unclear whether this ethos is worthy of consideration by modern Muslim juridical councils.

These arguments against brain death are also not without flaws. *Istiishab* presumes continuity of a state, yet a change has occurred. A person who was previously able to move willfully and breathe by themselves can no longer do so thus a continuity of state argument may not apply. Further, one is not certain whether a brain dead individual is living nor if he is dead, and by virtue medical science is probability-based, *zanni*. So principles such as certainty
is not eroded by doubt, *al yaqin la yazul bi shakk* may be inoperable within respect to medicine

As medical science and scientific evidence has advanced over the past twenty years, Islamic juridical councils need to reassess the validity of brain death as legal death according to Islamic law. The arguments offered to accept or reject the new definition of death need further refinement. Which secondary sources and principles are operative and why has not been clarified by jurists. Similarly it is unclear whether jurists adequately understood brain death as a state where there may be residual brain functioning. In our reading of the positions statements and *fatawa* these important questions remain inadequately addressed.

**Conclusion**

Islamic juridical deliberations around brain death largely took place over 20 years ago and arguably were framed by concerns of organ donation. The Islamic experts who took up deliberation over brain death largely borrowed the *clinical* and *conceptual* definitions of brain death from the West. As these definitions have been transplanted in Muslim contexts, the Islamic rulings suffer from a lack of uniformity regarding the permissibility of brain death as legal death or as an intermediate state between life and death, in addition to ambiguity on whether organ procurement is permissible from one in this state. Furthermore conceptual clarity on which formulation of brain death (whole-brain vs. brain-stem) is most consonant within the Islamic tradition is lacking from the available juridical rulings. In order to meet the needs of Islamic bioethics consumers, i.e. Muslim physicians and patients, renewed discourse around brain death needs to occur in a multidisciplinary fashion.

**References**


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Using Fatawa within Islamic and Muslim Bioethical Discourse: The Role of Doctrinal and Theological Considerations- A Case Study of Surrogate Motherhood

Aasim I. Padela, Hasan Shanawani, Mohammed Amin Kholwadia, Ahsan Arozullah

Introduction

Studies of *fatawa*, or legal opinions issued by Muslim scholars based on the Islamic ethicolegal structure, are the cornerstone of Muslim and Islamic bioethics studies. Islamic bioethics researchers utilize fatawa as source texts for study, clinicians use fatawa to understand the permissibility of medical interventions, health policy advocates use fatawa as the basis for constructing health policy options, and Islamic studies experts use fatawa as source texts from which to derive and prioritize principles for a global Islamic bioethics. In all of these and other disciplines, regardless of methodology, the focus is on analyzing fatawa. “For the study of twentieth century Islam it is almost the only channel through which Muslim scholars’ attitudes and legal opinions can be learned.”[1]

Why use Fatawa as a basis of bioethical discourse?

As we study ethical issues that arise in human biology and medicine, bioethicists, clinicians, historians and sociologists delve into the principles that a fifth of the world’s population use to guide their daily lives, form the basis of their ethical constructs and normative goals, and drive their actions. Yet, the study of Islam and Muslims is complex. The study of Islamic doctrine and principles of the faith, legal theory, and bedrock ethical values as the basis of an “Islamic” bioethics is substantially different from the observation and study of activities of Muslims, including the writing of fatawa, and what we might refer to as “Muslim” bioethics. We believe that Islamic bioethics is the realm of religious studies scholars, philosophers, and theologians, in other words those who have content expertise within the religion. Muslim bioethics, on the other hand, is the subject of study of social scientists, historians, documentarians, and others who study the practice of those who adhere to Islam on societal and personal levels. Both those who study Muslim and Islamic bioethics attempt to answer the question: how do Muslims reconcile questions of faith, normative goals, and medical science? While one might argue that there is substantial overlap and only subtle differences between Islamic and Muslim bioethics, we believe the distinction to be important.
More immediately, it is relevant to the question of using empiric data (written fatwa) to draw conclusions about a global faith and to construct an ethical framework that ostensibly represents the normative goals of that faith (Islamic tradition).

It is with this in mind that we observe the efforts of bioethicists to construct yardsticks against which bioethical theories can be scrutinized, compared, and assessed for adequacy. [2] Islam as a bioethical theory, when measured against such yardsticks, may seem to come up short. This is not because Islam has nothing to say on such matters, nor is it because Islam provides no framework. Rather, it may be because efforts to answer the question, “what is Islamic bioethics,” is made more confusing by attempts at the study of Muslim bioethics.

At first glance there is much appeal to the use of fatwa as primary source material to study Islamic and Muslim bioethics. Until recently, no contemporary scholars have attempted to present a single comprehensive construct of bioethical theory based on Islamic theology or doctrine. Thus, given the complexities and challenges of the study Islamic Jurisprudence, the study of fatwa is much lower-lying fruit.

As with any methodology of research and method of inquiry, the study of fatwa has its own implicit dogma, challenges, and pitfalls, and as source-texts they contain implicit assumptions and provide areas of intellectual emphasis. In particular, this paper focuses a potential pitfall of failing to remember and acknowledge the underlying framework of Islamic legal literature and its elements. However, in our review of applied and academic Islamic bioethics materials we find little analysis or critique of the study of fatwa as a methodology.

These methodological issues of using fatwa are, in all likelihood, well known to those who study Islamic law. However, there are other writings of Islamic and Muslim bioethics where the methodological issues we raise would be less obvious. For example, physicians, bioethicists, and policy experts, in their effort to serve Muslims, may not be as cognizant of the shortcomings inherent to this method of inquiry. A few examples are enumerated below:

Medical Literature

In a study of published works on Islamic bioethics in the medical peer-reviewed literature, we found that most works were written by authors (and, presumably, for audiences) who have little working knowledge of Islamic law or, for that matter, bioethics in general. [3] Further, length restrictions in medical journals may preclude the discussion of religious constructs and analyses of ethical frameworks. Given the authors, the readers, and the
restrictions on attempts to publish works on Islamic bioethics, the use of short, to-the-point answers on immediately pressing religious questions has much appeal. With that in mind, those looking to share Islamic bioethics to a general medical audience would find fatwa appealing to their needs.

**Bioethicists**

Greco-Roman traditions, along with those of Christianity, have traditionally dominated the cultural sphere of bioethics as a discipline. However bioethicists are increasingly interested in faith traditions and other sources from outside Western traditions as population diversity increases. In their efforts to form meaningful comparisons, bioethicists look to fatwa as ready explanations of “what Muslims believe” or “What Islam says” about a particular bioethical question.

**Healthcare practitioners and professional societies**

Muslim healthcare practitioners, and the professional societies of which they are members, may seek fatwa in response to a spiritual crisis and a need to manifest an Islamic identity within the medical sphere. When facing complex ethical challenges clinicians may desire to know which practice is condoned, and which prohibited, according to Islamic ethical values. As traditional jurisconsults are those charged with helping the laity to understand the requirements of Islamic law, and more specifically those actions that will bring about sin and reward, physicians and other medical professionals seek their guidance in person or through published fatwa. Furthermore those who practice in pluralistic multicultural healthcare environments may seek fatwa not in response to a personal inquiry but rather as an intellectual exercise posed to them by working in hospital ethics committees or policy-making organizations dealing with cultural challenges and obstacles posed by Muslim patients. The need for a quick pragmatic response required by a medical audience not necessarily trained in Islamic ethics and law, may be easily served by fatwa and this group may view fatwa as the preeminent, if not the only, source of Islamic bioethics.

**The risks of using Fatawa as source material**

When fatwa studies are examined as a source of inquiry for applied religious bioethics, the assumptions that form the framework of their methodology might become essential in ways that are less important in academic circles of discourse. Scholars of applied religious bioethics need to be mindful of the process that leads to the development of a fatwa,
and fundamental aspects of Islamic law and Muslim legal scholarship that might get little, if any, attention in the study of fatwa as an academic enterprise.

Perhaps the most important of the fundamental questions of how and why fatwas are developed are what we believe are implicit and unspoken assumptions that are part of Islamic legal discourse and might (or might not) lead to the writing and declaration of a fatwa. We pose several questions to those who, in their pursuit of bioethics research, use fatwa as source material:

1. Does the fatwa literature represent the entirety of thought and discussion surrounding a question of Islamic Bioethics?
2. If the answer to the above question is no, what, then, is missing that should be considered when studying fatwa?
3. What are the implications and/or consequences of the study of fatwa without consideration of the two above questions?

We believe these questions need to be considered by researchers to best inform the questions they ask through their study of fatwa. Without a clear identification, comprehension, and analysis of these three questions, those who review of fatwa, might miss essential elements of Islamic ethico-legal theory.

The Definition of a Fatwa

Before proceeding to our analysis of the methodological concerns of using fatwa to build Islamic bioethics, defining a fatwa is necessary. Fatwa (singular fatwa), are legal opinions rendered by Islamic jurisconsults in response to a religious ethical or legal question, and have two essential aspects. First, they are derived with consideration of, and using the techniques of argument within, the sources of Islamic law and ethics, usul al-fiqh. Second there are formulated in the context of a question, thereby are tied to the social, cultural and legal circumstances of the questioner. Fatwa are therefore quasi-religious documents that inform Muslim behavior and public policy. [4] In the absence of modern case law derived solely from an Islamic juridical framework, fatwa are given increased importance within Muslim communities, particularly those within non-Muslim majority nations. For the seeker of the fatwa, different opinions allow a personal choice as to which fatwa has the stronger argument and sets the seeker’s heart at ease. In practice however, the seeker often consults a particular expert whose opinion he trusts, and will consider it binding on the subject. The choice of
jurisconsult is frequently based on adherence to a particular school of jurisprudence, cultural background, or content expertise. There are multiple reasons why the questioner may seek a fatwa. Inherently the questioner is faced with an ethico-legal challenge and unsure of the “right,” or Islamically condoned, course of action. Alternatively, the questioner may find the normative ruling on the matter to be wanting in terms of nuance, appropriate considerations, or not be specific to one’s situation.

Of import is that since fatawa are highly contextual they may not represent the normative Islamic legal ruling, *hukm*. With that in mind, fatawa may represent exceptions to the rule, where secondary contextual considerations allow for deviation from normative legal injunctions. Furthermore since fatawa are by their nature addressed to specific questioners and context, they are not timeless. Any myriad of changes in context necessitate reexamination of the fatwa, and they are not automatically portable from one person to next, one society to the next, nor from one time period to another.

**Shortcomings in using fatawa:**

There are several shortcomings in using fatawa to develop a framework of Islamic bioethics without consideration of unmentioned assumptions. Fatawa that are misunderstood, without the requisite understanding of them, may be rejected. As mentioned above, Fatawa are tied inextricably to *context*; the study of religious assertions made in fatawa out-of-context may lead some to compare conflicting fatawa in a spurious fashion. Fatawa outside of their context may fail to make rational sense. Fatawa attempting to answer one question, when used to consider a different question, might seem disconnected from the needs of contemporary Muslim society.

The converse of the previous concern is equally true. The consideration of fatawa out-of-context may lead to wholesale acceptance of such a fatwa, even in instances where it might not apply. The failure to consider scholars and adherents of differing legal traditions, historical periods, or other key elements that make up the context of a fatwa might lead to their inappropriate application to questions they do not attempt to answer. While previously the result is a seeming disconnect, here the result is application of rules and principles that, while they may seem to be relevant and applicable, may have key elements where other important Islamic principles and laws might take precedence.
Another serious shortcoming of the sole study of fatawa is that this methodology of inquiry fails to examine the Islamic legal tradition in its entirety. Ethical frameworks and theories are judged based on their clarity, coherence, comprehensiveness, simplicity, power, and practicability. [2] The effort to build an understanding of bioethics, or any construct of Islamic tradition, by relying on fatwa literature alone, ignores essential elements of Islamic tradition. As a result, when compared to other ethical frameworks or theories, frameworks of Islamic law derived solely through a keyhole of fatawa may seem to lack critical elements of other ethical constructs.

From our caveat about the study of fatawa, a question arises: what, if anything, unites Islamic tradition, available writings from Muslim religious scholars, and Muslim bioethics? We believe that the study of Islamic bioethics must be grounded within Islamic law and be cognizant of the assumptions of Islamic legal theory.

Our assumption about the relationship between Islamic law and Muslim bioethics raises a second question: If we hold that the study of bioethics should be grounded in Islamic law and jurisprudence, then how does one measure the quality of a fatwa in that light? As we construct bioethical principles and theories from the writings of Muslim scholars, how should Islamic jurisprudential theory and processes be used as a yardstick against which the quality of fatwas should be measured? Although this question is beyond the scope of this paper, we make a brief attempt to answer in order to give the reader an understanding of our goal: to best understand current writings on Muslim and Islamic bioethics in the light of fundamental aspects of Islamic Law.

The third question alluded to earlier is the main focus of this paper: If there is indeed a bigger picture of Islamic law that might be missed as we focus on fatawa for case study, what are we missing? We believe we can best study Islamic bioethics and observe Muslim bioethics by first studying the fundamentals of Islamic tradition and principles. But we are not sure the reverse is equally true; that we can obtain a thorough understanding of Islamic tradition and principles by first studying observations of Muslims and their writings. The reason is that scholars of Islamic tradition and law, as in other intellectual disciplines, discuss their field with assumptions in mind that are unspoken, and therefore, not available to the studier of their writings and statements. [5] These assumptions in Islam might include fundamental aspects of faith and belief or commonly accepted prohibitions and requirements. These assumptions, while fundamental to the discourse, and study, of Islamic Law and
bioethics, are not routinely discussed in fatwa. It is the failure to consider these assumptions, we argue, that lead to the risks we enumerate above. If Islamic tradition is the basis of bioethics, then anything other than the study of Islamic tradition will lead to conclusions about bioethics that are potentially specious.

Perhaps the most important unspoken assumptions that are part of Islamic jurisprudence are those that focus on the theological assumptions or doctrine (aqidah) that are part of an Islamic scholar’s thought process. These assumptions inform the relationship of man to the Divine and the understandings of man’s role in ethicolegal inquiry and are so fundamental that many potential fatwa never materialize because questions prompting potential fatwa are dismissed due to theological precepts that may be explicitly stated to the questioner but not written into formal fatwa. Alternatively, these theological considerations are so implicitly part of a legal scholar’s theory that they are excluded when speaking to a particular audience, say, their students. As a result, information of import to an academic, non-devotional circle aiming to build a framework for Islamic bioethics is not explicitly offered by the fatwa.

In this paper, we will examine the impact of not considering theology as a foundation for the dispensing of fatwa by comparing and contrasting various approaches to an Islamic bioethics question, that of permissibility of surrogacy for infertile couples. We do so with several premises:

1. That in their role of answering ethicolegal questions, fatwa serve ultimately to facilitate the public and private worship of God by acting in consonance with His decree. Therefore, fatwa and their study should be preceded by theological and doctrinal considerations.

2. That Islamic bioethics as analyzed through the study of fatwa is inextricably linked to Islamic Law, and that principles of Islamic belief are at the foundation of Islamic (if not Muslim) bioethics.

We hope to convince the reader that fatwa are best analyzed when doctrinal understandings of God (Maturidi and Ashar’i as examples) are considered and both Muslim theologians and jurists are involved.
An analysis of a Fatwa question: a comparison of published analyses

Infertility impacts 10% to 15% percent of all couples and has been an area of intense interest in bioethics. Muslim scholars are debating mechanisms of treating infertility in light of recent advances in reproductive medicine. The Islamic tradition has historically placed importance upon fertility. A couple’s ability to conceive a child considered a key part of a healthy and successful marriage: “Men and women are legally justified to not enter or break a marriage on the based of infertility, and Islamic law strongly defends this right.” [1]

Definition of surrogacy

There are several solutions depending on the cause of childlessness and infertility, and discussions of treatments for infertility are socially, legally, and ethically complex. For the purposes of this paper, we focus on surrogate methods [6]: In partial surrogacy, a couple will commission a woman to be artificially impregnated by semen from the husband. The surrogate will then carry the pregnancy to term, and upon birth, give the baby away to the soliciting couple. In this case, the child will have the rearing father as the biological father, a rearing mother, and a biological/birth mother. In a complete surrogacy, the commissioning couple will undergo IVF. The embryo created by IVF is transferred to the surrogate woman who gives the baby to the soliciting/rearing couple at birth. In this case, the biological parents are the rearing couple, and the surrogate is the birth mother. This paper focuses on the technique mentioned above.

Arguments and discussions over the permissibility of surrogacy in Islam.

Published Ethico-legal Perspectives

We focus on ethicolegal arguments around surrogacy posed in three sources authored by scholars in different fields who all used fatwa as the basis for their study.

1. Muslim physicians under the aegis of the Islamic Association of North America who sifted through fatwa to produce a consensus Islamic bioethical “policy” statement. [7]

2. An Islamic studies expert, Prof. Vardit Rispler-Chaim’s who researched modern Egyptian fatawa. [1] This is a paradigmatic example of a well-researched and thoughtful review of contemporary fatawa from one locale.

3. A comparative law student who used published fatawa to explore Islamic legal questions regarding surrogacy, [8]
Medical discussions

At the 2003 annual conference of the Islamic Medical Association of North America (IMANA) a session was held about Islamic bioethics and surrogacy. In the written remarks during that session, a variety of viewpoints were expressed around the treatment of infertility as a disease and the permissibility of various methods of treatment. The discussion ultimately played a role in the development of an ethics primer entitled *Islamic Medical Ethics: The IMANA perspective*, which included a section titled “Assistive Reproductive Technologies and Surrogacy”. [7] This section derived from the discussion at the meeting, from work authored by Dr. Fadel, a gynecologist and the current chair of the IMANA ethics committee, and writings by Dr. Hathout, a prominent Muslim physician and ethicist.[8-10] The ethics committee statement refer to various fatwa in general and according to the author and ethics committee chair, was informed by multiple existing fatwa.

The relevant section from IMANA reads:

“…We believe infertility is a disease and the desire for a cure by an infertile couple is natural. However, in Islam, for an action to be permissible all means of achieving that action are also to be pure…We believe in the sanctity of marriage and the importance of preserving lineage. The Qur’an says: ‘…It is He who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things).’…IMANA holds the following positions:

1. All forms of assisted reproductive technologies (ART) are permissible between husband and wife during the span of their marriage using the husband’s sperm and the wife’s ovaries and uterus. No third party involvement is allowed. We believe in the sanctity of marriage and that the death of the husband terminates the marriage contract on earth, thus frozen sperm from a deceased husband cannot be used to impregnate his widow. 2. Sperm, ova and embryo donation are not permitted. 3. Additional embryos produced by IVF between husband and wife can be discarded or given for genetic research, if not to be used by the same couple for a future attempt. 4. Surrogacy involving a third person is not permissible, as we believe that it exceeds the boundaries of the marriage contract and lineage. 5. Use of fertility drugs is permissible. An infertile couple, if they can not find a permissible cure, can care for an orphan or someone else’s child as their own within the
Islamic guidelines of adoption, not the legal adoption as practiced in the United States.” [7]

In the other two works the *fatawa* cited, and the subsequent analysis for and against surrogate motherhood, focuses on the questions of lineage, whether the act of surrogacy is equivalent to adultery, and the potential commoditization of motherhood. In summary, the major reasons noted for the prohibition of gestational surrogacy are:

1. Surrogacy using a third party, in any form, is believed to be a form of *zina*, or unlawful reproduction out of wedlock. When a fertilized egg is implanted into a surrogate mother’s womb, these scholars consider that act to be a form of unlawful procreation.

2. Third-party donation confuses issues of kinship, descent, and inheritance by mixing the relations and confusing lines of descent. This assertion was detailed within Rispler-Chaim’s work where she notes that because of potentially dubious lineage of the child and relationship between child, mother, and father, the child might end up with the status of *laqit* (foundling), or worse, a *walad zina* (bastard child), with all of the stigma associated with each epithet.

3. Lastly, scholars argue that surrogacy commodifies motherhood. This law journal article emphasized this point and suggests that process of surrogacy in non-Muslim countries is simply a contractual relationship. “The *primary* objection [in Islam] is that it results in the commodification of motherhood (emphasis added). Motherhood is reduced from a value to a price. As a result, children become a commodity and the process of procreation becomes a business enterprise.” [11]

**Surrogacy: the view when theological perspectives are considered primarily**

We could find, in a limited search, no statements that took issue with the theological questions raised by surrogacy. We thus asked Shaykh Mohammed Amin Kholwadia, to consider the question of surrogacy, particularly in response to the three discussions above. Shaykh Amin is a traditional jurisconsult, *mufti*, who serves as the director of Dar-ul-Qasim, an Islamic post-graduate educational institute in Chicago Illinois. He has expertise Islamic law receiving his formal authorization to issue verdicts and teach the subject from Qadi Mujahidul Islam Qasmi through advanced studies at Imaarat Shariah in India. In addition, Shaykh Amin has advanced training in Islamic theology and theosophy, having studied under Dr. Allamah Khalid Mahmood, a current justice at the Supreme Court of Pakistan, and under
the late Shaykh Muhammad Meeran of Sabeelur Rashad seminary in Bangalore, India. His studies encompassed the ethicolegal theories of al-Ghazali, Ibn Arabi, Shaykh Sirhindi and Shah Walliullah of Delhi.

In his response, Shaykh Amin stated that the fatwa cited “ask the wrong questions,” and that they utilize the legal arguments without adequate consideration of the theological frame wedded to the legal mechanisms employed (Kholwadia, 2009). He noted that before framing the legal argument for, or against, gestational surrogacy one must ask: Is infertility a disease, or is it a human fate written for some people in this world? Addressing this theological question a priori governs whether or not one deliberates ethicolegally. Shaykh Amin’s reply makes the following commentary:

“I see the following fundamental theological problem. Not all couples in human history have had children. The Quran acknowledges this fact in no uncertain terms:

‘To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He bestows (children) male or female according to His Will; “Or He bestows both males and females, and He leaves barren whom He will: for He is full of Knowledge and Power.’ Surah al-Shura (42): 49/50…There are other phenomena where Islam does not allow Muslims to override Allah’s will and thus they do not have the mandate to earn what is contrary to Divine will. If one does, that would be tantamount to fighting with God and become guilty of not submitting to His will.” [12]

Shaykh Amin’s reply continues by raising a previously unasked question: If some of us are destined to not have children, what efforts might be seen, by God, as an attempt to usurp God’s authority in this matter? Using suicide as an example of an unacceptable response to human suffering, his reply asserts that some efforts towards pregnancy are acceptable and others not. He next draws upon examples from the Prophet’s life, that teach Muslims that some may not have the destiny of having children. The Prophet himself did not exercise all “available” options, including marrying again, and accepted his fate when his only son died in infancy.

The debate among Islamic legal scholars over potential social implications of a child being a walad zina or laqit is one that, to the mind of Shaykh Amin, might also be dismissed.
ab initio: “Having children is not a legal right [before God] for every couple who get married. Pursing the idea of conceiving children is a prerogative of every couple. But whether a couple begets or does not beget should not be left for the legal society to decide as society cannot perceive what is sinful or not sinful in the hereafter. Practitioners of Islamic law must ascertain whether or not there is sin or not in any act – as that is there primary agenda. (emphasis added) The reply concludes that “the permissibility of gestational surrogacy does not even exit the gate of theological permissibility.” [12]

Key Differences in approach and implications to Islamic Bioethics

The fundamental difference between the fatawa in circulation and the statement from Shaykh Amin is the question of God’s dominion, and the rights of creation before their Creator. The IMANA statements clearly state, and writings based on other fatawa strongly imply, an assumption of infertility as a disease, the “child product of insemination is not a sin”, and the right of the infertile to seek all “acceptable” means to cure it. [1,7,8] The arguments that follow simply ask the question of which methods are acceptable, and potential consequences of certain approaches. The consequences enumerated are societal: stigma, commodification of family relationships, confusion of lineage. But when infertility is regarded not as a disease, but as a human condition imposed by God, the discussion changes in important ways. The relationship between man and God is now a primary consideration and the challenge to God’s dominion, akin to the challenge to God’s plan by people who commit suicide, becomes immediately evident. In this light, when the implications are profound for the life to come, the societal consequences in the here and now are trivial and pale in comparison.

The question of acceptance of, versus interference with, God’s decree is not unique to Shaykh Amin’s statement, and is briefly mentioned in Chaim’s work. A review, however, finds little on the question of God’s decree. A study of these fatawa might lead one to the conclusion that Islamic scholars are unconcerned with the question of God’s dominion. Such a conclusion would be inappropriate. On the contrary, we hold that the studier of fatawa should ask why it is not included in the fatwa, and what other fundamental elements remain unspoken.

This omission from fatawa leads us to another question regarding the potential for some responses to ethico-legal questions never coming to light. Instead, the jurisconsults may dismiss the question theologically in the privacy of a questioner-respondent (mufti-mustafiti)
relationship, and the public would thus have no access to a written fatwa. This is illustrated by the Shaykh Amin’s deliberative process which may have never come to light had we not asked for a “formal” fatwa for citation purposes. As a result, those studying fatwa as a source for Islamic bioethics would not be informed by questions and consideration that lead to the “silent” fatwa dismissed theologically. They have no access to the theological, metaphysical, or philosophical frames that may help to inform Islamic bioethics. Worse yet, they may consider, wrongly, theological assumptions and presumptions to be of little importance in the question at-hand.

The opposite is also true: It may be that jurisconsults writing fatwa assume theological principles that to them are so fundamental as to not need explanation to a particular questioner, whom they know to share their views. In this example, the jurisconsults who omit theological concerns from a particular fatwa (in this case, surrogacy) may have asked and answered those concerns, and moved beyond them to subsequent questions that ultimately led to their fatwa. But the studier of fatwa nonetheless falls into a trap of erroneous conclusions as they try to build an understanding of a bioethical question from a specific fatwa.

Ultimately, it might be argued, all the cited discussions on surrogacy go the question of *halal* versus *haram* treatments for infertility. Further, the fatwa ultimately fall on the question of whether it is allowable to pursue a child through means that take the biological/medical therapy outside the marriage bond. At first glance, the reader might conclude that there exist no clear differences between the statements. And for the average adherent to Islam, they might be right. But we are asking a different question: as we attempt to build a working understanding of “what is Islamic bioethics,” does the additional monograph substantially add insight that we previously did not have? Put another way, we repeat our questions asked at the beginning of this paper:

1. Does the fatwa literature represent the *entirety* of thought and discussion surrounding a question of Islamic Law?
2. If the answer to the above question is *no*, what, then, is missing that should be considered when studying fatwa?
3. What are the implications and/or consequences of the study of fatwa without consideration of the two above questions?
Certainly, the answer to our first two questions are an emphatic “no,” and that a review of fatawa that presume fundamental questions about fate and theology, might miss important insights that are central to Islamic theology, law, and bioethics.

As for the third question: we can only speculate but offer some thoughts to consider. We would guess that all fatawa profess an effort towards improving one’s standing before God and in the afterlife. With that said, we wonder if fatawa that look more closely at social implications may miss addressing the question of one’s standing before God. We might erroneously infer from a fatwa’s focus on the challenges of society (such as that of questions of lineage or stigma associated with being a laqit) that the act of third-party surrogacy has no significant theological implications.

Finally, there exists the argument that in fatawa that do not refer to any question of God’s decree, the question is actually asked and answered albeit implicitly. This claim speaks directly to the concerns we outline, and the risks of not considering those unwritten assumptions and beliefs that are essential parts of the fatwa-giving. Those with expertise and insight into the legal theory and mechanisms may be able to infer the unwritten assumptions, yet the ground-level consumers of fatawa, i.e. medical practitioners, social scientists, may not have the requisite knowledge-based to infer from, or read into, a fatwa.

Discussion

We have shed a light on an important example of what might be missed when the study of Islamic bioethics focuses on fatawa as source material. We believe the consideration of theology in all discussions of Islamic bioethics deserves special mention because it refocuses the discussion of bioethics in Islam to normative goals as being based in God and the Divine, rather than more profane general normative goals. With that in mind, there may be other considerations missed by the sole study of fatawa, raising a more general question of what is commonly known in medical research and literature as publication bias [13]. Publication bias denotes a state where the published literature is systematically unrepresentative of the population of completed studies. Simply put, when the research that is readily available differs in its results from the results of all the research that has been done in an area, readers and reviewers of that research are in danger of drawing the wrong conclusion about what that body of research shows. In medicine this can have dramatic consequences where ineffective or dangerous treatments are falsely viewed as safe and effective. We argue, that in a study of selected source material that is considered (or asserted) to be representative
of the field of inquiry, we need to consider and evaluate the same threats to research validity. As we consider the vast extent of Islam and Muslims around the world as an object of study, we might wish to evaluate the methods of study in addition to the subject of it.

Publication bias is a potential threat in all areas of research, including qualitative research, primary quantitative studies, narrative reviews, and quantitative reviews. It has come to prominence in recent years with the widespread adoption of the use of systematic review and meta-analytic methods to summarize bodies of research. As methods of reviewing medical ethics become more systematic and quantitative, it might be possible to empirically demonstrate the existence of publication bias and to evaluate its impact. Thus, a problem that was viewed hazily through a limited review of Muslim literature might come into sharper focus under the lens of a more deliberate approach to the same question that suggests outward expressions such as fatwa are necessary, but not sufficient, to best understand “what Islam says” on a particular subject.

Reason vs. Tradition in Islamic Jurisprudence and Ethics

It may be that not all people interested in Islamic and Muslim bioethics agree with our initial premises regarding the central role of theology in Islamic bioethics. Given that so much of contemporary bioethics focuses on the development of normative goals, one might consider that Muslims might be able to develop their own bioethical frameworks based on a shared sense of Muslim values rather than traditional thought. However, the debate over this question is nearly as old as Islam itself. Since the time of Prophet Muhammad’s demise a considerable debate has ensued over the role of intellect (‘aql) in matters of religion. Specifically, with regards to the questions of good and evil, right and wrong, and the framework around which ethical theories are built, a dispute exists over what questions can be answered using only wahi, revelation, and what can be determined by rational thought.

Methodology and Islamic Bioethics: Implications for Western-Christian bioethics

As we undertook this effort to evaluate the study of Islamic and Muslim bioethics, we wondered if the existence of implicit and unspoken assumptions is unique to Islam. If not, we ask whether the relatively closer relationship between Western religions and academia, where the two have a longer history of interaction and dialectical development, has allowed for assumptions within inquiry to become explicit. As we look through “Western” eyes at Islam, perhaps we should re-examine not only our current state of bioethics, but also the methodologies by which we do so.
Obviously, such an undertaking goes beyond the scope of this paper. However scholars are increasingly considering the study of bioethics as a discipline distinct from bioethics itself: consider Methods in Medical Ethics as an example. [14] We believe that the study of bioethics will benefit from a more rich and interdisciplinary approach that includes provocative questions about our own “culture of bioethics.” Importantly we believe that the normative goals of humanistic or secular bioethics, oriented towards societal outcomes, differ greatly from those of religious bioethics, which ostensibly focus on goals of the afterlife. Further, we argue, there are places where rational thought, which is a cornerstone of other methods of ethics, may have little place in Islamic bioethics.

This raises a host of questions, all beyond the scope of this paper. What key differences, such as the once we point out above, exist between secular and religious bioethics? What differences exist between Islamic and other faith traditions within religious bioethics? How do these differences inform our understanding of regionally predominant norms of bioethics? And how can these differences best by studied and understood, and what are the shortcomings of any particular method of study of Islamic bioethics? It is these questions, starting with the questions raised by using fatwa as source material that we hope to grapple with in our study of Islamic bioethics.

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SECTION III

BIOETHICAL POSITIONS IN SPECIFIC ISLAMIC COMMUNITIES OR IN CERTAIN COUNTRIES
Bioethics, Human Rights and Islam in Multicultural Societies

- A Case Study on Serbia

Hajrija M. Mujovic-Zornic

Abstract

Contemporary societies consider the human health one of the highest values and the basic human rights’ most important object. This article tends to point at certain bioethical principles and practice that may assist with providing health care within an appropriate ethical context for Muslims who are, particularly in many European countries such as Serbia, a religious minority. Namely, in multicultural societies health care for each member of the minority population should mean adequate and care of a good quality. It becomes the question of democratization of health care system and, in a way, positive discrimination concerning religious believes and cultural models of one population group. On one hand, health care providers should be more sensitive when dealing with needs, dignity and privacy of each of the Muslim patients. Only this could constitute an adequate and active health care. On the other hand, there is a general tendency of strengthening right protection, achieving higher medical standards and ethical rethinking, which all result in the decreasing influence of religious view (Islam) relating on everyday medical practice. In conclusion, this article explains the existence of a specific interaction between legal and ethical decisions, e.g. in healths care, in cases it may occur.

Introduction

Similar to many European countries, Serbia aspires to be a multicultural and a multi-religious society in the true sense of the word. It also tends to build civil society within a certain respect for human rights, dignity and individuality. The same aim applies to members of the Islamic religion in Serbia and in neighboring area and some republics of Former Yugoslavia (Bosnia and Herzegovina, Montenegro, Kosovo, Macedonia). Members of Islam in Serbia are nationally declared as Muslims and Bosnians, while one part also includes members of the Albanian people (majority of them are Muslim) and Roma people (minority of them are Muslim). Religious freedom and rights have been guaranteed in the past through relevant
legislation and recently confirmed by the new Constitution of Serbia (2006).\textsuperscript{2} Observing Muslim population in Serbia, due to some historical reasons it does not represent, from the sociological aspect a homogeneous population, in terms of equal religious behaviors, even with quite differing cultural, educational and geographical context. Here we should emphasize that there are evident nuances within the entire population, but the component of Islamic religious feelings, tradition and customs, are surely the elements that connect them. This is especially engaged in sociological research and research in the field of oriental studies and philosophies, so this is not of a strong relevance for discussing issues related to bioethics and human rights. From the legal point of view, the questions of respecting religious freedom and its relation to patients’ rights in the context of effectiveness and legality of the health care providers, are of an essential significance at this point. This question becomes more important when it includes permeation and some sort of mixture of ethical, religious and legal (imperative) rules of conduct. In practice, it often happens that illegal issues or dispute cases do not exist when these rules are combined and compared, when there is no collision in their implementation. The case study of Serbia as a multicultural society can also show the specific interaction of these rules.

**Medical Ethics, Islam and the Law**

Despite the diversity of medical ethics (bioethics) views between the Islamic countries and those countries that are not Islamic, which is often emphasized by some authors, common and universal values are derived from the period of the Hippocratic Oath.\textsuperscript{3} These are values inherent to each ethical consideration in medicine, and could not be in any sense less or more "ethical". Neither can Sheriat law, if it is to aspire to become a positive legal system, nor the history, ignore the general development of human rights through international documents, and the consensus regarding the highest international standards. However, this is how it should be, and what we should insist on, since it is all about universal values, human life and health. Besides, many codes of ethics have been formulated in the line with the World Medical Association code (1948) and it also states in its preamble that follows it in Islamic bioethical laws. Regarding the legal solutions from Islamic sources, current issues and problems that have appeared in the context of present Muslims' medical issues are being constantly discussed.\textsuperscript{4}

Generally speaking, theoretical aspects point to medical ethics as one of the sources of medical law. Legal theory makes a distinction between formal and autonomous sources of
medical law. Formal would be statues, laws and other state regulations. Autonomous are, first of all, rules of medical ethics. The law is the minimum of ethics. Right there, when the law ends, ethics begins. However, today, even with ethics being much more important, the law has a stronger sanction, and only the law is applicable for what needs to be established. In such a way, the law has a more significant and a protective function. The law always helps when ethics is not sufficient and when traditionally exclusive ethical relations are changing due to a loss of, or compromised confidentiality. It can be most generally said that medical ethics are always present as far as it comes to treating individuals through a humane approach, and not as an object of certain medical procedures. Human rights are becoming present through the concept of patients’ rights. Part of these rights is the standards of human dignity and mental integrity, which is a framework for understanding religious feelings and needs of every person.

Aspects of regulation (ethical, professional and legal) are indeed very important. In the past, because of a specific subject and purpose, the medical profession was regulated only by ethical principles, which had established the standards for medical profession. Rules of medical ethics are nowadays mostly collected in a form of professional self-regulation, in so-called codes of medical ethics. In a modern society, there is a tendency of making ethical rules parts of legal norms. Needs for adopting new laws in the area of biomedicine are expressed very strongly.

In its practical aspects, in everyday health care practice, teaching includes different situations of making medical decisions. Ethical rules are of the biggest relevance in the domain of confidentiality and options of medical treatment, in concrete medical procedures, where the legal status of the patient is evidently significant, because the protection that he needs has a more distinctive function. The relationship between medical law and medical ethics, or the framework of their rules and norms, could be in some situations disputable in terms of a medical decision. There are three possibilities: 1) there is no legal norms (case of lacuna iuris or customary law, for example in Serbia where there is still the case of euthanasia); 2) an ethical norm is equal to a legal norm (for instance, principle of informed consent); 3) an ethical norm is different from a legal norm (cases when medical treatment is refused, or suicide, and a hunger-strike by the prisoner); the legal norm here prevails, because of a stronger sanction and forcible function of the law; it is a majority opinion that in numbered situations even unjust laws should be accepted, with the need for initiation of necessary legislative changes.
The biggest problem lies in how to make concrete and specific ethical requirements. Comprehensive definitions of the correct behavior by a physician from the standpoint of medical ethics, is not completely possible to be done in advance. What the physician should do in a concrete case also cannot be predetermined by ethical norms. A physician evaluates and decides each time in a given situation, guided by basic ethical principles, which essentially serve as a code of conduct, and usually are not to limit the medical treatment. Due to missing casuistry, sometimes the "empty space" and subjectivity in the decision making may appear. From this may arise a different judgment in the same medical procedure, but that is the risk that is ultimately common for each norm.7

Explaining particular cases from medical malpractice, as a case of penal, civil or professional liability, has also an ethical dimension, partly because members of the medical profession in Serbia find these cases to be mostly unfair. In fact, the current situation in Serbia is a consequence of ignoring the real relationship between medical ethics and medical law. Discussing practical cases would seem like self-learning component of the course which should be developed to strengthen ethical reasoning and judgment. Members of the medical profession in Serbia are obliged to respect the general ethical principles and to perform them in the provision of the Code of professional ethics, as a main document in their branch organization. Many of these principles are incorporated in several laws. Ethical obligations normally become transformed into legal obligations. Knowing that The Muslims are an ethnic minority in Serbia, there are no legal situations where the rules of Sheriat Law could be officially applied. However, it is not allowed that the health care of Muslim patients be diminished consequently. Basic rights are guaranteed without any excuse for everyone in Serbia, by the provisions of The Constitution of Serbia as the highest legal act.8 Human dignity is untouchable, and everyone shall be obliged to respect and protect that value.9

Health care for children, pregnant women, mothers on maternity leave, and elderly persons, shall be financed from the public budget, unless it has already been provided for from some other source, in accordance with the law. Health insurance, health care and establishment of health care funds shall be regulated by the law.10 Religious freedom and rights are also part of the fundamental rights included in the Constitution of Serbia.11

In relation with the applicable code of professional ethics of the Medical Chamber of Serbia, a provision against any discrimination has also been adopted, that covers discrimination on religious grounds12. Acting in accordance with the main medical ethics principles, the physician should respect the dignity and rights of every patient.13 Related to this, it is also
important to mention the earlier Draft Code of medical ethics from 2003, which was made by an interdisciplinary group of experts. According to the draft version, it includes the provision on religious support to the patient who is going through a medical procedure. At the patients’ demand, the physician should allow the use of spiritual and moral support within the religion of the patient's choice, and whose work is permitted on the territory of the Republic of Serbia14.

Ethical committees in medicine constitute one form of institutionalized interaction between medical law and medical ethics, and the committee members make decisions regarding different issues in medicine. Practice of ethical boards in Serbia shows that this first ethical instance is primarily engaged in approving submitted protocols and monitoring medical research, while other aspects related to clinical practice are only marginally present.15 New legislation ensures that each health institution is responsible for establishing ethical committees. It also includes new competencies in monitoring and analyzing the ethical part of the relationship between health professionals and patients, especially in counseling the patient on the proposed medical measures. Committees should contribute to the creation of habits in respecting and implementing the principles of professional ethics, while health care activities are being carried out. They may have a preventive and a consultative role, if "the ethical case" is recognized or turned into a "legal case".

Health Care, Religious Believes and Human Rights

Regarding the situation in the Serbian society- when it comes to health care, it can be concluded that protection of health often does not have a specific relation with religious believes of individuals, neither with those of persons who have declared themselves as members of the Islam religion. Controversial cases in health practice have only been provoked during the treatment of Jehovah’s Witnesses who traditionally reject surgery treatment and blood transfusion. Particularly complex and difficult case may arise when a minor child appears as a patient, and when it is needed to make the right legal qualification of existing abuse of parental rights. Another example of certain problems in providing health care in Serbia occurs in exceptional situations with some members of the Roma population due to their nomadic lifestyle and lack of personal identity documents, health cards or domicile. There have also been some registered cases where a Roma has referred to discrimination in access to health care, especially with the emergency services and hospitalization.
Although the Muslim minority in Serbia enjoys all the rights related to health care without any selectivity and discrimination, there are still some situations where one could raise the question whether the health care system sufficiently recognizes their health needs. On the line of contemporary meaning of ethical principles in medical practice, the health needs are considered important determinants in multiethnic societies.\(^{16}\) For example, in some of the country’s areas, Muslims are the lower class of the population, and sometimes lacking health insurance, except when they are the beneficiaries of social aid by the state.

Health care Act of Serbia (2005) included basic rights of citizens in the role of patients, and consumers of health care services. The principle of equitable health care is affirmed in the provision that prohibits any discrimination based on race, sex, age, nationality, social origin, religion, political or other believes, financial status, culture, language, type of illness, mental or physical disability.\(^{17}\) Concerning legal regulations, a more comprehensive solution in the Balkans region was offered in Bosnia and Herzegovina. One of the provisions in Bosnian Health Care Act (1997) speaks about the protection and rights related to religious believes: a patient has the right to food in accordance to his own religious belief during the entire hospitalization care in a health institution, if it is not in contradiction with the prescribed medical diet; the patient also has the right to perform religious rites during this time in a special and predetermined place, including the right to equipment in the morgue with the undertaking religious rites, separated for each confession.\(^{18}\)

Many important issues in health practice could become relevant as well as numerous ethical questions. Many of them are at the same time legal and ethical issues. For members of the Islamic religion, it may be more problematic, for instance, if a medical treatment or surgical intervention is to happen during the Ramadan fasting. Besides, females that are covered by a scarf (hidzab / nikab) due to religious reasons, can refuse gynecological or other medical examination by a male physician. These situations are usually solvable by applying the law about the rights of individual patients to a free choice of practicing physician, but the case remains arguable when it comes to an emergency, and hence to a medical intervention or a surgery by a particular surgeon.\(^{19}\) According to a traditional custom and believes of the Muslims in Serbia, there is a known male children circumcision surgery (snet). In rural territories conditions, there are still rare situations where pregnant women are left without necessary maternity care to give birth at home, on their demand. One of the cases, which are recently registered, was about the request of a young woman who wished to undergo the hymen surgery. The point she made was that she belonged to an extremely religious and
patriarchal family, which still preserved the old custom that girls need to get married chaste. All the cases mentioned here evidently show certain life features of the Muslim population, through the perception of their health needs. The Serbian health care system mostly meets those needs, because each of the described medical interventions or services can be regularly provided. However, some of them are in the system of self-payment, since they are not covered through the compulsory health insurance fund.

Another example of a specific behavior that is expressed by the Muslim patients for a long time was opposing by the relatives to subject a deceased person to an autopsy. Such a kind of attitude is common for Serbian citizens of other religion as well. The ground of family’s objection is keeping the integrity of the body of the living and the dead persons, which is an important principle of Islam, even though no direct command or statement in the Islamic jurisprudence concerning post-mortem examination was found. Theory also speaks about the need to balance between two known principles: keeping the integrity of the body and justice. In order to seek the integrity of the body, justice has to be weighed. Justice is the most valued principle in Islam, and it is the question how to reveal the cause of death in order to provide justice to the victims, when a post-mortem examination becomes a necessity?20

Solving the autopsy dilemmas concerning Muslim population in Serbian practice, the starting point was that according to the rules of Islamic faith, a dead body is holy and untouchable.21 It would be prohibited to desecrate the body in the autopsy procedure, while examining the cause of death. However, the problem appears if the autopsy is legally mandatory. Health institutions were facing a situation when they apparently violated the law, because of the pressure and explicit demands by the relatives. The coincidence was that the same health institutions had insufficient financial resources and lack of medical specialists (pathologists), and this became a sort of their alibi for not performing the needed procedure. Those mishaps were contrary to the restrictive provisions of Health Care Act (1992), which was in recent times replaced by new law, and the irregular practice continued over the years.22 Appreciating the attitude of relatives of a deceased person in Muslim population, similar situation has occurred in Bosnia and Herzegovina, but with a more specific regulation by the law 23. When a patient dies in the hospital, the director may decide at the request of family members or a guardian of the deceased, that the autopsy is not to be performed. The situation is clearer regarding the Sheriat Law. In general, an autopsy is a common way to educate the members of medical profession through an established practice worldwide. Sheriat law allows autopsy with the inform consent by the relatives of the deceased. It is only the matter of some specific
cases like murder, poisoning, or doubt about the cause of death, when autopsy should be performed in accordance with the law, and disregarding the will of relatives. Thus the autopsy in Islamic Law is allowed only as an exception.\textsuperscript{24}

The New Health Care Act of Serbia (2005) preserved the old solution and listed mandatory autopsy conditions in the same manner, without any possibility for an exception. The health institution is obliged to perform autopsy in the following situations: 1) when the cause of the patients’ death is unknown; 2) the patient died within the period of 24 hours from the start of the medical treatment in hospital care; 3) the patient is an infant who died in a health institution immediately during the treatment after birth; 4) at a request of the physician, performed on the patient who died; 5) at a request of the physician to determines the cause of death by the competent authority; 6) when it is of a special importance for the health of citizens, or required by some epidemiological or sanitary reasons; 7) at a request of the court who proceeds; 8) at a request of a close family member of the patient who died; 9) if death occurs during the diagnostic or therapeutic procedures.\textsuperscript{25} From an interpretation of this article it is evident that relatives of the deceased patient have the right only to seek an autopsy, and not to oppose it for any reasons, even if it would be a religious one. In connection to these issues are the patient rights aspects, in the situations when the opposition to autopsy was expressed during the life-time, and when it has a form of self-determination. Patients’ will opposed to the autopsy should be respected with an exception of mandatory cases. Current Serbian practice still shows many cases in which a mandatory autopsy failed to be performed.\textsuperscript{26} On one side, there are recent analysis of the court records that found that in 147 cases of the negligent treatment an autopsy was performed only on 36 % of the deceased patients 27. On the other side, a large number of citizens informed that autopsy is well known in medical practice from the early times to present day, and they accept the exceptions from the law and their believes regarding the autopsy are changing and developing.

\textbf{Concluding Remarks}

Interaction between ethical and legal rules in countries where Muslims are a minority should always be in the context of a better understanding of health care.

Health care providers should be more sensitive when solving the issues regarding dignity and privacy of each Muslim patient, since only this could constitute an adequate and active health care; influence of religious believes from this aspect should be more present and respected.
There is a general tendency of strengthening the right protection, achieving higher medical standards and ethical rethinking, which all have the consequences in Islamic religious views becoming less obliging within the every day medical practice yet with a justified presence and influence with regard to overall policy and decision making.

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Ethical problems related to the management of young immigrant detainees with psychiatric disorders in Italian prisons

R. Nardello, Noaman Beji

Introduction

The number of foreigners in Italian minor prisons is quite large and it varies in relation to the geographical location. First of all, we must clarify a few points: a minor prison is a judicial system of detention for people between 14 and 21. Before the age of 14, teenagers cannot be put on trial in Italy. In the minor prison of Palermo, 40-50% of the detainees are people coming from Tunisia, Morocco, Algeria, Egypt, but young people from Southern America, Albania and Romania are present too. Albanians and Romanians usually move to eastern Italy. The immigrant detainees are often illegal refugees or children of a first generation of immigrants, who easily deviate from law in order to survive. Most of the crimes committed are drug pushing, robbery, burglary, and less commonly, sexual and physical abuse. I am going to introduce the complex system of ethical problems connected to the relationship with such young people, especially with those affected by psychiatric problems. Quite often the personal data provided are false, from their first name to the family affiliation, and their homeland. The educator, who has the first contact with the children, or the psychologist, and sometimes the doctor who visits the convicts, often asks for a psychiatrist’s intervention. A look at the different populations of detainees may provide useful suggestions. In fact, for what concerns illegal immigrants we must divide them into two groups: those who are with an adult, and those who travel alone. The ones accompanied by an adult, who usually is their parent or a relative, initially do not experience the detachment from their country traumatically, because of their positive expectations. Subsequently, they are victims of social eradication, due to the impact with the new cultural system and the difficult encounter with the host country's customs. The adult person who should be the point of reference often loses such a function, because he shares the same difficulties and problems. This results in a search for an external help; the child cannot blame the adult’s standpoints, and therefore, a gap is created, and the young person may become a criminal. The most problematic group are the
children travelling alone to Italy; they pass through several traumatic experiences, not least
the lack of affection and the shock of a long travel, of the arrival and the clash with a new
culture. The main difficulty is the lack of communication due to the foreign language. The
children of a first generation of immigrants have troubles with their social identity, they
cannot be helped by their parents, who have a too low cultural level; the children have to
follow an unfamiliar educational system, which seems almost impossible. Some parents try to
merge the edge; others complain about their extreme effort, moving to another country, to
guarantee a better future for their children. Quite often children do not accept such a situation,
and pretend to be similar to Italian teenagers, even stealing a piece of clothing to get a status
symbol. The most common psychiatric disorders in minors' prisons are anxiety, depression,
adaptation difficulties, post-traumatic stress disorders, personal disorders, psychosis, drug
addiction, and self-damaging behaviors, which are often a means to express sufferance.

Alcohol and drug addiction are quite frequent because western countries are more tolerant,
both in the control and the attitude to such a habit. Actually, the sense of failure, the refusal of
a disappointing reality, and the need to adopt a similar identity to the western teenagers’, may
be the real causes of such addictions. Once young immigrants get into prison, they experience
shocks, which eventually may turn useful for the acquisition of linguistic skills and for a sense
of detachment from negative facts and drug addiction. Detention can be a means of control
and of self-awareness in order to be able to plan a better future; in the end, young inmates
may get along well with Italian teenagers.

Ethical problems related to the psychiatric activity in detention contexts

Setting

The psychiatrist works in a challenging context, which can provoke psychopathologies or
psychological problems into subjects with a problematic history before the detention. Only in
a few occasions the context plays a key role in their pathologies.

Basic human rights at risk

In the penitentiary the respect of human rights is not always guaranteed, because of a prior
choice for social security and defense.
Awareness of the psychiatric intervention effects

The psychiatrist’s opinion, in such a context, may interfere with the detainee’s status, and obviously with the social security. It is important to keep in mind that the convicts know how to exploit the role of the psychiatrist or of the psychologist to give a positive image of themselves during the trial.

Social and cultural implications

The cultural implications of the psychiatric intervention are a very touchy topic; any cultural misunderstanding must be avoided through an accurate interpretation of the foreign cultural codes. During Ramadan the patients refuse any treatments, to observe the fast; a compromise is then necessary not to spoil the positive relation created. A frequent asked question is: “can I say the salet, (a prayer) if I take the medicine?” The opinion they have of the head-shrinker and the regulation of the detention system is another central question. Moreover, foreign patients are more reluctant to get psychiatric treatment than Italians. Teenagers rarely get into close relationship they have never experienced before, and avoid getting friendly with somebody who is considered the doctor of insane people.

Personal morals

People working for the penitentiary system must overcome their personal morals, keeping a sort of necessary detachment; their occupation does not allow them to give personal judgments on the detainees, even in case of brutal abuse.

Knowledge limitations and personal intuitions

The penitentiary system puts to trial any psychiatric scientific convictions, especially the ones referred to what the patient will be after the treatment.

Being open to criticism

Frequently, the request for alternative detention (rehabilitation centers or foster care) raises harsh criticism and attacks. This implies social responsibilities and a moral burden. Foreigner teenagers are not easily admitted to alternative systems of detention, mainly because they do not have enough financial resources to be properly legally defended, and they cannot be supported by their families. (1,2,3)

Conclusions
Trying to combine the convict’s needs and his rights with the community’s, is not a safe way to protect the detainee, nor the society. Supporting an alternative detention, when no factual motivations are evident, is a threat to the social security.

The question of the teenager’s life after detention is controversial. When he is not a minor prisoner any more, but he is subdued to law as common adult criminals, he loses any protection, and points of reference; crime seems the only possible perspective. Then, have the psychological and social rehabilitation failed?

The maintenance of social order and the management of secure detention should be combined with a proper psychiatric and psychological treatment in the perspective of a real placement into society. We should remember that we are dealing with people and not with clinical cases. The first contact of the teenager with the psychiatrist needs the presence of a cultural mediator. Taking into account that the personal data can be false, we must make sure of their age, before starting any medical treatments; psychotropic drugs medication needs parental approval. When the parents are not available, because they are still in their homeland, it is a very complicated situation.

A psychotropic drugs abuse is often required by the state of agitation of these foreign detainees that cannot speak Italian; moreover, the psychiatrist must keep the patient under sedation when dangerous arguments arise.

Later anxiety and disturbance may be due to the traumatic prison experience. To many psychiatrists is more difficult to talk to the patient in an inappropriate setting than treat him with drugs.

Once the symptoms are clear, the choice of the correct moment to start a psychiatric treatment, in accordance with the patient’s motivation to be treated, is an ethical problem, which can be complicated by the institutional structures’ needs. An appropriate consideration was made by Manninen (2006) “the direct manipulation used to treat a normal state of sufferance, modifies the growth eliminating useful symptoms”. (4)

The justice system measures may negatively interfere with the psychotherapeutic treatment, when the patient is sent to a rehabilitation centre, or freed before the treatment is finished; sometimes, it is continued by another psychiatrist, but this contributes to the sense of disorder the patient feels.
Finally, we can define that an ethically acceptable health system, is when the individual’s needs and the social necessities are balanced.

Ethics inside a psychiatric team implies a fair relation between operators and their functions.

I think that a correct ethical atmosphere must be established between all the people involved, doctors, psychiatrists, cultural mediators, and their patients. The respect for their different minds, their different cultures, or life styles, is a pivotal point if we want them to continue their emotional experiences freely, including their past experiences and their imagination. Another important question is: “can ethics be taught, or is it one of the personal traits that cannot be enhanced?” In such a wonderful job we do, I think that being is quite more important than trying; I do believe that a good therapist must be a good person!

References


The influence of Islam in the use of Assisted Reproduction Technologies (ART) in the United Arab Emirates (UAE) and how it shapes the decision-making processes of Emirati families using modern technologies.

Shirin Karsan

Introduction

In an era of easier medical access and more medical centers providing assisted reproductive technologies (ARTs) in the Middle East and worldwide, Muslim families are finding many opportunities to pursue having children, as is desired by their culture and traditions. This is particularly apparent in the United Arab Emirates, a society that is pronatalistic. With significant access to ART centers in the UAE now, Emirati couples facing infertility (medically defined as the inability to conceive a child after twelve months of unprotected and appropriately timed intercourse) are hopeful to fulfill their desire to have children by undergoing treatment through In Vitro Fertilization (IVF). Islam poses no restrictions for the use of modern ARTs, as long as there is no third party involvement in the IVF process. Couples find much comfort knowing that the IVF process is halal, (i.e. acceptable) in Islam. To the advantage of local Emiratis, they also have significant financial support from their government to pursue this goal of having children. This paper discusses the ethical concerns that arise about the level of understanding of the impact that the IVF and ART treatments are having on families who go “Treatment Shopping”. To date, very few studies have been conducted on assisted reproduction in the UAE. Generally Islam permits any form of ARTs, as long as it is within the institution of marriage, the husband and wife submit their own respective sperm and oocyte(s), and transfer the fertilized egg back into the same wife. This has emerged as a path to take for many couples that face the challenges of not bearing children naturally. For so many, IVF enables the ultimate goal of childbearing which is an integral part of a family particularly in Middle Eastern culture, where the ability to procreate seems to be directly related to the dignity and social esteem accorded to both the husband and wife. The Emirati culture, which is predominantly Sunni Muslim, also emphasizes childbearing as a successful and viable outcome for a marriage. Not having children can be perceived by a woman as a threat to her marriage, since the husband may take another wife, as is considered socially and religiously permissible by Shari’ a (Islamic Law) in the UAE. This study indicates that the infertility factor impacts the physical, emotional and psychological
health of both men and women primarily because many in the UAE look upon assisted reproduction as unnatural and therefore unacceptable. In western countries, Muslim families may have access to more open discussion of health education, which ideally should be accessed as early in the reproductive years as possible. In the UAE these issues often are addressed after marriage, at which point, the men feel effete if found infertile due to societal and cultural pressures. Hence they feel that assisted reproduction is a quick solution for their problem.

Method
A qualitative study was conducted in the UAE from December 2009 to April 2010. Approval to conduct the research was granted by the Al Ain District Ethics Committee. The research process involved recorded interviews of Emirati families who came to infertility clinics seeking treatment, primarily for the purpose of having children. Seventy-two (72) patients were interviewed, either as couples or male and female patients independently, resulting in a total of sixty-three (63) interviews. (Table 1) Upon consent, the process involved anonymous interviewer-administered questionnaires and recorded interviews. The questionnaire comprised of closed and open-ended questions. Participants’ information, consent and questions were provided both in Arabic and in English. A database was set up using the Statistical Package for Social Sciences Program (SPSS). This SPSS program was also used for the analysis for continuous and categorical variables. Permission was granted to interview patients from all seven of the Emirates of the UAE in both government (Tawam Hospital, Al Ain) and private infertility centers (Dubai and Abu Dhabi). Interviews were held in a private room provided by each facility. Women and couples were interviewed during their visits to the treatment centers. Men (unaccompanied by women) were usually interviewed after their treatments were completed to minimize disruption to their treatment schedules.

Results:
The mean age of the participants ranged from 18-57 years. Given the generally high level of education (Table 1) the interviews were conducted sufficiently in English and Arabic without the need for interpreters.

Demographic Data of study population:

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Mean</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>32.4</td>
<td>18-43</td>
</tr>
<tr>
<td>Male</td>
<td>32.1</td>
<td>23-57</td>
</tr>
</tbody>
</table>
Participants were asked how many times they would attempt IVF or any ART treatment. (Chart A). Their responses were categorized into three options with “Maximum times allowed,” (six IVF cycles recommended and restricted in a government hospital center) which was differentiated from “until successful” (treatment resulting in successful childbirth) since nearly 60% of the sample considered going beyond the maximum limit. Many cited verses from The Holy Quran and referred to Prophets Yahya and Zakariya: “O my Lord! Grant unto me from Thee a progeny that is pure: --"O my Lord! How shall I have a son, seeing I am very old, and my wife is barren?"; stating that they too had faith in Allah, and would be similarly successful eventually in having children, that Allah will bless those who believe and persist: “So We listened to him: and We granted him Yahya: We cured his wife's (Barrenness) for him.”

In some cases, infertility treatment was sought as early as three months after marriage. Almost every couple had supplicated a “Salaat Isthikhaara”, a prayer for guidance from Allah to make the right decisions, which provides a great sense of comfort and support to the individual in feeling that their pursuits are under the guidance of Allah, and will not be undertaken in vain.

**Chart A:**

<table>
<thead>
<tr>
<th>Gender (%)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>59</td>
</tr>
<tr>
<td>Male</td>
<td>30</td>
</tr>
<tr>
<td>Couple</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Education/Work (%)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>University</td>
<td>61</td>
</tr>
<tr>
<td>Secondary</td>
<td>33</td>
</tr>
<tr>
<td>Primary</td>
<td>6</td>
</tr>
<tr>
<td>Employed</td>
<td>65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Length of Marriage (years)</th>
<th>7.2</th>
<th>1.00-38</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length Trying for Children (years)</td>
<td>4.3</td>
<td>0.25-18</td>
</tr>
</tbody>
</table>

**Chart B:**

The number of times IVF will be Support through the IVF process attempted
This study found that couples facing this difficult path are willing to go above and beyond the recommended six ART cycles of over a two-year period for treatment. In addition, couples that are not successful in that two-year timeframe will either travel abroad or go to private clinics in the UAE to seek assisted reproduction, sometimes multiple times. Resources are not a factor since the Emirati government covers almost all related costs for their health care and infertility treatment, even if it means the couple wishes to travel abroad to seek treatment not available in the UAE. The choice of IVF is often a very private matter between the husband and wife, and, out of respect to the husband, the wife does not usually seek outside emotional support even if she needs it. Rather women reported relying heavily on the comfort of their faith. 75% of the patients kept their infertility a secret between the husband and wife (Chart B) and did not share details with anyone else in their lives. Interestingly, in a strong culture of extended families and sometimes multiple wives, this is looked upon as a reason not to divulge such a sensitive, private issue of infertility for fear that they will be judged as inadequate couples. While in this study, it seemed apparent that couples were very supportive of each other through the difficult journey, they did not have a supportive system available within the treatment centers, and about half felt that their faith was sufficient support for them, while the other half felt they would certainly benefit from counseling and support services. Approximately 70% of the husbands also mentioned that their infertility was God’s punishment for his prior actions and so carried this guilt with him.

**Discussion**

“For millions of couples around the world, the inability to have children is a personal tragedy. For a significant proportion of them, the private agony is compounded by a social stigma, which can have serious and far-reaching consequences.”

Due to the absence of a national infertility registry as yet in the UAE, it is difficult to know the exact prevalence of infertility.
However, the increase in infertility centers and the increase in the number of patients seeking treatment indicate that both female and male factor infertility, primary, secondary, as well as of unknown factors, is a significant issue. Culture and religion are strong factors that shape the attitudes of Sunni Muslims in the Emirates when it comes to the pursuit of creating a family. Their religion (Islam) is by no means a barrier to the use of modern technologies when required; in fact every family interviewed in this study felt confident based on guidance from the religious authorities that within the institution of marriage, their usage of ART was halaal (acceptable) in Islam as long as there is no concern of mix up of family lineage during the process. Culture and traditions, on the other hand, greatly impact the social and emotional status of Emirati couples that cannot conceive naturally. This study indicates that the power and influence of the societal norm for couples to have children poses a huge burden on young married couples. With newly married couples, the continuous questioning from surrounding family members to find out if they are pregnant right after marriage is immense pressure on the new couples to prove their procreative abilities. Additionally, failure to announce a pregnancy may prompt the family to begin to encourage the man to take another wife, a custom that has long been practiced in the Emirati culture. Studies report that financial factors were the main reason that couples cannot undergo ART or IVF. The UAE is an interesting exception in that the government provides substantial support for ART and infertility treatment, thereby alleviating that barrier as a negative factor for Emiratis to have to contend with. In comparison, a study done in Iran, which is primarily a Shia State, which allows third party involvement in infertility treatments, contrary to Sunni practices, shows that the psychological and emotional health of couples undergoing IVF and ART indicate a need for support during and following these treatments. Chachamovich et al investigated the quality of life among infertile men and women, which showed that both male and female depression factors were related to the psychological and physical domains. This poses an ethical dilemma given that the financial support provided for undergoing IVF treatment in fact seems to encourage couples to pursue it to the point of obtaining positive results, even though the success rate of IVF is reported at approximately 30%. Given that in over 50% of the cases, it was the doctor that recommended ART as the only solution (Chart C) and that patients felt there was no alternative for them but to try IVF for having children (Chart D), this also raises concerns that patients lack the total understanding of the ramifications of their desire and decisions to keep trying beyond safe limits recommended by their doctors. What is of further concern is that currently there is an absence of a national registry related to ART usage. Therefore, the physician may not be fully informed of how many times a couple may
have tried the ART process and what problems they may have encountered, though this is now improving greatly with better medical software and technology available. The lack of medical history combined with the desire for couples to keep trying leads to “Treatment Shopping,” where couples seek a doctor willing to provide them the treatment they request if they do not get results from one facility. Frequently couples will travel outside of the UAE to seek treatment. Patients frequently mentioned travel to Europe, Asia or other parts of the Middle East. This relatively new phenomenon of medical tourism, and its impact on reproductive health care and related issues, is an area that still warrants further research. The doctors engaged may be totally unaware of necessary medical history and patients information due to lack of access to relevant records.

**Chart C:**

Who recommends IVF?

<table>
<thead>
<tr>
<th></th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>family</td>
<td>5.4%</td>
</tr>
<tr>
<td>husband</td>
<td>10.8%</td>
</tr>
<tr>
<td>both</td>
<td>11.2%</td>
</tr>
<tr>
<td>wife</td>
<td>11.2%</td>
</tr>
<tr>
<td>doctor</td>
<td>77.5%</td>
</tr>
</tbody>
</table>

**Chart D:**

Are there any alternatives to IVF?

- Yes: 16.33%
- No: 6.12%
- Other: 77.55%

Emirati couples do not feel that Islam prohibits the use of available ART. This provides much comfort to them when undergoing assisted reproduction treatments, hence enabling them to achieve their ultimate goal of bearing children, only, as they believe, if it is Allah’s will. Cultural sensitivities however, are different from religious obligations. Nevertheless many societies rely on the guidance from the religious authorities to provide this clarification to the legal system. Social stigma continues to hamper the development of much needed medical, social and psychological services. This would provide both the husband and wife with even greater relief and additional comfort, through counseling and psychiatric services, etc. in alleviating guilt in the men, (who did not realize that this is a common medical circumstance) or minimizing risk to a woman having to endure futile procedures. Islam certainly encourages and accepts any benefit derived from new knowledge and technologies, if it is aligned with
the Shari’a. The benefits that couples then enjoy, as is firmly believed, is due to the grace of Allah.

Based on this study, providing psychosocial support to the patient, couples and family, and developing programs to enhance understanding and cultural acceptance of psychological and other relevant counseling services to couples undergoing infertility treatment is strongly indicated. Acknowledging the role of faith and having access to religious counseling and support may also prove important for patients, especially women.

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Voluntary Induced Abortion in Turkey: Why 10 Weeks?
Ahmet ACIDUMAN, Önder İLGİLİ, Şehriyar ŞEMS

Abstract
Turkey is a secular country with a majority of Muslim Population. The fifth article of the law numbered 2827 concerning planning of population involves “before the end of the tenth week of pregnancy” statement managing voluntary induced abortion. The statements related to this period in Islamic basic sources, works of leading physicians in Islamic History of Medicine, and contemporary embryology sources were explored. In the light of the collected data, the basis of determination of ten week period, the effect of Islam on this determination, and the voluntary induced abortion within a ten weeks period, from an Islamic point of view, were evaluated.

Introduction
Abortion is permitted in most of the Middle East and North African countries to protect women’s life, physical health and mental health, or under certain conditions, such as rape and fetal defects. Turkey and Tunisia are two countries wherein pregnancy can be terminated voluntarily and legally, except for the mandatory conditions, respectively up to ten weeks, or to the end of the first trimester (1). Their majorly Islamic populations are a common feature of these two countries. A question comes into mind, why was the ten weeks designated for legal voluntarily abortion time in Turkey (2), while it is 12 weeks in most countries around the world. Answers to these questions will constitute the topic of this article.

Materials and Method
1. The minutes of the Advisory Council meetings for The Law on Population Planning, Nr. 2827.
2. The Quran and Hadith for principles regarding this topic.
3. Works of authors of Golden Age of Islamic Medicine, such as Haly Abbas and Avicenna, and the contemporary embryology sources for medical information, to learn what is the status of the fetus in the first ten weeks of pregnancy.
4. Articles related to our subject in literature.

Findings derived from these sources were presented and discussed.

The minutes of meeting of Advisory Council on the Law Concerning Population Planning No: 2827
It was found that opposition to the Law 2827 claimed that the fetus is alive in the womb since
the beginning of the formation of the pregnancy, and it has legal rights from the moment of
meeting of ovum and sperm. The minutes of the meeting of the Advisory Council, therefore,
suggested that voluntarily evacuation of the uterus before 10 weeks was unacceptable. One of
the members who had positive opinions about the law, reported that jurists of Islam were
lenient with abortion since conception and up to 120 days, and the draft of the proposed law,
that permitted abortion until the end of 10 weeks of pregnancy, covered by the bill, could be
tolerated, and it did not contradict the religion of Islam. Health and Social Affairs
Commission spokesman, S. Feridun Gunay, claimed that the fetus is not created with the fall
of sperm into womb; the fetus is first a zygote (fertilized egg), then it becomes a gastrula, and
then turns into an embryo. Referring to Dr. Naguib Mahfouz, he said that the fetus is called
gastrula to the end of the fourth month (16 weeks) of pregnancy, so the limit was not
exceeded upon agreeing to evacuate the uterus before the 10th week of pregnancy. He also
stated that the draft of the government accepted this period of 12 weeks, as is accepted by
modern medicine, but ‘this limit can be exceeded and reach dangerous stages, thereby
maternal mortality and morbidity can increase’ so, the Health and Social Affairs Commission
reduced this period to 10 weeks. The Health Minister Kaya Kılıçturgay focused on the
viability concept, and stated that viability did not begin with fecundation of ovum, and ovum
and sperm are also alive, and fertilization is the continuity of viability; noting that an egg is
dropped monthly by women, and sperm is ejaculated physiologically or for other reasons by
men, and these are the elements of the child to be born (3,4).

**Quran- Creation of Mankind and Ensoulment** (From *The Meaning of The Glorious Koran*
[An Explanatory Translation by Mohammed Marmaduke Pickthall], sixth printing. New
York: The New American Library, 1958 )

There are many verses related to the creation of mankind in the Quran. The first revelation of
Quran referred to creation:

**Surah 96 - Al Alaq (The Clot)**

096.001 Read: In the name of thy Lord who createth,
096.002 Createth man from a clot [‘alaq] (5).

Further verses on this issue are in Al-Hajj and Al-Mu’minun Surahs of the Quran.

**Surah 22 - Al Hajj (The Pilgrimage)**

022.005 O mankind! If ye are in doubt concerning the Resurrection, then lo! We have
created you from dust [mutfa’], then from a drop of seed [‘alaqa], then
from a little lump of flesh shapely and shapeless [mudga], that We may make (it) clear for you. And We cause what We will to remain in the wombs for an appointed time, and afterward We bring you forth as infants, then (give you growth) that ye attain your full strength. And among you there is he who dieth (young), and among you there is he who is brought back to the most abject time of life, so that, after knowledge, he knoweth naught. And thou (Muhammad) seest the earth barren, but when We send down water thereon, it doth thrill and swell and put forth every lovely kind (of growth) (5).

**Surah 23 - Al Mu’minun (The Believers)**

023.012 Verily We created man from a product of wet earth;
023.013 Then placed him as a drop (of seed) [nutfa] in a safe lodging;
023.014 Then fashioned We the drop [nutfa] a clot ['alaqa], then fashioned We the clot ['alaqa] a little lump [mudga], then fashioned We the little lump [mudga] bones, then clothed the bones with flesh, and then produced it as another creation. So blessed be Allah, the Best of Creators (5)!

Ensoulment and creation are together in Al Sajdah surah of the Quran.

**Surah 32 - Al Sajdah (The Prostration)**

032.007 Who made all things good which He created, and He began the creation of man from clay;
032.008 Then He made his seed from a draught of despised fluid;
032.009 Then He fashioned him and breathed into him of His spirit; and appointed for you hearing and sight and hearts. Small thanks give ye (5)!

**Creation of Mankind and Ensoulment in Hadith**

Hadith related to the stages of human creation and ensoulment from Sahih Buhari (Volume 4, Book 54, Number 430) is presented below:

Narrated ‘Abdullah bin Mas'ud:

Allah’s Apostle, the true and truly inspired said, "(The matter of the Creation of) a human being is put together in the womb of the mother in forty days, and then he becomes a clot of thick blood for a similar period, and then a piece of flesh for a similar period. Then Allah sends an angel who is ordered to write four things. He is ordered to write down his (i.e. the new creature's) deeds, his livelihood, his (date of) death, and whether he will be blessed or wretched (in religion). Then the soul is breathed into him. So, a man amongst you may do (good deeds till there is only a cubit between him and Paradise and then what has been written for him decides his behavior
and he starts doing (evil) deeds characteristic of the people of the (Hell) Fire. And similarly a man amongst you may do (evil) deeds till there is only a cubit between him and the (Hell) Fire, and then what has been written for him decides his behavior, and he starts doing deeds characteristic of the people of Paradise (6).

The time between the sperm falls into the uterus and the breathing of soul into it is 120 days, according to the stages of creation of the fetus mentioned in the above hadith.

The 33rd book of Sahih Muslim Kitab-ul-Qadr-Book of Destiny contains a hadith related to the stages of human creation in the womb:

Abdullah (b. Mas'ud) reported that Allah’s Messenger (may peace be upon him) who is the most truthful (of the human beings) and his being truthful (is a fact) said: Verily your creation is on this wise. The constituents of one of you are collected for forty days in his mother's womb in the form of blood, after which it becomes a clot of blood in another period of forty days. Then it becomes a lump of flesh and forty days later Allah sends His angel to it with instructions concerning four things, so the angel writes down his livelihood, his death, his deeds, his fortune and misfortune. By Him, besides Whom there is no god, that one amongst you acts like the people deserving Paradise until between him and Paradise there remains but the distance of a cubit, when suddenly the writing of destiny overcomes him and he begins to act like the denizens of Hell and thus enters Hell, and another one acts in the way of the denizens of Hell, until there remains between him and Hell a distance of a cubit that the writing of destiny overcomes him and then he begins to act like the people of Paradise and enters Paradise (Book 33, Number 6390).

This hadith has been reported on the authority of A'mash with the same chain of transmitters, and in the hadith transmitted on the authority of Waki’ (the words are): “The creation of any one of you is like this that (semen) is collected in the womb of the mother for forty nights,” and in the hadith transmitted on the authority of Shu'ba (the words are): “Forty nights and forty days.” And in the hadith transmitted on the authority of Jarir and ‘Isa (the words are): “Forty days” (Book 33, Number 6391).

Hudhaifa b. Usaid reported directly from Allah’s Messenger (may peace be upon him) that lie said: When the drop of (semen) remains in the womb for forty or fifty (days) or forty nights, the angel comes and says: My Lord, will he be good or evil? And both these things would be written. Then the angel says: My Lord, would he be male or female? And both these things are written. And his deeds and actions, his death, his
livelihood; these are also recorded. Then his document of destiny is rolled and there is no addition to and subtraction from it (Book 33, Number 6392)(7).

In the above hadiths the time allotted for the angel who came to the created one in the uterus, is given the duration of forty to fifty nights and days.

Canon Law of Islam

Scholars of jurisprudence of Islam called the child a “fetus” when it is still in his/her mother’s womb. A fetus in his/her mother’s womb is handled in one of two ways, depending on its being viewed as vitalized, or non-vitalized, namely “a fetus who is alive” and “a fetus who is not alive”. Furthermore, a fetus is considered as such, if its creation is complete, and its organs have appeared. Beforehand it is accepted as ‘alaka. Scholars of jurisprudence of Islam viewed induced abortion as murder, if not based on a necessity, or in other words, without any legal permission. Those who committed the crime of fetal rejection would be punished with discretionary punishments- “ta’zir”. This was adopted and referred to as punishment with fines “gurra”. Islamic jurists have accepted that abortion may be possible as a necessity in two cases:

a) When the mother’s life is in danger,
b) While mother is breastfeeding a child, experiences a shortage of milk supply, and also when the family’s financial situation is insufficient to hire a woman who would suckle the infant.

Islamic jurists also agreed that induced abortion is acceptable up to 120 days of the fetus’s life, and is not permitted after this time (8).

Sources from the Golden Age of Islamic Medicine (900-1100)

Haly Abbas (d. 994) wrote in The Royal Book regarding the formation of the fetus and the period before birth:

“The period of time of the shaping of the embryo: As to the shaping and completing of the fetus: a fetus is born in seven months. If male, the formation is completed in thirty days and he begins to move in sixty days; if female, her formation is completed in thirty-five days, and she begins to move in seventy days (9).”

Avicenna (980-1037) wrote regarding the formation of the fetus in his famous book The Canon of Medicine:

“They say that the average natural time for completion of shaping of embryo is thirty-five days, and he/she moves in seventy days, and it is born in two hundred and ten days that is a period equal to seven months, perhaps a few days earlier or later. (10).”

Contemporary Embryology
A zygote is formed with the fertilization of ovum by sperm. The zygote divides repeatedly and transforms into blastomeres (when the zygote contains 12 to 16 blastomeres, it is called a morula). In the next step of this period, blastomeres transform into blastocyst, and the implantation occurs on the 5th or 6th days. From 7th to 14th days, trophoblast invasion is going on, and on the 7th day of the second week the bilaminar embryonic disc occurs. During its development on the 9th day the embryo is completely embedded in the endometrium. At the 3rd week the bilaminar embryonic disc transforms into trilaminar embryonic disc. Gastrulation, appearance of cranio-caudal axis, first steps of organogenesis, somite, somitomer and neural plate formation also develop in that period. The time between the 4th and 8th weeks is called the embryonic period, when the differentiation of organs from three layers is formed, as a result of gastrulation. The shape of the embryo changes as organs develop, and at the end of the second month the main form of the body appears. At the end of this period the embryo begins to look like human. The developmental period, from the third month till the end of intrauterine life, is called the fetal development period (11).

Discussion
In Turkey, voluntary medical abortion is legal according to the Law Concerning Population Planning No: 2827, article 5 “Until the tenth week of pregnancy medical uterine curettage can be made if there isn’t any objection based on the mother's health” (2). According to the results of a study aiming to determine attitudes of 524 (%45 female, %55 male) physicians working in Educational Hospitals in Ankara, %80,7 of the physicians supported medical abortion in accordance with the medical legislation in Turkey. In the same study, the main reasons for this choice are determined as “Every child has the right to be a wanted child”, and “Medical abortion provides families with the opportunity of making a choice between wanted and unwanted children”. Participants claimed that this law is supported by the general public, and it emphasizes women’s personal rights, and the evolving status of women in modern society (12).

In most of the countries, medical legislation concerning voluntary medical abortion, accepts the first trimester (12th week) of pregnancy as the latest limit of practicing this process (3). The following reasons can be provided for the different ‘10 weeks of pregnancy limit’ which is valid in current medical legislation in Turkey.

According to negotiations in the Advisory Council, the rapidly increasing population and maternal harm caused by illegal abortions were taken into consideration. Religious arguments also play a significant role in this process. As seen on minutes of the Advisory Council meetings, the government’s last limit suggestion of 12-week pregnancy was changed by the
Health and Social Affairs Commission to 10 weeks, according to arguments stating that “this limit can be exceeded and reach dangerous stages, thereby maternal mortality and morbidity can increase”(3). There are also efforts for a religious reasoning for this issue. If we look over the stages of creation in the Quran, the first stage is nutfa, and then it becomes ‘alaka, and after that it reaches mudga stage (5). It is mentioned that mudga is transformed into bones, and the bones are covered with flesh, and at the end it becomes a totally different creature (5). Definitions of the concepts mentioned in the Quran are given below:

**Nutfa (نطفة):** 1. A portion of water that has stood some time in a vessel; or, a remnant of water in a vessel. 2. A sea; a lake; a great river. 3. Sperma genitalis (13).

**‘Alaq (علق):** 1. Any thing that hangs. 2. A thing by which a thing hangs. 3. A hole torn by a catching thorn, etc. 4. Sufficiency of support, maintenance. 5. A slight feeling of love. 6. Pertinacity. 7. (علق) A clot of blood. 8. (علق) The leech, hirudo (13).

**Mudga (مضنة):** A little bit; enough for a chew (13).

Evaluation of this issue depending on Hadith, in the study of Şeref Mahmut el-Kuzât (14), titled “When is the soul breathed into the embryo?” gave a hadith, not clearly signifying the breathing of the soul, but mentioning the creation of the embryo, writing of the destiny and the period of these processes as 40, 42 or 45th day of nutfa in uterus, similarly to the hadith from Sahih Muslim (7) (given in findings section of our study). The aforementioned author reports that as seen in the first hadith from Sahih Buhari (6) (given in findings section of our study), there is no hadith emphasizing the distinction between breathing of the soul and writing of the destiny; this means that breathing of the soul and creation of the embryo occurs at the same time of the arrival of the sent angel (14).

After these religious explanations, we find the following concepts and numbers about the breathing of the soul:
1. Concepts mentioned in Quran such as nutfa, ‘alaka, mudga, consisting of the bones, covering of bones with flesh, becoming a totally different creature.
2. Concepts and time periods related to shaping the nutfa in the uterus between 40 and 50 days, generally 42 days, and writing of its destiny in the Hadith.
3. Concepts of becoming ‘alaqa from nutfa in the uterus after 40 days, and becoming mudga from ‘alaqa during another 40 days, and the formation of mudga taking 40 days, and the shaping of the fetus and breathing of the soul in the Hadith.

We couldn’t reach any statement related to the 10th week of pregnancy in the Quran. The stages of creation are clearly given, but there is no information about the correlation between time periods of pregnancy and stages of creation. The timing of breathing of the soul is
approximately 6-7 weeks of pregnancy. The breathing of the soul is interpretable as the
gaining of human identity by the living creature in uterus (14). As Kuzat (14) reported from
Ibn Qayyim, the indication of breathing of the soul is the combination of voluntary
movements to previously existing involuntary movement, and the development of embryo.
Due to this explanation, voluntary movements are the evidence of the existence of the soul.
In works of authors of the golden age of Islam, like Haly Abbas and Avicenna, except
insignificant differences, it is reported that the mean formation period of the embryo is 35
days, and the period until appearance of movements is 70 days, equivalent of 10 weeks. (9,10)
Ali Abbas based the given information on works of Hippocrates (9).
According to contemporary embryology, the involuntary movements at the 8th week of
pregnancy become voluntary coordinated movements at 14 weeks (11).

Conclusion
Pregnancy term is 280 days or 40 weeks after last menstrual cycle. After fertilization this term
is 266 days or 38 weeks (11). Concerning these time periods, a woman consulting a physician
at about a 12 weeks pregnancy, after calculations based on the given information above, is
carrying an embryo developing for 10 weeks in uterus. The reason behind this argument is the
occurrence of fertilization and pregnancy 14 days after last menstrual cycle. At 10th week of
pregnancy, the pre-embryonic and embryonic stages would be left behind, and the fetus
reaches the first two weeks of fetal stage.
Some obstetrician-gynecologists and some religious leaders were opposed to the Law
Concerning Population Planning in Turkey in 1983. While gynecologists were opposed with
the aim of performing more abortions in their private clinics for high payments, religious
leaders concentrated on ensoulment time. Finally, the legal time-limit for abortion on request
was accepted until ten weeks after conception (or twelve weeks after last menstrual period)
(1).
As mentioned in an article of Prof. Beyaz:

_We remember that 20 years ago during this law- negotiation in public, and at the
Grand National Assembly of Turkey, opinions of members of medicine and divinity
have major effect on commissions negotiating the law. Opinions of divinity circles
were permissive when the pregnancy is in a stage of clot of blood or piece of flesh,
when the organs have not yet developed, and when, this creature cannot be called a
child, or does not reflect the meaning of child and human as defined in the Quran. For
these reasons medical uterine curettage is permissible. Opinions of medicine circles
rely on that after r the 10-week period, the appearance of organs signifies the_
transformation from embryo to a child. Consequently, medical uterine curettage before 10 weeks of pregnancy stated was as a rule acceptable, according to law and ethics (15).

The minutes of the Health and Social Affairs Commission meetings are unavailable, so we do not have any information about the grounds of negotiations. Nonetheless, the significant role of religious arguments in the negotiations at the meetings of the Advisory Council is a fact.

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The anti-FGM discourse in contemporary Egypt.

Serena Tolino

I. Introduction

The term “female genital mutilation” (FGM) gained support in the 1970s and, according to the definition of the World Health Organization (WHO), it is applicable to “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons”.¹ The term serves two important purposes. First, in contrast with “female circumcision” it clearly distances it from the practice of male circumcision. Second, it stresses the negative consequences (both physical and psychological) of the practice and its connotation as a violation of women’s rights. It has been adopted in all the United Nations’ documents after the recommendations of the WHO. FGM have been classified into four different categories:

    Type 1: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy)
    Type 2: Partial or total removal of the clitoris and the labia minor, with or without excision of the labia majora (excision)
    Type 3: Narrowing of the vaginal orifice with a creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation)
    Type 4: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.

FGM in Egypt, especially of the first type, the only one accepted in the Islamic tradition, has been practiced since ancient times², and a statistic from 2008 says that 91% of women between 15 and 49 have been cut.³ Despite this high percentage, it should be said that the anti-FGM campaign is having some results. Projections from the 2008 data show that over the next fifteen years the percentage of girls between fifteen and seventeen to be subjected to female genital mutilation will decrease to 45% compared to 77% nowadays.

² The tradition is said to date back to the prophet Abraham who was circumcised when he was eighty. al-Šawkānī. Nayl al-Awtār. Riyād: Dār ibn al-Qayyim li-l-Našr wā at-Tawzī’, 2005, vol. I, pp. 352-353.
II. Materials and Methods

Before discussing the anti-FGM movement in Egypt, it is necessary to specify that the expression “female genital mutilation” is mainly used by the anti-FGM movement, when speaking in English. The most frequently used equivalents in Arabic are *khītān*, *khīfād*, circumcision or cutting, *tahāra*, purification. Translating articles and books from Arabic to English highlights this shift from neutral concepts like *khītān* or *khīfād* to the negatively charged FGM. In this paper the term female genital mutilation or FGM will be used when dealing with English or international literature, while the term female circumcision will be used when dealing with Arabic texts, in order to make this distinction clear.

This paper will analyze the most important documents produced in the last years by the anti-FGM movement, concentrating on the legislative and the religious discourse, in order to point out how the declarations of anti-FGM religious leaders have been used by the movement as a source of justification to delegitimize and then prohibit FGM. At the end, I will reflect on the limits of this approach.

III. Results

a. FGM as a violation of human rights

The conceptualization of FGM as a human rights issue is something relatively new, especially for those States that traditionally practiced it. It was always perceived as a matter of private or familiar interest. It was only in 1979 that the first regional seminar on “Harmful traditional practices affecting the health of women” was organized by the WHO in Khartoum, Sudan. The Convention on the Elimination of all forms of discrimination against women (CEDAW), adopted in 1979 and made executive in 1981, was a milestone for this issue. Other
documents that specifically address the issue of FGM include the African Charter on Human and People’s Rights, ratified by Egypt in 1984, and the Protocol from this Charter on the Rights of Women in Africa, also known as the Maputo Protocol, adopted by the assembly of the African Union in 2003 and effective in 2005. Although not signed yet by Egypt, the Protocol represents a fundamental step in the abolition of the practice, since article 5 explicitly prohibits FGM and calls on States to “take all necessary legislative and other measures to eliminate such practices.”

Also the Convention on the rights of the Child, which Egypt ratified in 1990, states in article 24.3 that: “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

Nevertheless, the categorization of FGM as a human rights issue was not immediately accepted in Egypt. This was made clear for example by the first report that Egypt presented to the Committee on the Rights of the Child, in which there was no mention of FGM, as if the matter did not yet deserve consideration in these terms. It is possible to say that for Egypt 2003 represented a real turning point, although efforts against FGM started decades before:  

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10 When Egypt ratified this document it presented two reservations to art. 20 and 21, related to adoption, which has been removed with the presidential decree n. 145 of 2003.
11 Moreover, article 19 calls on States parties to: “[…] take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.
13 For example in the 1920s the Egyptian Society of Physicians made a proclamation against FGM and its adverse health effects. In 1928, during a conference, Dr. ‘All Ibrāhīm, the founder of the Egyptian Society for Physicians, denounced the negative effects associated with FGM, stating that this practice was not medical. On the religious side, Rašīd Ridā wrote the essay “Female Circumcision: obligatory or an act of sunna” in the magazine al-Manār where he stated that “there is no evidence to refer to or a sunna to follow”. The same opinion was shared in the 1940s by šaykh al-Sayyid Sābiq and during the 1950s by šaykh Mahmūd Šaltūt. The Grand Muftī and then šaykh of al-Azhar (until his death in 2010) Tantāwī also expressed his opposition to female circumcision in 1996. In the same period an Egyptian Task Force against FGM was established, whose aim was to create awareness on the dangers of FGM and to stop the practice. The Task Force developed a curriculum for
in this year the Afro-Arab Expert Consultation on Legal Tools for the prevention of FGM was held. Since then, thanks to the support of the National Council for Childhood and Motherhood (NCCM, in Arabic Mağlis al-qawmī li-t-tufūla wā al-umūma) a governmental body founded with the presidential decree n. 54 of 1988 which supervises the implementation of the Convention on the Rights of the Child in Egypt), the media and the religious leaders, the anti-FGM campaign became national, and the debate escalated from pure religious, medical, or cultural arguments to a comprehensive human rights issue. The “Cairo Declaration on FGM” in 2003 and then, after five years, the “Cairo Declaration on FGM + 5”, represented two important milestones. The Cairo Declaration on FGM is not a binding document, but it is still important because it came directly from the states where FGM is practiced and provides states with a series of recommendations aimed at stopping FGM, using a comprehensive approach on the issue, which stresses on the one hand the importance of law, and on the other, the awareness campaigns that should accompany the law:

“The use of law should be one component of a multi-disciplinary approach to stopping the practice of FGM. Depending on the national context, outreach efforts by civil society and governments aimed at changing perceptions and attitudes regarding FGM should precede or accompany legislation on FGM.”

Shifting the discussion to a human rights perspective had the important result of also involving the legislative perspective that was traditionally neglected by the anti-FGM movement, in favor of cultural, religious and social aspects.

b. The legislative evolution

In 1959 the Minister of Health issued Ministerial decree no. 74, which forbids doctors from performing female circumcision in hospitals surgeries and health centres. In 1994 another decree was issued that permitted the practice of female circumcision in state-hospitals, stating that the operation should be partial. This decree represented a response to the calls for the

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14 Cairo Declaration for the elimination of FGM. Available at: www.childinfo.org/files/fgmnc_Cairodeclaration.pdf. Accessed March 24, 2010, art. 2. After five years, in December 2008, the Cairo Declaration on FGM + 5 High Level Meeting was held in Cairo. In its final declaration the participants “emphasize, in particular, that legislation is both a reflection of society and has a role to play in leading society towards changing behavior, FGM should not be defended under the guise of “culture” or “tradition”, but should explicitly be treated as a human rights violation”.

15 Barsoum G. et al., op. cit., p. 110.

16 Ibid.
medicalization of female circumcision. In fact, as also pointed by UNICEF, excessive insistence on the negative impact of FGM on health can lead to the idea that the risks will be reduced if a doctor performs it.\textsuperscript{17} This decree was overturned in 1995 by a decree that banned the practice in public hospitals. A further decree was issued the following year, prohibiting the practice to physicians and others, both in public and private hospitals.\textsuperscript{18} However, the text was ambiguous, because it left the possibility open for medical personnel to practice FGM “when necessary”.\textsuperscript{19} After the death of Budûr, an 11 years old year girl that died of the consequences of FGM, the Minister of Health and Population issued a decree in 2007 (no. 271) in which art. 1 states: “it is prohibited for any doctors, nurses or any other person to carry out any cut of, flattening or modification of any natural part of the female reproductive system, either in government and non-governmental hospitals or any other places”.\textsuperscript{20}

Law n. 126 of 2008, proposed by the National Council for Childhood and Motherhood, introduced a new article to the Child Code, article 7 bis co.\textsuperscript{a}\textsuperscript{21} forbidding the intentional exposure of a child to any physical damage or harmful practice. The same law specifically prohibited female circumcision, introducing article 242 bis to the Penal Code. The article states:

“Without prejudice to any greater penalty prescribed by another law, anyone who causes an injury which is punishable by article 241, 242 of the Penal Code, through performing female genital mutilation shall be punished by imprisonment for not less than three months and not exceeding two years, or a fine of not less than one thousand pounds, and not exceeding five thousand pounds”.\textsuperscript{22}

The introduction of this article, that was originally part of the Code of the Child and was then moved to the Penal Code, has been widely debated in Parliament. Opposition was so strong that the original bill that called for a stated absolute prohibition of any kind of female genital mutilation could not be approved, because the Legislator was forced to mediate between the very different branches of Parliament. The outcome of these negotiations was a very

\textsuperscript{17} Unicef, op. cit., p. 7.
\textsuperscript{18} Barsoum G. et al , op. cit., p. 21.
\textsuperscript{19} The decree was repealed in June 1997 by the Administrative Court and then upheld in December 1997 in Court of Appeals. Mağlis al-qawmî li-t-tufūla wā al-umūma, op.cit., pp. 110-111.
\textsuperscript{20} Ibid., p. 111.
ambiguous article: “anyone committing such a crime can still be justified for reasons of necessity”, with a reference to art. 61 of the Penal Code that states: “No punishment is possible for a person that commits a crime under an immediate threat of death pending over him or another person, on the condition that he was not responsible for this event, or could not avoid it by any means”.

c. The support of religious leaders to the anti FGM campaign

The anti-FGM campaign is organised both on a national and a local level, through partnerships with non-governmental organizations (NGO), associations and religious leaders. One of the most important outcomes of the campaign is the FGM-Free Village Model project, which was launched in 2003 in sixty villages (which increased to 120 in 2005) in cooperation with 21 local NGOs. The most important element of the project is the role that is given to the community: it is the community itself that should reject FGM. For example, a particular aspect of the project is represented by the “declarations against FGM”: at some point the community members decide to meet and to write a declaration that is then made public in an official ceremony making it an official document. This has the important result of proclaiming that the village is ready to denounce those who practice FGM, and to encourage families to make the choice not to circumcise their daughters.

The support of religious leaders is a key-element of the campaign: it has become clear that while the human rights perspective needs to focus primarily on laws, it is equally important for laws to be approved by the people, and this is why we will examine here the declarations of some anti FGM religious scholars. It is important to remark that female circumcision has been considered for centuries, if not religiously mandatory, at least acceptable, and many religious leaders still believe that female circumcision is a religious duty, or, at least, a permissible practice. For example Muhammad al-Musayyar, Professor of Creed and Philosophy at al-Azhar University, in an interview with the television al-'Arabiyya underlined that “since the XIV century the Muslim scholars have agreed that female circumcision is permissible” and that “nobody has said that it is a crime”. He added also that the “oppositions to female circumcision are illogical and unnatural”.

Especially after 2003 many scholars have tried to deconstruct this firm belief. For example, the General Secretary of the International Federation of Muslim Scholars, Muhammad Salîm

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23 Ġumhuriyyat Misr al-'Arabiyya, Qanûn al-'Uqûbât al-Misrî, al-Matâbi' al-Amirîyya, al-Qâhira 2009, art. 61, p. 18
al-ʿAwwā, published a booklet in 2005 entitled *khīṭān al-ināth fī manzūr al-Islām* (female circumcision from an Islamic perspective), where he shows that none of the sources of Islamic law can be invoked to justify female genital mutilation. For what regards the Qurʾān we find no mention of the practice, while the *ahādīth* on the topic are not legally binding. One of them, mentioned by Ibn Hanbal and al-Bayhaqī, and considered *daʿīf* (weak) by the latter says “circumcision is *sunna* for men and an honorable act for women”. al-ʿAwwā considers it weak, but goes on saying that “even if we consider the *hadīth* as hypothetically acceptable, which it is not, the ruling on circumcision does not put males and females on an equal footing, for while circumcision is an act of *sunna* for males, it is an honorable act for females”. On the contrary, other *ahādīth* are used by those who support the necessity of this act: al-Šawkānī mentions “those who adhere to Islām should circumcise”, or the very famous *hadīth* reported by Abū Dawūd and considered *daʿīf* “The Prophet said to Umm ‘Atiyya, a woman who was used to circumcise women: “Do not cut severely, as that is better for a woman and more desirable for her husband.” Also the *hadīth* that imposed the women of *al-Ansār* to circumcise is also considered *daʿīf*. A forth *hadīth* says that when the sexual organs meet it is mandatory *al-ġusl* (the complete purification). The term used to refer to the sexual organs is “*al-khīṭānān*”, the two circumcised, hereby implying that the female sexual organ should also be circumcised This *hadīth*, considered *sahīh* (authentic), could be used to justify female circumcision, but al-ʿAwwā declares: “in the Arabic language two things or persons may be given one quality or name that belongs only to one of them”. Finally al-ʿAwwā discusses another *hadīth sahīh* on the argument: “there are five acts of natural disposition: the circumcision, shaving the pubic parts, cutting of moustache, of fingernails and of armpit hair.” The author agrees on its truthfulness, but it is not held to corroborate female

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27 The classical theory on Islamic law says that it is based on four primary roots. These roots are the Qurʾān, the *sunna*, which consists of the traditions on the Prophet Muhammad, his sayings (*hadīth*, pl. *ahādīth*) and his deeds, the consensus of the scholars, (*iğmaʾ*) and the method of reasoning by analogy (*qiyyās*). I will briefly recall what these sources say on FGM analyzing directly the statements of contemporary Muslim leaders.
30 al-ʿAwwā, *op.cit.*, pp. 5-6.
34 He refers to the two ‘Umars (Abū Bakr and ‘Umar), the two moons (the sun and the moon) etc. *Ibid.*, p. 8.
circumcision, because, for example, cutting of moustaches refers only to males, and the same could be said about circumcision.\textsuperscript{35}

One of the most recurring topics to support the abolition of FGM is to disregard the practice as an Islamic one. For example on the 22\textsuperscript{nd} and 23\textsuperscript{rd} November 2006 a conference on “Preventing the mutilation of the woman’s body” was organized by Dar al-Iftā’ in Cairo and was attended by important religious experts like the former šaykh of al-Azhar Tantāwī, the Minister of Aqwāf, (religious endowments) Mahmūd Hamdī Zaqqūq, the Muftī of Egypt Ali Gum’a, the head of the World Union of Muslim Scholars, Yusuf al-Qaradāwī. At the end of the conference a list of recommendations was issued. One of them said:

“Female circumcision is an old custom that appeared in some human societies and that some Muslims practiced in some countries without any basis in Qur’ānic verses or in hadīth sahīh”.\textsuperscript{36}

And then:

“The circumcision which is practiced today harms women physically and psychologically. Therefore, it should be avoided to comply with one of the highest values of Islām that is to avoid harm to the human being, like the Prophet said: “lā darar wā lā dirār fī-l-Islām”.\textsuperscript{37}

During the session of 28\textsuperscript{th} June 2007, the Islamic Research Council of al-Azhar took part in the debate.\textsuperscript{38} All the members agreed that there is no basis in šarī'a for female circumcision, and that “ it is a harmful custom that spread and grew steadily in a small number of Islamic communities.”\textsuperscript{39} This opinion has been shared by Dar al-Iftā’, that in fact issued a fatwā in July 2007 where it stated: "female circumcision belongs to the category of traditions and not of religious obligations, while male circumcision belongs to the category of religious obligations".\textsuperscript{40} In the final part the muftī offers an answer to the predictable question of why this custom survived for centuries, based on the medical and scientific discourse: the dangers

\textsuperscript{35} Ibid., p. 9.
\textsuperscript{36} al-Mağlis al-qawmī li-t-tufūla wā al-umūma, op. cit., p. 57.
\textsuperscript{37} Ibid.
\textsuperscript{38} Ibid., p. 19.
\textsuperscript{39} Ibid., p. 20.
\textsuperscript{40} Dār al-Iftā’: Bayān hawla khitān al-ināth in: Mağlis al-qawmī li-t-tufūla wā al-umūma, op. cit., p. 60. The fatwā relies on various sources that did not deem female circumcision obligatory or that considered all the ahādīth on this argument weak, like for example Ibn al-Hağğ, or Šams al-Haqq al-‘Azīm Ābādī, when states that: ‘ahādīth on female circumcision are reported through many chains of transmission, but they are all weak, defected and refutable, and cannot be raised as arguments. See for example Šams al-Haqq al-‘Azīm Ābādī, op. cit., vol. XIV, pp. 183-189. At the end the fatwā recalls those contemporary jurists and experts that shared the same opinion, and especially šaykh Tantāwī, Yusuf al-Qaradāwī. and al-‘Awwā.
of the practice where unknown, but now “that they appeared, and have been confirmed by physicians, it has become mandatory to forbid it”,\textsuperscript{41} and again later: “many have left the issue in the hands of physicians, which confirmed its hazards, so it became indispensable to declare it forbidden”.\textsuperscript{42} At the end the muftī warns those that oppose this opinion, that they should fear Allāh, because “they should know that fatāwā are connected to reality, and the matter of circumcision has changed towards a focus on its many hazards, both physical and psychological”.\textsuperscript{43}

We find similar arguments in the booklet \textit{Khitān al-ināth laysa min šaʿāir al-Islām} (female circumcision is not an Islamic rite), published in 2007 by the Ministry of \textit{Awqāf}. In his introduction the Minister Zaqzūq says:

“It is not possible to make Islām responsible for the spread of this custom between these countries or others. It is necessary to distinguish what is Islamic from an old reprehensible and unacceptable custom that is however widely spread in some Islamic countries”.\textsuperscript{44}

In the same booklet Tantāwī states: “one of the basic principles that is established by šarīʿa is: “when it is proven that an act is harmful, it is obligatory to stop this act”. Moreover he remembers that this tradition is unknown in a great number of Arab and Islamic countries: “I personally visited a great number of Arabic and Islamic countries, and they had not heard of female circumcision”.\textsuperscript{45}

In the same book Salīm ‘Abd al-Ğalīl also opposes to the practice, stating that male circumcision cannot be compared to female circumcision, because the first one is accepted in šarīʿa, and is considered obligatory by many scholars,\textsuperscript{46} while female circumcision represents a social custom that has no relation with religion. The author uses medical and religious arguments\textsuperscript{47} and then adds: “I believe that if jurists could know how it is practiced nowadays they would have forbidden it, especially because it has no basis from a juridical point of

\textsuperscript{41} Dār al-Iftā’: \textit{Bayān hawla khitān al-ināth}. In: \textit{Mağlis al-qawmī li-t-tufūla wā al-umūma}, \textit{op. cit.}, p. 60.
\textsuperscript{42} \textit{Ibid}.
\textsuperscript{43} \textit{Ibid}.
\textsuperscript{44} ‘Abd al-Ğalīl Tantāwī, Zaqzūq. \textit{Khitān al-ināth laysa min šaʿāir al-Islām}. Qalyūb: Wizārat al-Awqāf, Matābi’ al-Ahrām at-Tiğāriyya, 2007, p. 6. The official translation in English of the booklet says: “It is outrageous to burden Islām with the responsibility of the spread of this custom in these countries or elsewhere. We have to differentiate between what is religiously Islamic and what is just a traditional custom that is verily unacceptable and absolutely rejected but widely spread in some Muslim countries”.
\textsuperscript{45} The conclusion of Tantāwī is that “we see that female circumcision is a bad habit that is almost disappearing in Egyptian governorates, thanks to the correct awareness of fathers and mothers, good guidance, the scientific and the cultural development and the constant remembering of the harms of this bad custom”. \textit{Ibid}., p. 9.
\textsuperscript{46} \textit{Ibid.}, p. 11.
“Abd al-Ğalīl also mentions another argument: the practice represents an attempt to change Allah’s creation, which is a satanic act. Finally, female circumcision has nothing to do with cleanliness and health; it cannot be considered a means to beautify an unnatural part of the body, or to avoid that a woman commits adultery, because this is related to faith and the respect of God. These arguments are identical to those used by al-anbā Musā, the bishop of Youth of the Coptic Church, in khitān al-ināth: ilā matā? published by the NCCM in 2005. In fact, Egypt being a country with a strong Christian (Coptic) minority, the campaign tried to get also the support of Christian leaders. al-anbā Musā, who also supported the Cairo declaration of 2003, says: “When God created man, he did it in the best form and every part of his body has a function and a role.” He also declares that chastity has nothing to do with a harmful practice, because “chastity does not come from the body, but from will and spirit” and it is built “through good family, educational and religious upbringing”.

IV. Conclusion and discussion for researches
An analysis of the anti-FGM discourse in contemporary Egypt shows some distinctive characteristics emerging after 2003: most prominently the argument moved from a pure religious or medical domain to a human rights one. This gave the anti-FGM movement the opportunity to engage the problem on different levels and to propose a law that, although ambiguous, still criminalized the practice. The engagement of NCCM in the anti-FGM campaign had the important feature of creating a 360 degree awareness movement that involved national media and political actors. Moreover, the NCCM was able to understand the importance of networking, and to gain the support of religious leaders, Muslim and Christian. The anti-FGM campaign tried to attract religious leaders in order to mediate the message that FGM is not required by Islām or by Christianity, and that, therefore, it could and should be abandoned out of respect for a fundamental human right. Nevertheless, it should be stressed that local religious actors could have different opinions, and it is only through a capillary cooperation with local actors that the movement can verify this possibility, because local

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49 Ibid., p. 17.
50 It is difficult to accurately state how many Copts are actually living in Egypt, but the proposed percentage is between 10% and 18% of the Egyptian population. Boles I.: Disappearing Christians of the Middle East. In: Middle East Quarterly, winter 2001.
52 Ibid.
leaders could be able to influence the community more than national ones. Moreover, the campaign should concentrate on gender perspective and women’s empowerment.
References


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The Viewpoints of the Presidency of Religious Affairs of Republic of Turkey on Various Bioethical Problems

Cemal Hüseyin Güvercin

Abstract

The Presidency of Religious Affairs is the sole official authority on religion in Turkey. The department which was established in 1924 renders currently its services in a special statute as a branch of Prime Ministry. Besides religious issues, the Presidency of Religious Affairs is also responsible for opinion and commend, considering Islam, on various issues and problems about bioethics based on Qur'an and hadiths. Such issues are discussed and assessed in the Chairmanship of the High Council of Religious Affairs, and then established opinions are declared to public.

This study analyzes the choice of the subjects related to bioethics and the way they are evaluated both in the Presidency of Religious Affairs' official web site and in some publications. Accordingly, The Presidency of Religious Affairs gives opinion on subjects such as abortion, euthanasia, transplantation, use of assisted reproduction technology, cloning, stem cell researches, tube baby, frozen ovum/sperm donation, screening gender, family planning, switching off the life-support machine, suicide, the death fast and whether or not the inspection and treatment methods invalidate fasting. Other than exceptional cases, abortion and euthanasia are considered to be inappropriate from Islamic perspective due to the justification of sacredness of life and will of God. Although assisting reproduction techniques between spouses is considered to be appropriate, third party involvements are strictly forbidden. Researches on stem cells have been accepted restrictedly. Whereas cloning research on plants and animals is considered to be appropriate only if it is for the benefit of the mankind, common opinion on human cloning research is that it is so early to come up with a specific conclusion due to the related research extent,

The arguments set by the Presidency of Religious Affairs are important since it plays a crucial role in shaping the social values of public and affects the decision of individuals in the practice of these issues.
Introduction

The Presidency of Religious Affairs is the only officially authorized organization in Turkey in terms of religion. The Presidency of Religious Affairs, which was founded in 1924 following abolishment of caliphate in the same date, renders its services under the special status subordinating to the Prime Ministry. Upon proposal of the Prime Minister, the chairman of the organization is appointed by the President and his term of office is seven years.

The Presidency of Religious Affairs is a quite significant public organization in terms of both the budget and personnel. Its 2010 budget is 2.7 billion TL (1.8 billion USD), which is 1 % of the general budget. The 2010 Budget of the Presidency of Religious Affairs is larger than budget allocated for 8 ministries and 22 universities and it also is 1/5 of the Ministry of Health’s budget and approximately 1/10 of the Ministry of Education’s budget. The Presidency of Religious Affairs offers worshipping and religious services in nearly 100,000 mosques throughout the country with 85,000 personnel as well as is responsible for administration of these mosques.

The Presidency of Religious Affairs not only deals with religious matters but also makes interpretations and declares opinions on bioethical problems and related matters, depending on Qur’an and the study of hadiths according to the religion of Islam. These subjects are discussed and evaluated by the High Council of the Religious Affairs and their consensuses are disclosed to the public opinion.

Findings

The information has been received from both the official web site of the Presidency of Religious Affairs and its publications.

The Opinions on Esthetical Operations

In the religion of Islam, to change the true nature as created by God in order to look better or to receive attention is prohibited. However, if anyone has a defect or a flaw or a deformation which makes him/her affected psychologically and repels others, he/she may have an operation in order to remedy it, and such operation is regarded as a kind of healing rather than a changing for the true nature (fitra). The religion of Islam gave permission to the esthetic surgeries for the purpose of healing.
An esthetic surgery may be practiced if the operation

- does not change the true nature as created by Allah,
- does give no danger because of performance of the operation,
- does not contain any kind of trick or deceit; and is not made for the intention of resembling the opposite sex.
- does not lead to any legal confusion, or misunderstanding.

**Effects of Some Examination and Treatment Methods on Fasting**

Medical applications which don’t break fasting:

- Sprays used by asthmatic patients
- Eye drop use
- Nasal drop use
- Sublingual use
- Ear drops use or ear irrigation
- Biopsy
- Blood donation
- Vaccination
- Topical cream application or medicated pendant use
- Supozituar or enema use
  - Supozituar use (rectal, vaginal)
  - According to the amount of water, or glucose etc during enema, the fasting is either broken or not
- Depending whether water is given through the device, endoscopy, colonoscopy, rectal or vaginal USG break the fasting, otherwise not.

The Presidency of Religious Affairs expresses opinion about the effect of anesthetic applications on fasting that local anesthetics don’t break fasting, whereas regional and general anesthesia break fasting. Food and arbitrary injections, serum use, and blood donation break fasting. It is also reported that peritoneal dialysis breaks fasting but hemodialysis does not. Besides, it is also reported that angiography or angioplasty application does not the break fasting.

**Applications of Family Planning Methods**
The Presidency of Religious Affairs states that certain family planning methods are appropriate, but especially irreversible surgical procedures have been handled deliberately. Coitus interruptus, preservative application, oral contraceptive administrations, and other methods changing hormone level implications have been considered as acceptable methods. However, tubal ligation and vasectomy methods should be applied only when medically necessary, otherwise it is considered as unacceptable. Intrauterine device application is also approached with deliberation. As this method involves damage and destruction of the fertilized egg, it is accepted as equivalent to abortus. The Presidency of Religious Affairs also publishes on its opinion about this matter in its website as “population and family planning will cause results against Islamic world in the long term, and those campaigns conducted for this purpose have a different goal and are not appropriate for political strategies”. Islamic Fikh Academy, 4th Period Assembly, 10-15 January 1988, Kuwait.

**Abortus**

The miscarriage or abortion of the fetus resting in the womb of the mother, even when it is performed with the assent of the parents; is considered as homicide and forbidden by the religion.

While a group of Islamic jurists including some Hanefis consider that an abortion before 120 days is not a fully developed fetal loss, Maliki and Hanbeli jurists think that an abortion before 40 days is not a fully developed fetal loss.

After the gaining of the spirit – that is 40 days according to some jurists or after 120 days for others – the abortion of a child is forbidden by the religion, and an abortion before this time is regarded as revolting.

In case of abortion, an indemnity called as “gurre” is paid, which represents the financial damage caused by the loss of the fetus. Gurre is determined to be as approximately 212.5 gr of gold or 1785 gr silver.

**Suicide**

According to Islamic point of view; the fundamental rights are not the ones which people have intrinsically and that they can have all kinds of authority on, but rather a gift Allah granted people to use under certain circumstances and conditions. The right to live is also like that. The religion of Islam doesn’t give people a suicide right, which means
destroying their rights to live but rather have considered suicide as forbidden and one of the big sins.

**The Death Fast**

The Presidency of Religious Affairs explains that a person’s conducting some faulty behaviors that cause death should be involved in the scope of suicide prohibition. Eating and drinking for survival is a religious duty; therefore, avoiding from this duty and attempting the death fast would be considered as suicide. So far, Islam permitting eating and drinking even forbidden foods under danger of starvation that may cause death, is based a principle that protects and saves human life. Even a person’s not struggling to get out of a dangerous situation is also accepted as equivalent to suicide.

**Euthanasia**

It’s explained that euthanasia is absolutely against the Islamic religion and that men cannot decide when to die because this decision belongs to the creator. Moreover, active euthanasia would mean the same as suicide and a person who ends his or her own life in this way would have committed a sin; it’s also emphasized that those who ratify this action and don’t administer the necessary treatment would be a sinner and hold the responsibility as well.

Qur’an reads that “I created the human beings and jinns to serve with other faithfulness and obedience”. God is the owner of the life, and human being is the caliph of the God. Man can make decisions about himself and can apply them, but cannot encroach the life given by the God. That’s just the way even when a man lasts his life. Even while facing the death, man should give thanks to God and wish to be cured by God.

**Life Support Unit**

As it is forbidden to end one’s own life, it is also forbidden to end life of someone else who has no life expectancy according to medical data or who suffers from intense pain. Patient on life support unit could be removed only if specialized doctors have made their decisions that all the brain functions of the patient are over and reversing the situation is impossible.

**Organ Transplantation**
The approach of the Presidency of Religious Affairs on organ transplantation is within the scope of the idea that “obligations make forbidden things permissible”.

It is explained by the Consultation and Religious Works Committee’s decision dated in 1960 that blood transfusion is appropriate when obligatory and cornea transplantation is religiously permissible when necessary. According to the justified decision of High Council of Religious Affairs with number 3 and date of 19.01.1968, it is stated that not only to save life but also to cure an organ and to enhance the treatment of an illness, blood transfusion is religiously permissible, and heart transplantation is also religiously permissible on the condition that the medical and legal rules were fulfilled.

The Presidency of Religious Affairs explained that certain medical conditions should be met for organ transplantation. According to this;

- Medical necessity
- Donor should have died and if the donor is alive, the organ or tissue to be transplanted shouldn’t be a vital one.
- No fee should be paid for the donated organ or the tissue
- Donor or his/her relatives should give a consent before.
- Recipient should also give a consent.

**Using Assisted Reproduction Technology**

Islam prohibits owning a child without marriage and accepts this situation as the reason for the social degeneration. It is not permissible if any one of the sperm, ovum and the uterus (womb) does not belong to a husband and wife because a legal child should belong to the sperm, ovum and the uterus of a married husband and wife according to Islamic general principles.

There is no religious objection to the in vitro fertilization technique if three components of the fertilization (sperm, ovum and the uterus) belong to a married couple. However, it’s not permissible if any one of the sperm, ovum and the uterus does not belong to a married couple.

- having a child from a sperm of an unknown male without marriage.
• Husband having insufficient sperm because of medical problems and wife being pregnant via sperm of another man.

• Establishing of sperm banks

Thanks to in vitro fertilization technique, more than one blastocysts are produced and some of them are implanted into the uterus. Utility of other blastocysts for investigations or treatments of some illnesses or destruction of them make in vitro fertilization technique debatable for religious aspects. To avoid this objection, no more than needed ovum should be fertilized if possible in the in vitro fertilization application. Otherwise, the destruction of fertilized ovum would be religiously impermissible.

Ovum/Sperm Preservation and Donation

It would be religiously acceptable if ovum taken from females would be given back again when these patients were cured. But it is not permissible if they would be implanted to another female. Likewise, it is religiously permissible if sperm would be preserved because of some medical reasons, and implanted to his lawfully wife.

Stem cells and Therapeutic Utility

If using specialized mature cells from body organs for therapeutic purposes would be possible instead of embryonic stem cells, then it would not be necessary to get the stem cells having a potential to become a human being as spare parts.

The important thing is to make use of the scientific results achieved for the sake of humanity. By the way, medical fields should be directed towards therapeutic utility of specialized mature stem cells that don’t possess a potential to become an independent living being. According to religious and moral aspects, it is no different than organ transplantation.

However, when embryonic stem cells could not be produced from specialized mature cells and there are no other treatment possibilities; the blastocysts remaining after the tube baby can be used as therapeutic purposes on condition that precautions are taken to avoid all kinds of commercial and abusive utility.

Sex Determination

In Qur’an, it is explained that being male or female is determined by the God. Therefore, beyond medical obligations, sex determination is considered as inappropriate religiously.
Cloning

It is accepted religiously permissible to use microorganisms, plants and animals for cloning techniques and genetical engineering applications all for the sake of human being. As it’s early to get an Islamic verdict about the human cloning, one should act extremely prudent.

Discussion

It’s well known that the Presidency of Religious Affairs makes interpretations on some of the bioethical issues, depending on Islamic principle sources. Besides, detailed opinions about the effects of some diagnostic and therapeutic procedures on fasting are put forward. However, to propose fasting to a patient who will undergo angioplasty or dialysis, without considering the patient as a whole or ignoring other medical parameters would be a reductive approach. Proposing a patient to fast or not by considering only the disease and the name of the diagnostic procedure and ignoring scientific medical data would be quite dangerous and cause damage to the health of the patient.

The Presidency of Religious Affairs, like other monotheistic religions, approaches to subjects like abortus, euthanasia, suicide, death fast, and ending life support units by considering the holiness and immunity of life. As for the abortus, it is explained that the time of gaining the spirit is the key point, and abortions done after this period would be considered as the same as homicide. It is accepted that the creator is the absolute ruler, and man cannot conserve on or end his own life. However, it is observed that ending life support devices is accepted deliberately, which does not mean a personal autonomy approval. Both for active euthanasia and induced passive euthanasia or the right to refuse the treatment are all against the will of the Creator, and so far they have been considered to be impermissible. The Presidency of Religious Affairs explains that their interpretations rely on Islamic main sources, but different approaches from other Islamic countries have arisen, too. Although each religion has a universality assertion, different interpretations may exist even among the same religion members. According to The Presidency of Religious Affairs, the patient could be taken away from the life support unit under certain circumstances (brain death occurrence, and no chance for drawbacks) ;on the other hand, in 2004, it was strongly opposed to take away Yaser Arafat, President of the Palestine. Mufti of Jerusalem explained that it was prohibited by the religion (Vatan, 2004). Another example is seen in the case of Ariel Sharon,
the Prime Minister of Israel, has been on life support device since January 2006. It was absolutely opposed to take away him from the life support unit. (Milli Gazete, 2010).

Being married is critically important for the utility of supportive fertilization techniques. An extensive permission is considered for the procedures involving ovum, sperm and the uterus from a married couple; however, considering that the number of fertilized ovum is more than one and some of them undergo elimination, which would create a situation equivalent to abortus, a careful attention should be taken. It is worth noticing that the subject of cloning is deliberately handled and no predictions have been made, yet.

The opinions brought by The Presidency of Religious Affairs have great importance in formation of value judgement of the society and play certain roles on decisions made by each individual person on these issues.

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SECTION IV

MISCELLANEOUS
INVESTIGATION OF ARTICLES RELATED TO ISLAM AND BIOETHICS IN THE EXAMPLE OF AMERICAN JOURNAL OF BIOETHICS AND JOURNAL OF MEDICAL ETHICS FROM 2001 TO PRESENT

Önder İlgili, Ahmet Acıduman

Abstract
Articles published in American Journal of Bioethics (Am J Bioeth) and Journal of Medical Ethics (J Med Ethics) issues since 2001 have been investigated. The articles that have been chosen are related to Islamic societies, include an Islamic point of view, and originate from countries with major Islamic population. The countries from which articles originated, and the distribution of articles over years, have been evaluated. We have tried to determine the contribution of Islamic thoughts in search of solutions to bioethical issues, as well as the countries with major Islamic population working on bioethical issues.

Introduction
Bioethical issues arise in every society all over the world. Bioethical issues significantly are affected by cultural characteristics. Religions are one of the essential factors forming the basis of culture. Culture strongly determines the kinds of issues and solutions suggested to these issues. After the development of modern transportation facilities and increasing international collaboration, people from different cultural origins began to live together in the same place (1,2). Therefore, and in relation to the universal efforts for finding solutions to bioethical issues, the position of Islamic societies in the area of bioethics can be questioned. The well known two journals published in the field of Bioethics, were chosen; one of them is the European Journal of Medical Ethics (3), and the other is the American Journal of Bioethics (4). Published issues from 2001 – 2010 (2010 not included) were surveyed.

Material and Method
Published issues of American Journal of Bioethics and Journal of Medical Ethics between 2001-2010 (2010 not included) were surveyed using hardcopies of the journals in Ankara University School of Medicine Library, and digital forms available through Ankara University E-Library accessible by internet (5,6). Articles related to Islamic societies, including Islamic point of view, and those originated from countries with a major Islamic
population, were chosen. The internet site for members and observers of OIC (Organization of the Islam Conference) used for countries with major Islamic population (7,8). Chosen articles were given in designed tables for both of the journals. The ratio of the selected articles, compared to the rest of the articles published in the aforementioned dates, was given by charts. Distribution of chosen articles, according to countries of origin and publication years, was given in charts.

**Findings**

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| 7   | 2008 | May Vol 34 Iss 5 | 1) The perceived role of Islam in immigrant Muslim medical practice within the USA: an exploratory qualitative study  
2) Patients’ preferences for receiving clinical information and participating in decision-making in Iran  
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O Al-Amoudi, S Al-Eithan, B Al-Ghamdi, M Gamal-Eldin  
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2) Iran  
3) Turkey |
<p>| 8   | 2008 | June Vol 34 Iss 6 | A pilot study of bullying and harassment among medical professionals in Pakistan, focusing on psychiatry: need for a medical ombudsman | A A M Gadit, G Mugford | Canada |
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| 10  | 2007 | August Vol 33 Iss 8 | The ethics of poverty and the poverty of ethics: the case of Palestinian prisoners in Israel seeking to sell their kidneys in | Miran Epstein | UK |</p>
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<td>Who is a parent? Parenthood in Islamic ethics</td>
<td>M Kabir, Banu az-Zubair*</td>
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<td>Therapeutic abortion in Islam: contemporary views of Muslim Shiite scholars and effect of recent Iranian legislation</td>
<td>K M Hedayat, P Shooshtarizadeh, M Raza</td>
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<td>2005</td>
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<td>Informed consent in the Pakistani milieu: the physician's perspective</td>
<td>A M Jafarey, A Farooqui</td>
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<td>The physician and prison hunger strikes: reflecting on the experience in Turkey</td>
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<td>A model for scoring and grading willingness of a potential living related donor</td>
<td>A A Al-Khader</td>
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<td>Making regulations and drawing up legislation in Islamic countries under conditions of uncertainty, with special reference to embryonic stem cell research</td>
<td>S Aksoy</td>
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<td>Between universalism and relativism: a conceptual exploration of problems in formulating and applying</td>
<td>G B Tangwa</td>
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Table 1 List of chosen articles from Journal of Medical Ethics.

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<td>international biomedical ethical guidelines</td>
<td>1) The law and ethics of male circumcision: guidance for doctors 2) Rationalising circumcision: from tradition to fashion, from public health to individual --critical notes on cultural persistence of the freedom practice of genital mutilation Response to: A rational cure for pre-reproductive stress syndrome 3) Value judgment, harm, and religious liberty</td>
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<td>Rights of patients in developing countries: the case of Turkey</td>
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<td>Changes in attitudes regarding cancer disclosure among medical students at the American University of Beirut</td>
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<td>1</td>
<td>2009</td>
<td>August Vol.9 Nm 8</td>
<td>A Closer Look at the Abortion Debate in Iran</td>
<td>Kiarash Aramesh</td>
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<td>Clash of Definitions: Controversies About Conscience in Medicine</td>
<td>Ryan E. Lawrence, Farr A. Curlin</td>
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<td>Leveraging Genetic Resources or Moral Blackmail? Indonesia and Avian Flu Virus Sample Sharing</td>
<td>Arthur L. Caplan, David R. Curry</td>
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<td>2007</td>
<td>October Vol. 7 Nm 10</td>
<td>The Influences of Bioethics and Islamic Jurisprudence on Policy-Making in Iran</td>
<td>Kiarash Aramesh</td>
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<td>7</td>
<td>2007</td>
<td>February Vol. 7 Nm 2</td>
<td>An Islamic View to Stem Cell Research and Cloning: Iran's Experience</td>
<td>Kiarash Aramesh, Soroush Dabbagh</td>
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<td>Alan Jotkowitz, Avraham Steinberg</td>
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Table 2 List of chosen articles from American Journal of Bioethics.
Table 3 Ratio of selected articles in this study from American Journal of Bioethics published between 2001-2010

Table 4 Ratio of selected articles in this study from Journal of Medical Ethics published between 2001 - 2010
Table 5 Distribution of Articles Selected in This Study According to Publication Year

Table 6 Distribution of Articles Selected in This Study to Countries Originated From
Discussion

The percentage of chosen articles from Am J Bioeth in total articles published in this journal between 2001-2010 was detected as %0.441. The percentage of selected articles published in J Med Ethics in total articles published between 2001-2010 these dates was found as %1.763. According to the findings of our study following matters can be considered:

• The articles including studies about bioethical issues originated from countries with major Islamic population occupy a limited place in western literature, and this dramatically diminishes the collaboration and contribution of countries with major Islamic population in universal search for solutions to bioethical issues.

• In search of solutions to bioethical issues of Moslem population living in western countries, more interest on cultural differences and studies concerning the bioethical issues of Moslem minorities is needed.

• Bioethical issues often arise with developing technologies, so bioethical discussions are considered to begin in technologically developed Western countries. The distribution of publications reflected in our study-results can be evaluated in relation with this status.

• A few published articles from countries with major Islamic population in the journals we examined may be explained by the publication policies of these journals, or the quality of articles submitted from countries with major Islamic population.

Turkey, according to our findings, is intensively represented in these two journals; Iran and Saudi Arabia follow, respectively.

Conclusion

An increase in cooperation about bioethical issues is needed. Efforts in planning studies in which bioethical issues are considered compared to the Islamic point of view, should increase, to find out permanent, appropriate solutions for bioethical issues in Moslem societies, wherever they live. In relation with these necessities, institutional infrastructures of these conducted studies should be supported in countries with major Islamic population. Publishing in western journals of more articles originating from countries with major Islamic population, and/or articles with Islamic perspectives, will contribute to the search for universal solutions, and this is also an important factor for Moslem populations living in the West. In this respect, journals are encouraged to make improvements in their publication policies.
References


Islamic and Buddhist Medical Ethics:

Morality and Theology in Moral Reasoning

David Cummiskey

Introduction

A comparison of Islamic and Buddhist medical ethics provides a revealing look at the relationship between morality and theology. At the core of Islamic medical ethics is an overarching recognition that life and death are ultimately in God’s hands. For believers, this life is a precursor to a better and higher life. Although we should treat the sick with compassion and strive to cure illness and disease, our life and our actions must above all else serve and honor God. Buddhism shares many basic values with Islam, but the theology is strikingly different. The Buddhist belief in reincarnation offers a very different conception of life and death. The Buddhist conception of the inevitability of suffering, rooted in desire leads to a different conception of enlightenment, nirvana, or heaven. The impersonal force of karma transforms the conception of responsibility, punishment, and desert. The doctrine of interdependent origination, the interconnectedness of all life, and the conception of the self as ultimately illusory are the core metaphysical doctrines of Buddhism. These foundations of Buddhist ethics lead to important differences in the framing of moral problems. On the other hand, despite the fundamental theological differences, the core moral principles are shared. Buddhists and Muslims share a commitment to compassion for all, self discipline, self restraint, and equality and justice for all. This suggests that these fundamental moral principles are in some important sense independent from theological considerations.

When it comes to specific issues, however, despite common moral principles, theology does make a difference. For example, from an Islamic perspective the central issue in judging the morality of abortion or in its conception of death, is determining when God ensouls the body and when the soul leaves the body. For Buddhist, the focus is instead on reincarnation and rebirth. Even when there is agreement, the reasoning is different. Although both Muslim and Buddhist traditions oppose euthanasia, for Muslims euthanasia violates the divine will; whereas for Buddhist the focus is on the significance of the moment of death to rebirth and the karmic character of killing. This presentation explores the source of the differences, and the similarities, in Islamic and Buddhist approaches to medical ethics.
We begin by setting out the basic approaches of Islamic and Buddhist Medical Ethics, and emphasizing the principles of Medical Ethics that are shared by these two very different theological perspectives. For this short paper, we will look only at the conceptions of Life and Death & the distinction between accepting death and letting a patient die and euthanasia

**Here I am, O God, at Thy Command!**

At the core of Islamic medical ethics is an overarching recognition that life and death are ultimately in God’s hands. Human life is a sacred trust from God. In addition, for Muslims, this life is simply a precursor to a better and higher life after death. This is the dual focus of Islam. We must value this gift of life and respect human life as a divine trust, but we do so aware that a better life follows for believers. This dual focus is also at the core of medical ethics. The Qur’an tells us, if anyone saved a life, it would be as if he saved the life of the whole people (Q 5:32). There is nothing fatalistic in the Islamic approach to medicine. In the Hadith, Muhammad tells us to “Seek a remedy for any disease.” Muslims are to use reason and science to combat disease. One of my favorite saying of Muhammad captures the Muslim attitude: “Trust in God but tether your camel first!” Illness and death are not punishments to be silently suffered. Instead, we should treat the sick with compassion and strive to cure illness and disease. Nonetheless, we must also always remember that our life and our actions must above all else serve and honor God.

**Principles of Islamic Bioethics**

We cannot here systematically establish the core principles of Islamic Bioethics, but the following principles are widely recognized.

1. As we have already emphasized, Submission to the Divine Will is the first principle. In practice this involves both the attitude toward life, medicine, and death outlined above and using the four sources of Sharia as the prime source of moral guidance. Although Islam emphasizes our freedom and responsibility to follow the path set out by God, the source of morality is *not the Autonomy of the will*.

2. Non-Malificience is a second core principle. We are not to harm others in the practice of medicine and we must follow the injunction—“Do not kill except for just cause.”
3. Beneficence and Compassion is the third principle and is rooted in the commitment to charity that is one of the Five Pillars of Islam.

4. Justice and Equity are related principles of Islamic bioethics and widely thought to ground a commitment to provide universal access to health care services.

5. As a fifth point, Islamic ethics tends to focus on Responsibilities and is not a rights-based moral theory.

6. Similarly, the model of medical decision-making and of informed consent is less individualistic and more family-based. Although this is a matter of emphasis, the physician/patient model is thus often takes the form of Shared Decision-Making and of Family-based Consent.

In addition to these first-order moral principles, Islamic Sharia includes two important secondary principles for resolving moral dilemmas. The first (a) is that we should always choose the lesser of the two evils, and the second (b) is that necessity can override what normally would be a prohibitions or requirement. For example, although fasting from sunrise to sunset is a pillar of Islam for Ramadan, nonetheless IV fluids, necessary to preserve life or health, are permissible during the fast.

Buddhism as Metaphysical Therapy

Like Islam, Buddhism is similarly committed to preserving life and relieving the suffering of the sick and dying. The Four Noble Truths of Buddhism explain the nature, origin, and path to the end of suffering - suffering in the deeper sense of the existential dissatisfaction with being. The Buddha taught that old age, illness, and death are inescapable aspects of human existence. Impermanence and decay are part of the order of the universe, but inner peace and contentment are nonetheless possible. Suffering is the result of both the impermanence and finitude of all embodied existence and also the inevitable consequence of unwholesome (bad) human choices. Suffering is thus often, in an important sense, self-inflicted. This is referred to as Karma.

Karma means intentional action but it really refers to a principle of causation associated with voluntary, deliberate, intentional actions. All intentional actions have Karma: a positive (wholesome), negative (unwholesome), or neutral moral character. Wholesome Actions result in/cause good consequences for self and others (and a higher better rebirth). Unwholesome Actions have the opposite negative effects. Karmic energy is discharged
overtime in this life and the next. Bad consequences follow naturally and inevitably from bad (unwholesome) actions. The conception of cosmic justice here is internal to the nature of action, rather than a justice imposed from an external ruler of the universe. The sanction is also not so much as a punishment as it is just the harmful and unavoidable nonetheless – if not in this life than in the countless lives that are part of the cycle of rebirth. In addition to Karma, however, much suffering is simply an inevitable part of the vulnerability and mortality of life itself.

In their conception of life and death, we have a significant difference between Islam and Buddhism. For Buddhism, this life is not a trust and preparation for the hereafter; we instead have a conception of perhaps infinite rebirths in different many different forms, from animal to ghostly hell beings. Each rebirth is the result of the accumulated Karma of one’s past life (lives). Like, Islam, however, there is nothing fatalistic or passive in the Buddhist acceptance of and response to hardship, illness, and death. Indeed, compassion for the sick and dying is the First Virtue of Buddhist medical ethics.

**Principles of Buddhist Bioethics**

Once again, we cannot here systematically establish the core principles of Buddhist Bioethics. Instead, our focus in this short discussion is the close similarity between Buddhist and Islamic moral principles. The following principles of Buddhist Bioethics are widely recognized:

1. A Buddhist follows the teaching of the Buddha, of course, and not Muhammad. The teachings of the Buddha are called the Dharma – and like the Sharia, they divide into the “revelation” of the timeless and eternal, the Four Noble Truths, and all of the other teaching and sayings and stories of the Buddha. Here it may be helpful to see a commonality between the place of the Qur’an and the Hadith in Islam. As Muslims submit to God, Buddhists strive to abandon ego-centricism and attachment and to accept the impermanence of all things and the workings of Karma. Although Buddhism emphasizes our freedom and responsibility to follow the Noble eightfold path that leads to ever greater insight and virtue, once again the source of morality is *not the Autonomy of the will*.

2. Non-Malificence is the core principle and precept of Buddhism – A Buddhist is committed to never intentionally harming or killing any person or sentient creature. So clearly, we are not to harm others in the practice of medicine.
3. Boundless Compassion is the first virtue of Buddhist ethics and thus beneficence is the guiding principle of Buddhist biomedical ethics.

4. The Buddhist virtue of Equanimity aims to treat all people (and all creatures) as we would treat our mothers or children. Justice and Equity are thus core principles of Buddhist bioethics and, just like Islamic ethics, ground a commitment to provide universal access to health care services.

5. As a fifth point, like Islamic ethics, Buddhism tends to focus on Responsibilities and Buddhism is not a rights-based moral theory.

6. The core insight of Buddhism is the Interconnectedness of all things, the delusional nature of egoism and the ultimately self-destructive character of self-centeredness. Buddhism is thus diametrically opposed to the strong focus on individualism in much contemporary (Western) bioethics. Like the Islamic approach, the model of medical decision-making and of informed consent is less individualistic and more family-based. Once again, the physician/patient model is often takes the form of shared decision-making and of family consent.

In addition to these first-order moral principles, like Islamic Sharia, Buddhism includes two important secondary principles for resolving moral dilemmas. The first secondary principle is to always use compassion and equanimity to guide our decision-making (this is similar to the Islamic principle of the lesser evil), and the second principle is to use wisdom & skilful means to recognize when the ordinary moral precepts and rules must be adjusted for unusual and extraordinary circumstances. This second principle is equivalent to the Islamic principle of necessity.

**Guiding Ideals – Buddhism and Islam**

The Three Jewels of Buddhism are the Buddha, the Dharma (teachings of the Buddha), and the Sangha (the community of teachers of Dharma). In a sense, the objective of Buddhist ethics is developing personal virtue through insight meditation (wisdom), while preserving the teachings and community, and preserving life and relieving suffering. Although Islam does not emphasize these” three jewels,” Islam is similarly centered on the Qur'an, the Prophet, and the protecting the community of believers. The focus of Islamic Sharia is the inner strengthening of faith, the protection of the Islamic community, and the protection of life, family, and property.
**Buddhism on Death and Dying**

Dying provides a unique opportunity for developing wisdom and compassion that should not be wasted. The awareness of the **impermanence of life** is unparalleled when one is facing death, and so it is best to be as mindful and aware as possible during this unique experience. Dying is also a unique opportunity to manifest **Compassion**; to comfort others, through one’s own inner calm and peace, in this time of need and impending loss. Buddhists do permit the withdrawing or withholding of care when this is in the best interest of the patient. The role of the physician is to restore health, if she is able, but also to relieve the patient’s suffering. When physicians do let a patient die, they foresee that death will occur, but they are not intending to cause the patient’s death. In contrast, active euthanasia is more controversial and not permitted. The distinction between foreseeing death and intending death involves the intention: The intention “not to treat” is not an intention “to cause death,” *it is argued*, because the intention is to avoid futile or burdensome care, and death is merely foreseen.

**Islam, Death, and the Divine Will**

For a Muslim, although we must always recognize and acknowledge Divine Providence, doing so is consistent with striving to overcome disease and using medical technology to preserve life. But accepting Divine Providence also involves *accepting death as part of God’s plan*. We should not cling to this life as if it is all of human existence. Indeed, after death, a better and higher existence awaits believers. We thus must strike a balance between preserving life and accepting death. When a patient is dying, the divine will is evident, and thus allowing death is not contrary to the divine will. Unlike futile attempts to prevent death, switching the medical focus to palliative and comfort care, and allowing natural death reflect an acceptance of divine providence.

Islamic medical ethics, like Buddhism, prohibits active euthanasia. Life and Death are in God’s hands, and intentionally causing death without “just cause” is forbidden. Suicide and Euthanasia violate the trust of life given by God, but so too can clinging to life when it is time to accept that our death is God’s hands.

**The Doctrine of Double Effect**
Despite the differing conceptions of life and death, Islam and Buddhism arrive at the same conclusion about the ethics of euthanasia, and in each case the conclusion is based on the distinction between Intending and Foreseeing death – commonly called the Doctrine of Double-Effect. This is also the position of many Christian and many secular bioethicists. In each case, there is also dissent from this majority position. For Muslims and Buddhists, the secondary principles for resolving moral dilemmas (the principle of the lesser evil or compassion and the principle of necessity or skilful means) provide a possible basis for hastening death in some particular difficult cases.

Conclusions

As a result of the distinct theological, metaphysical, and meta-ethical worldviews of Islam and Buddhism, the Moral Reasoning of the two worldviews is fundamentally different. Nonetheless, Islam and Buddhism share essentially the same Principles of Bioethics. In addition, unlike much Western bioethics, respect for individual autonomy is not the central concept of either Islamic or Buddhist bioethics.

In both traditions, a focus on patient preferences and respecting individual autonomy is often misguided. Instead, the outcomes, benefits and burdens of the proposed intervention, are much more salient. When it comes to discussions of accepting death or striving to preserve (meaningful) life, “futility”- based on the probability of meaningful recovery - is a better or more salient focus.

Given the differences in the theologies and the similarity in the moral principles, it is possible that the moral principle float-free, in some important sense, from their supposed theological roots. This is only a suggestion, however, and much more discussion and exploration of this question is necessary - and I think worthwhile.

References


What should be learned from the Islamic ethical values in disaster preparedness and relief

Miroslava Vasinova, Maurizio Castelli, Antonio Piga, Teresa Alfonso

Introduction

The earthquake that struck Haiti on the 12 January 2010, affecting about three million people, with an estimated number of 200,000 deaths and about 115,000 injured, has shown, once more the importance of preparedness by the country itself in limiting the preventable damages in the very first days after the impact of whatever disaster, natural or other strikes, an area and its population.

The authors of this paper, after having analyzed the available information on the effectiveness of the post impact rescue operations, the provision of the survivors with surgical and medical care, safe water, food, clothing, shelter and, last but not least, identification and proper disposal of the dead, and psychological assistance, we have found that the European Centre for Bioethics and Quality of Life, could and should provide with a contribution from the perspective of ethics and human rights.

This observation was based on the fact that as it will be shown, in Haiti 2010, as in México 1985, it has been an organizational and humane disaster in the post impact phase of the natural disaster, and that this can be, in other occasions, prevented with an ethical approach of humanitarian measures. This approach is the subject of the present paper.

Working methodology

The present study is the result of the documentary research, discussion and collaboration of its four authors: Dr. Vasinova and Dr. Castelli from the perspective of health, social, economics and legal ethics and also of the rights of the children; Prof. Piga as expert in disasters preparedness and relief management, and of the medico-forensic aspects involved, and of
Prof. Alfonso, from the point of view as pharmacist and Prof. of Pharmaceutical Legislation, Deontology and Bioethics.

Prof. Piga had participated in a debriefing after the earthquake of Mexico City on the 19th September 1985 and then he was on mission in Iran, following the earthquake of 21 June 1990. This experience has been the starting point of the group colloquia to raise consideration and conclusions.

**Objectives**

The main objectives are:

- to show that in the Iran earthquake the Islamic value system of the country played a determinant role in the priorities that were taken into account in the organization of the relief operations and of the rescue of the survivors and the deceased, and in the identification and proper burial of the mortal victims.

- To demonstrate that to consider as priority the human aspects of the prevention of the suffering of the survival is of the greatest importance in the disaster relief plans.

- To show that to have in mind not only the humanitarian aspects of the suffering of the people having lost close relatives and friends, but also of the respect of the religion of the different population groups, is not only feasible but also efficient in terms of motivation of all the people engaged in the rescue, care and reconstruction operations and in the healing of the moral wounds of survivors.

Comparative assessment of the Mexico City (1985), Iran (1990) and Haiti (2010) earthquakes, from the point of view of the human suffering prevention.

**The 19 September 1985, Mexico City 8.1 earthquake:**
It caused, accordingly with the Mexican National Seismological Centre, 45000 deaths, and 10000 estimated by others sources, but never known with exactitude.

More than 900 patients, physicians, nurses and paramedical workers died in the initial shock, because the area most severely hit by the earthquake had the highest concentration of hospitals of the town.

The main reason that the number of deaths is disputed is the lack of efficient preparedness and the government's response to the tragedy, when President Miguel de la Madrid ordered a news blackout and did not address the situation at all for 39 hours after the event.

Many corpses were buried unidentified and it is believed that the true numbers and percentage of known? Victims have never been revealed.

More than 4000 people were rescued alive from the de rubble and 600 injured people received treatment, including 1879 that needed hospitalization.

Among the conclusions to be taken from the ethics evaluation of the institutional response to the earthquake we select the following:

Although each year more than 90 temblors above magnitude 4, 0 are recorded from the movement of the North American plate against the Cocos and Pacific plates, the emergency response seemed to be improvised. Nevertheless there was a popular enormous generous response and great solidarity among the population.

Unfortunately the identification of the corpses was not included as a priority objective, when it was not obvious, for the work of the rescue teams.

Another very unfortunate aspect was that the public authorities seemed to think in their own political priorities, in matters as the acceptance of assistance from the United States, the number of victims determination, the priority selection of some victims for treatment and, even, in the retrieving of the machinery from a military factory, rather in removing the bodies of dead factory workers.
The government’s response to the earthquake was widely criticized at various levels of Mexico society.

Regarding the collapsed buildings only few from one to five stories suffered serious damages; the same was true for buildings over fifteen stories which suffered relatively less damage. This is explained because Mexico City had recently endorsed one of the most stringent building codes based on experience gained from earthquakes in 1957 and 1979. However, the codes were not designed for seismic activity of the intensity experienced in 1985.

The 7.3 earthquake in north-west Iran on June 21, 1990.

This earthquake struck the Zanjan and Silan provinces inhabited by four million people, destroying almost completely three towns, devastating 12 others and affecting more than 1500 villages, many of them with total destruction.

The number of deaths was estimated to be 50,000, with 110,000 injured and 500,000 left homeless.

The health services infrastructure for the affected population was destroyed.

1755 schools were flattened and 1720 others suffered between 50 and 90% damage.

The rescue and relief operations started immediately and thousands of Iranian military and civil defence people alongside with 500 foreign rescue workers pulled out of the rubble more than 100,000 victims within the first 60 hours. Tens of thousands of injured were flown by helicopter to hospitals and emergency centers.

The most important roads which had suffered damages or been closed by sand and stone slides were opened within hours of it happening.

The water supply pipes were damaged and many springs had dried out leaving the area practically without safe drinking water. Many infrastructures as bridges, rural roads, electricity network, irrigation and sewer systems, hospitals, health care centers, industries and community facilities were destroyed.
Prof. Piga visited towns of Lowshan Manjil and Rudbar, the first very badly affected and the other two almost completely destroyed. It could be seen that the fast and excellent assistance provided by Iranian relief workers, including the army, health personal and other groups, was perfectly coordinated.

Prof. Piga’s task was to act as expert in disaster’s management and forensic medicine aspects, and in particular to assist in organizing a system to make possible the fast identification of each rescued corpse, before its inhumation in individual graves, accordingly with the Islamic religious and humanitarian rituals.

On the town of Rudbar there was an operational coordinating meeting where Prof. Piga proposed, as it was agreed, that a simple, not time consuming identification method had to be carried out at the same time as the rescue of the bodies and of the trapped survivors. This method would reduce enormously the number of unidentified bodies and allow identifying the rest in the following days, with few exceptions.

The distribution of food, clothes and other conveniences, or the emergency medical assistance, was performed without any noticeable disorder.

The provisional camps were organized accordingly with the internationally accepted rules regarding location, provision of water, wastes collection, distance between tents, latrines, washing places, etc. A very important decision had been to make woman having lost a child, responsible for the care of lone children. In general to give task to everybody able was a very useful and psycho-therapeutically measure.

The 2010 Haiti 7.0 earthquake

It had its epicenter approximately 25 Km west of Port-au-Prince, the capital of Haiti. The International Red Cross estimated that about three million people were affected by the quake. On 15 of January the Haitian Interior Minister anticipated that between 100.000 and 200.000 lives would be lost.
As Jose Grau (ABC Spanish newspaper) has written and we have also known from other sources tens of thousands of corpses have been buried in mass graves without being identified, and this will add to the disaster very soon a terrible humanitarian problem, because all those corpses without name, legally are not dead.

The Haiti lawyer Thierry Mayard-Paul has explained that to have access to a bank deposit of a dead person it is necessary to have his death certificate, but in many cases this will be impossible. In the same way it will be impossible or very difficult to inherit or to be considered a widower.

In Haiti during the first days after the disaster hundreds of men were looting supermarkets and half destroyed buildings and the police was not hesitating to use weapons to control the mob.

The Port-au-Prince senate President, Thomas Rivera Schatz has been indignant by seeing the Port-au-Prince pictures of foreign medical personal carrying weapons.

Together with the international cooperation personnel it has been necessary to send to Haiti thousands of military, together with the local police, to prevent the robberies, protect the distribution of goods and the work and physical integrity of the cooperants.

**Summarized results of the author’s discussion of the ethics and humanitarian aspects in the post – impact rescue operations and assistance in the three earthquakes.**

- The comparative analysis of the post impact rescue operations, assistance to the victims and effective coordinated relief work, in the three earthquakes, shows that the management of the Iran earthquake was more effective and took better care than that of the two others disasters, in respect to the moral and humanitarian aspects of the stricken population.

- An important reason for this moral sensitive approach lies in the fact that Iran is a confessional state, where the vast majority of its population is Muslims. This was determinant in the urge to identify the mortal victims from the first moment, and to properly dispose of the bodies, as one of the priorities of ethical and humanitarian
behavior. Those priorities will become essential, later on, in preventing the suffering and grief of the stricken population.

- In the Mexico and Haiti earthquakes, although the majority of the population are religiously observant but the respective states as such are not confessional, and this has most probably led to the neglect in the medical and surgical assistance, in the humanitarian relief work and the ethical perspective of the disaster preparedness and relief plans.

- The identification of the corpses is a general problem in all disasters with many causalities. Unfortunately in some preparedness plans this is considered as secondary in the list of priorities. This ignores the importance of the mourning and of the elaboration of the grief by the dead of a loved one. It also ignores that the victims identification can be greatly facilitated with very simple, not time-consuming methods which have to be carried out at the same time as the rescue of the living and of the bodies of the dead trapped in the rubble.

- In the non confessional states the humanitarian aspects of the mass disaster relief must be considered as well as the bioethics and human rights duties, and should receive the priority importance they really have, together with the psychological assistance, children affective care and other humanitarian aspects.

- In our globalization era another priority of the disaster preparedness and relief plans, is to be taken into account, together with the humanitarian and ethical priorities, -- the specific religious needs of the minorities within the population (Muslims, Jews, etc.)

- A disaster shakes and puts on trial the morality and solidarity of the affected population and of the country as a whole. It is said that after the reconstruction the stricken area should become better build and organized than before. In ethical and humanitarian aspects this is also possible and should be realized, as long as it is taken into account in the disaster plans and programmes.
In the European Centre for Bioethics and Quality of Life priority plans of work and research for the next two years period, the topic of disaster’s ethics has been considered as a priority.

References


Photographs