[The Annals of Bioethics : Religious Perspectives in Bioethics] Islamic Bioethics

The Annals of Bioethics

Religious Perspectives in Bioethics

Edited by

John F. Peppin
Director
Center for Bioethics, Pain Management & Medicine
Des Moines, Iowa

Mark J. Cherry
Department of Philosophy
Saint Edward's University
Austin, Texas

and

Ana Iltis
Center for Health Care Ethics
Saint Louis University
Saint Louis, Missouri

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John F. Peppin, Mark J. Cherry, and Ana Iltis

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Islamic Bioethics

Abdulaziz Sachedina

I. Introduction

Islam, as a comprehensive religious-moral system, does not divide the public space in terms of spiritual and secular domains with separate jurisdictions. Its comprehensive ethical deliberations cover all areas of human activity and are founded upon moral realism touching the lives of ordinary people. Ultimate questions connected with human suffering through illness and other afflictions, reproduction and abortion, death and dying, are within the purview of its religiously based ethics. Human beings are essentially God's creatures, and, hence, their total welfare related to this and the next world is God's concern.

Historically, there has been much interest among Muslims in medical ethics (*adab al-tabib*) dealing with practical morals and professional ethics connected with both patient and physician (Bakar, 1986; Burgel, 1973, 1926; Masoom, 1992). The Hippocratic oath and other similar documents derived from Persian sources were part of the classical Arabic literature that sought to inculcate proper manners and correct procedures among physicians and patients. However, the case of biomedical ethics is different. Biomedical ethics evolved in the context of rapid changes in the biological sciences and in health care around the middle of the twentieth century. As a field of inquiry dealing with the moral obligations of health professionals and society in meeting the needs of the sick and injured, modern biomedical ethics provides a framework for moral judgement and ethical decision-making in the wake of phenomenal advancements in medicine. In recent years, Muslim religious scholars have produced legal and ethical responses to the majority of the questions raised by these developments. In major centers of Islamic learning like Cairo, Egypt, and Qumm, Iran, prominent scholars of Islamic law and ethics are engaged in providing ethical decision on all sorts of questions that have arisen in the last three decades (see, e.g., Assad, 1971; Giorgis, 1981). Before we begin to assess Islamic resources for modern reflection on the relationship between the professional and patient, let us understand Islamic tradition in its general outline. This information will enable the reader to grasp the adequacies and the inadequacies of Islamic tradition in providing solutions to contemporary problems in the biological sciences, medicine, nursing, and other modes of health care (Sachedina, 1996a, 1996c; *Islamic Medical Wisdom*, 1991; Plessner, 1974).

II. Historical Background

Islam, the last of the Abrahamic religions, literally means "submission to God's will." It was proclaimed by Muhammad (born 570 C.E.), the Prophet of Islam and the founder of

Islamic public order in the seventh century C.E. in Arabia. The beginning of Islam in 610 C.E. was marked by a struggle to establish a monotheistic faith and create an ethical public order embodying divine justice and mercy. Muhammad as a statesman instituted a series of reforms to create his community, *umma*, on the basis of religious affiliation.

Within a century following Muhammad's death in 632 C.E., Muslim armies had conquered the region from the Nile in North Africa to the Oxus in Central Asia up to India. This phenomenal growth into a vast empire required an Islamic legal system for the administration of the highly developed political systems of the conquered Persian and Byzantine regions. Muslim jurists formulated a comprehensive legal code, using the ethical and legal principles set forth in the *Qur'an*, the collected revelations of Muhammad, and the precedents set by the Prophet and the early community, in addition to the customary law found in the conquered regions.

Differences of opinion on certain critical issues emerged as soon as Muhammad died in 632 C.E. The question of succession to Muhammad was one of the major issues that divided the community into the *Sunni* and *Shi'a*. Those supporting the candidacy of Abu Bakr (d. 634), an elderly associate of the Prophet as a *caliph* (political successor), formed the majority of the community, who gradually came to be known as the Sunnis; those who acclaimed 'Ali (d. 660), Muhammad's cousin and son-in-law, as the *Imam* (religious and political leader) designated by the Prophet, formed the minority group, known as the *Shi'a* ("partisans"). The dispute had profound implications beyond the political. The paradigmatic nature of prophetic prestige in the community, established both in the *Qur'an* through persistent admonition to obey him and through his personal exercise of discretionary power in shaping the public order, meant acknowledgement of an authority whose decisions in all spheres affecting Muslim life would be binding for the posterity (Hodgson, 1974).

III. Fundamental Teachings: The Five Pillars

The two authoritative sources of Islamic teachings are the *Qur'an*, regarded by Muslims as the "Book of God," and the *Sunna*, the exemplary conduct of the Prophet. The *Qur'an* consists of the revelations Muhammad received intermittently from the time of his call as the prophet in 610 C.E. until his death in 632 C.E. Muslims believe that the *Qur'an* was directly communicated by God through the archangel Gabriel, and accordingly, it is regarded as inerrant and immutably preserved. It has served as the source for ethical and theological doctrines and principles for the public organization. The *Sunna* (meaning "trodden path") has functioned as the elaboration of the Qur'anic revelation, providing details about each and every precept and deed, purportedly traced back to the Prophet's own precedent. The narratives that carried such information were designated as *hadith*. In the ninth century, Muslim scholars developed an elaborate system for the theological and legal classification of these *hadith*-reports to deduce certain beliefs and practices.

The tradition describes the Muslim creed and practice as "The Five Pillars of Islam."

The First Pillar is the *shahada*, the profession of faith: "There is no deity but God, and Muhammad is the messenger of God." Belief in God constitutes the integrity of human existence, individually and as a member of society. The *Qur'an* speaks about God as the being whose presence is felt in everything that exists; everything that happens is an indicator of the divine. Faith in God results in being safe, well-integrated, sound, and at peace.

Life is the gift of God, and the body is the divine trust given to humankind to enable it to serve God as completely and fully as the wonderful creation of God has made that serving possible. The humble origin of humans is established by the Qur'anic reference to their creation from "dry clay of black mud formed into shape" (Q. 15:26). Through the well-proportioned creation of human being in God's image and the perpetual guidance provided to perfect it both spiritually and morally, human beings have been given the trusteeship of their body. On the Day of Resurrection, all parts of the human body will have to account for the actions of the person whose bodily organs they formed. God has set limits on what human beings may do with their own bodies. Suicide, homicide, and torturing one's body in any form are regarded as acts of transgression against God.

The Qur'anic affirmation of bodily resurrection has determined many religious-ethical decisions regarding cadavers. Dead bodies should be buried reverently as soon as possible. Islamic law prohibits mutilation of the cadaver and, thus, cremation. Under certain circumstances, in order to determine the cause of death, autopsy is permitted. Postmortem dissection is permitted, for instance, to retrieve a valuable object belonging to another person that might have been swallowed by a deceased person. There was still doubt about the use of human cadavers for medical research until more recently. The rulings are now well established in regards to the cadavers. If the research for a cure is dependent on the dissection of a Muslim cadaver, then, most of the Sunni and the Shi'ite jurists rule it permissible and as a precautionary measure also require the payment of compensation to the family of the deceased (*Fiqh al-tabib* [Islamic Laws for Physicians], compiled by Drs. Mustafa Najafi, Mas'ud Salihi and Mas'ud Firdawsi, International Congress on Medical Ethics, Tehran, July 14-16, 1993, pp. 159-180). Some recent rulings from the Shi'ite jurists permit research and use of organs for transplantation (Ibid.).

The *Qur'an* affirms reverence for human life in reference to a similar commandment given to other monotheists: "We decreed for the Children of Israel that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all humankind, and whoso saveth the life of one, it shall be as if he saved the life of all humankind" (Q. 5:32). This passage has provided modern Muslim jurists with religious documentation to legitimize medical advancement in saving human lives. It has also served as an incentive to protect humanity against peril by choosing to save oneself and others from perdition and serve humanity as service to God.

The corollary of the belief in God's guidance is human accountability to further divine purposes on earth. The purpose of creation is to allow human beings, created with cognition and volition, to accept freely the responsibility of perfecting their existence by working with the laws of nature grasped by the divinely endowed innate disposition (*fitra*) and understanding principles of causality that regulate their well-being. The *Qur'an* emphasizes God's benevolence, all-forgivingness, and mercy. But it also accentuates God's justice, and stresses that humanity should develop moral and spiritual awareness (*taqwa*) in fulfilling everyday requirements of life.

Human existence is not free of tension and inner stresses caused by rejection of truth (*kufr*) and impairment of moral consciousness. To help humanity, God sends prophets "to remind" humanity of its covenant with God (Q. 7:172). There have been 124,000 prophets from the beginning of history, of whom five (Noah, Abraham, Moses, Jesus, and Muhammad) are regarded as "messengers" sent to organize their people on the basis of the guidance revealed by God.

The Second Pillar is daily worship (*salat*), required five times a day: at dawn, midday, afternoon, evening, and night. These prayers are very short and require bowing and prostration. A Muslim may worship anywhere, preferably in congregation, facing Mecca. Muslims are required to worship as a community on Fridays at midday and on two major religious holidays. The congregational prayer gives expression to the believer's religious commitment within the community. Women are exempt from this obligation of congregational participation, and the tradition recommends that they worship in the privacy of their homes. However, although segregated from men, they have always worshiped at designated areas in the mosque. The *Qur'an* prescribes the state of physical purity for the worshipper through the performance of ablutions and a full washing after sexual intercourse or a long illness prior to undertaking worship. Women are required to perform a full washing after the menstrual cycle and child birth because blood is regarded as ritually unclean. Islamic law prescribes regular cleansing and physical hygiene as expressions of one's faith.

Prayer in Islam is regarded as therapeutic. Besides seeking medical treatment Muslims are encouraged to seek healing, especially in psychological illnesses, by praying to God. Many illnesses, according to the teachings of the Prophet, are caused by psychological conditions like anxiety, sorrow, fear, loneliness, and so on. Hence, prayer restores the serenity and tranquility of the soul.

The Third Pillar is the mandatory "alms-levy" (*zakat*). The Muslim definition of the virtuous life includes charitable support of widows, wayfarers, orphans and the needy. Islamic law includes technical regulations about how much *zakat* is due and upon what property it is to be levied. These legal rulings, which originated in early Islam before the disintegration of the Islamic public order, do not necessarily prevail in contemporary Muslim nations. Although *zakat* has for the most part been left to the conscience of Muslims, the obligation to be charitable and contribute to the general welfare of the community continues to be emphasized.

The Fourth Pillar is the fast of the month of Ramadan, marked according to the Muslim lunar calendar that has been in use since the seventh century. Since the lunar year is shorter by 10-11 days than the solar one, the fasting occurs in different seasons. Ramadan is also regarded as the holy month during which the *Qur'an* was revealed to Muhammad. During the fast, which lasts from dawn to dusk, Muslims are required not only to refrain from eating, smoking, and drinking; they are also to refrain from sexual intercourse and acts leading to sensual behavior. The fasting is meant to alter the pattern of life for a month, and Muslims are required to make necessary adjustments in their normal schedules of work and study. The end of the month is marked by a festival, *'Id al-fitr*, after which life returns to normal. The discipline engendered by Ramadan varies from individual to individual. Although instituted to cultivate individual spiritual and moral self-control, Ramadan also provides a community experience in which families and friends share both fasting and evening meals in the spirit of thanksgiving.

Like prayer, fasting also possesses therapeutic value. Prophetic medical tradition prescribes fasting for different kinds of ailments, including psychological problems caused by fear and anxiety. It was regarded as a remedy for curing excessive sexual drive.

The Fifth Pillar is the annual pilgrimage, the *hajj*, which all Muslims are required to undertake once in their lives, provided they have the financial means. The rituals of the pilgrimage at Mecca are a collective commemoration of the sacrifice story of Abraham and of the lessons to be derived from it. Its spiritual objective is to inculcate a form of asceticism accompanied with renunciation of worldly desires (sexual intercourse, use of perfumes, and so on) and concern with the hereafter. The experience brings together Muslims of diverse cultures and nationalities to achieve a purity of existence and a communion with God that will exalt the pilgrim for the rest of his/her life.

IV. The Shari'a: Islamic Legal Tradition

Islamic jurisprudence (*fiqh*) was developed to determine normative Islamic conduct as detailed in the *Shari'a*, the Sacred Law. The *Shari'a* is the divinely ordained blueprint for human conduct, which was inherently and essentially religious. The juridical inquiry in discovering the *Shari'a* code was comprehensive because it necessarily dealt with every case of conscience covering God-human relations, as well as the ethical content of interpersonal relations in every possible sphere of human activity. Most of the legal activity, however, went into settling more formal interpersonal activities that affected the morals of the community. These activities dealt with the obligation of doing good to Muslims and guarding the interests of the community.

Islamic legal theory recognized four sources on the basis of which judicial decisions could be deduced: the *Qur'an*, the *Sunna*, consensus (*ijma'*) of the early community of the Muslims, and analogy (*qiyas*) which is a method of reasoning from data furnished by the *Qur'an* and the *Sunna* attempting to estimate the unknown from the known ruling. Al-Shafi'i (d. 820), a rigorous legal thinker, systematically and comprehensively linked the four sources to derive the whole *Shari'a* to cover all possible contingencies. The legal precedents and principles provided by the *Qur'an* and Sunna were used to develop an elaborate system of rules of jurisprudence. Human conduct was to be determined in terms of how much legal weight was borne by a particular rule that rendered a given practice obligatory or merely recommended. For instance, if it is deemed that by risking one's life one may be able to save another person from impending death, then the law permits not only donation but also sale of a needed body part or an organ after a careful risk-benefit analysis. Vital organs like eyes are excepted in this ruling because deforming one's countenance was not permissible. Likewise, it had to be decided whether an obligatory act, because of its social relevance and the degree of applicability of a given rule or precedent, was to be enforced by penalties in the courts or left to God's judgment in the hereafter.

All schools, although tending to give the male an extensive prerogative, presupposed a considerable social role for women. The Qur'anic injunction to propriety were stretched by means of the *Sunna* to impose seclusion. The veil was presented simply in terms of personal modesty, the female apartments in terms of family privacy. It was not to become a form of social distinction, as it did with the upper-class women living upon rigorous segregation. Among the latter, it became a mark of a woman of a quality that she was secluded from all men but her own.

Segregation of sexes as required by the *Shari'a* has led to numerous problems in the teaching and practicing of medicine today. The problems cover such areas as closely examining and touching the reproductive organs (male-female, female-male, male-male, and female-female); looking even at the naked photographs for studying physiology and anatomy; taking pulse, and other vital signs of patients of opposite sex. While the classical

decisions were prohibitive in all these cases, majority of the modern Muslim jurists have casuistically accommodated the need to carry out necessary medical training and research.

In the patriarchal family structures, and not necessarily in the *Shari'a*, women were assigned a subordinate role in the household and community. Through certain cultural practices, women's reproductive capacity was controlled. In some parts of the Muslim world, women are victims of traditional practices that are often harmful to their well-being and that of their children. One of the controversial and persistent practices is female circumcision (*khafd* or *khifad*) without which it is believed that girls could not attain the status of womanhood. Islamic views on female circumcision are ambiguous. While there are traditions that can be extrapolated to prohibit the practice, there are some that condone it as a cultural norm. The operation was performed long before the rise of Islam. It is not practiced in many Muslim countries, including Saudi Arabia, Tunisia, Iran and Turkey. There is nothing in the *Qur'an* that justifies female circumcision, especially its most severe form, infibulation. The Prophet opposed the custom found among pre-Islamic Arabs, since he considered it harmful to women's sexual well-being. Yet the official juridical position among majority of *Sunni* jurists is that female circumcision is sanctioned by the *Sunna*. However, the law does not regard it as an obligatory requirement. It is merely a recommended act.

As Islamic jurisprudence became a highly technical process, disputes about method and judicial opinions crystallized into legal schools designated by the names of prominent jursits. The legal school that followed the Iraqi tradition was called "*Hanafi*", after Abu Hanifa (d. 767) the *imam* (teacher) in Iraq. Those who adhered to the rulings of Malik b. Anas (d. 795), in Arabia and elsewhere, were known as "*Malikis*." Al-Shafi'i founded a legal school in Egypt whose influence spread widely to other regions of the Muslim world. Another school was associated with Ahmad b. Hanbal (d. 855), who compiled a work on *hadith*-reports that became the source for juridical decisions of those who followed him. Shi'ites developed their own legal school, whose leading authority was the Imam Ja'far al-Sadiq (d. 748). Normally, Muslims accepted one of the legal schools prevalent in their region. Most of the Sunnites follow Hanafi or Shafi'i; whereas the Shi'ites follow the Ja'fari school. In the absence of an organized "church" and ordained "clergy" in Islam, determination of valid religious praxis was left to the qualified scholar of religious law. Hence, there emerged a living tradition, with different interpretations of the Qur'anic laws and prophetic traditions, giving rise to different schools of the *Shari'a*.

The scope of *Shari'a*, understood as the norm of the Muslim community as a community, was defined by two essential areas of human life: acts of worship both public and private, connected with the pillars of faith; and acts of public order that insure individual justice. The *Shari'a* reflected Muslim endeavors to ensure that Islam pervaded the whole of life. However, many areas of human existence, including the ethical problems connected with the medical treatment of human ailments received little systematic attention in the classical formulations of the legal thought (Rahman, 1980; Wensinck, 1965; Watt, 1968).

V. Theological and Ethical Tradition

In the first half of the eighth century, the debates about qualified leadership, the existence of injustices in the community, and its appropriate response to redress the situation formed

the rudiments of the earliest systematic theology of the group called Mu'tazilites. Before them, some Muslim thinkers had developed theological arguments, including a doctrine of God and human responsibility, in defense of the Islamic revelation and the prophethood of Muhammad when these were challenged by other monotheists. The Mu'tazilites, however, undertook to show that there was nothing repugnant to reason in the Islamic revelation. In defining God's creation and governance of the world, these early Muslim theologians sought to demonstrate the primacy of revelation. At the same time, their theology reflected Hellenic influences. From the ninth century on, translations of the full Greek philosophic and scientific heritage became available in Arabic. The result was the development of a technical vocabulary and a pattern of syntax that enriched theological terminology.

The Ash'arite traditionalists, reacting to Mu'tazilite rationalism, limited speculative theology to a defense of the doctrines given in the *hadith*-reports, which were regarded more reliable than abstract reason in deducing individual doctrines. The Ash'arites emphasized the absolute will and power of God, and denied nature and humankind any decisive role. What humans perceive as causation, they believed, is actually God's habitual behavior. In their response to the Mu'tazilite view about the objective nature of good and evil, and in their effort to maintain the effectiveness of a God, at once omnipotent and omnibenevolent, who could and did intervene in human affairs, they maintained that good and evil are what God decrees them to be. God transcends the order of nature. Hence, the notion of free will is incompatible with the divine transcendence, which determines all actions directly. Ash'arite theological views remained dominant throughout Islamic history, well into modern times, and had profound effect upon scientific and particularly medical theory and practice among the Sunnites. The Shi'ite theological and ethical doctrines were based on Mu'tazilite thesis about the Justice of God and the objective nature of moral values.

At the practical level, medicine, like astrology, involved the training necessary to apply techniques that demonstrated tact and insight in the treatment of patients. Medical practice was based on a tradition of clinical observation, which became the source for encyclopedic works like the *Canon* (*al-Qanun*) of Avicenna (d. 1037). Since dissection of human cadavers was socially impossible because of the prohibition in Islamic law against mutilation of the dead and the requirment of immediate burial, physicians treated their patients partly on the basis of their knowledge of anatomy and partly by relying on their understanding of the rationality and harmony of the cosmos. Diagnosis and prognosis were also based on their insights about psychological and environmental factors. Despite the disapproval of some orthodox Muslims, who rejected Greek medicine as not provided for in the Prophetic medical tradition, many of these philosopher-physicians of society came to be known as the *hakim* (wise) (Elgood, 1951a, 1951b).

VI. Professional Ethics in Islam

Since the *Qur'an* teaches that society as a whole needs to respond to the creation of a just public order, there has been an emphasis on the way an individual needs to be prepared for such a revolution. Acknowledgement of God demands, in the first instance, a personal devotion to moral purity. But personal purity implies a just social behavior: generosity to the weak and curbing the license of the strong. Moreover, it is fully recognized that a person's moral life is usually less a function of his good resolutions than of the level of actual

expectations around him. It must be society and not just individuals that should be reformed. The *Qur'an* makes it sufficiently clear that moral path is for everyone, not just for moral heroes, by praising those who urge others to virtue almost as much as those who practice it themselves. The moral life must be lived by a society at large.

Practical piety and reliable character are emphasized in connection with all professions. Although a physician need not be a pious individual in order to be a competent physician (because a physician's work is essentially to take care of his/her patient), nevertheless, piety and good character aid in the general acceptance of the physician's advice and bad character would detract from its value. A physician should be a cultured person, aware of the sensibilities of the people among whom he/she works. In Muslim culture, a physician must work hard to gain the trust of the patient and cultivate professional confidence (*Fiqh al-tabib*, 1993; Rahman, 1989).

Islam lays great emphasis on virtues and obligations in connection with medical profession, because medicine deals with the most valued aspect of existence, namely, preservation of human life. Bad character in a physician is seen as a mortal poison and a sure path to perdition. The sicknesses of heart and the diseases of soul are regarded as a great threat to the normal professional role assumed by a physician. Moreover, the society and the institutions that provide medical care have certain expectations from a person to whom they entrust their physical well-being. Muslim ethicists lay down canons by which virtues become ingrained in the practice of a skillful physician. Techniques of meditation and prayers are suggested for medical professionals to focus their attention to the wholeness of human care, and not simply to their physical condition. In this way, medical professional in a Muslim community is expected to learn not only the origins and causes of sicknesses which cause loss of corporeal life, but he/she also begins to pay attention to the diseases of heart and soul. In this latter diagnosis, Muslim physician goes beyond the role-related technical skill and equips him/herself with a character built on virtuous life to understand the religious/psychological dimensions of the profession. The two most important virtues emphasized in Islamic professional ethics are spiritual and moral consciousness (*taqwa*) and patience (*sabr*). The physician must cultivate these two virtues by leading a balanced and moderate life and by not wasting time and energy indulging in pleasure and amusements.

The question of professional ethics is directly connected to a religious problem of the relationship between action and its impact upon human conscience. To state it briefly, human acts have a direct impact upon the development of conscience which, in Islamic tradition, is regarded as the source of determining the rightness or wrongness of human undertakings. The conscience must be constantly guarded against becoming corrupted. When conscience becomes corrupted as a result of neglecting ethical matters related to the production of daily sustenance, then there is no moral safeguard left to prevent these professionals from engaging into more serious acts that would lead to the destruction of the very fabric of social relations founded upon divinely ingrained sense of justice and fairness. Both intention and reflection must precede all human acts that infringe upon the spiritual and physical well-being of others.

Here it is important to keep in mind that both the patient and physician are required by Islam to observe ethical discipline. Patients should strictly follow their physicians' orders and respect their physicians. Patients are exhorted to regard their physicians better than their best friends. Patient should have direct contact with their doctors and should confide fully in them concerning their sickness. In fact, it is better for people to stay in touch with a physician who can advise them about their health before they actually need treatment (Rosenthal, 1969).

VII. Healthcare Provider: Patient-institution Relationship

When a patient goes to a health care institution, he/she is in desperate need of attention. Islam teaches that fulfilling the needs of the people is in itself an opportunity to recognize the blessings of God on humanity. Hence, it is the duty of healthcare providers to perform their responsibilities with necessary compassion and discernment. The profit motive should not drive the institution to hold back the necessary diagnosis and treatment. In fact, both patient and health providers must observe an ethical discipline founded upon the total wellness of individual (Rispler-Chaim, 1993).

There is much emphasis on free medical services in Muslim culture because of the prevalent poverty in many regions of the world where Muslims are a majority. To refuse to see a patient because she happens to be poor is to forfeit the claim to be human. Institutional responsibility in such cases is enormous because healthcare insurance coverage is not available universally. In the modern Muslim nations health care has become a major part of endeavors to educate population about health hazards and the need to observe daily hygiene as much as keep the home and social environment clean.

VIII. Reproductive Technologies and Related Issues

The ability to bear children is regarded as an important purpose of marriage in Islam. Some Muslim religious thinkers view procreation as the main goal of a marital union. However, normative sources like the *Qur'an* and the *Sunna* do not view sexual relations between spouses merely for the purpose of reproduction (Musallam, 1989). In Muslim culture, children are an important source of a healthy and successful marriage. Since the *Qur'an* does not accord legal validity to reproduction separate from the act of coitus, and since Islamic law does not regard adoption as an option for infertile couples, there has been relatively more sustained interest in reproductive technologies developed by modern medicine. However, a number of techniques infringe upon ethical sensibilities connected with obtaining semen or implantation of spermatozoa into the female reproductive tract (Islam and Family Planning, 1974; Sachedina, 1996b).

(1) Artificial insemination is permissible in Islamic law as long as insemination utilizes the semen of the husband. Semen of a third party or donor insemination is forbidden because, according to Islamic law, the lineage of an off-spring must be properly connected to a male and female joined in a religiously recognized and solemnized marital union. The sanctity of a child's moral and legal personhood is dependant upon his/her untarnished lineage through both parents.

(2) Since artificial insemination involves an element of adulterous implantation in the womb of a surrogate mother, no contract involving such transaction would be legal in the *Shari'a* law. Another problem related to artificial insemination is related to the method of obtaining semen. Masturbation as a method of obtaining semen is rejected

by the law as sinful. Some jurists have argued its permissibility in this case because the purpose is not to derive pleasure. Moreover, they justify their decision based on the principle which states "necessity renders the forbidden permissible." But other methods, such as the use of vibratory stimuli, an alternate possibility of obtaining sperm by using a condom during intercourse or by removing some surgically from the epididymis (the storage depot for spermatozoa), are not a problem.

(3) In general, all legal schools in Islam approve insemination of a wife (*in vivo*) with semen obtained from her husband and artificial insemination (*in vitro*) using the husband's semen. All other forms (e.g., using sperms of a donor or mixing the woman's ovum with semen from a man other than her husband, then transferring the ovum to the uterus of the man's wife) are forbidden. The problem of discarding other fertilized ova will be discussed under abortion (see below).

(4) Surrogate motherhood is also forbidden on the grounds that no other womb than the wife's can be used for the purpose of carrying a fetus to its full term. The main concern for the preservation of properly recognized lineage of the child rules out any ambiguous procedures that may raise doubts about the identity of the child's parents.

Muslim jurists define abortion as the induced ejection of a fetus prematurely with or without a proper justification. The common juristic terminology like *al-isqat* (literally "elimination") suggests the intentional aspect of the miscarriage and not simply discharged fetus with no signs of life (Ebrahim, 1991).

There are no references in the *Qur'an* about abortion. The passages used as documentation to infer prohibitive ruling about abortion refer to the general interdiction about killing (*qatl al-nafs*) and the punishment that accrues to the one who commits intentional homicide: "And slay not the soul God has forbidden, except by right. Whosoever is slain unjustly, We have appointed to his next-of-kin authority; but let him not exceed in slaying; he shall be helped" (Q. 17:33; also 5:32). Even those passages that speak about the embryonic development of a fetus do not spell out the modern day differentiation between a biological animation and a moral and legal existence.

Based on Qur'anic embryology (Q. 23:10-12), some important conclusions have been drawn about the development of embryo to a full human person. First, perceivable human life is possible at the later stage in biological development of the embryo when God says: "thereafter We produced him as another creature." Second, it is possible to make a distinction between biological animation and moral-legal personhood, and, as indicated by the consensus among the Sunni jurists over the interpretation of these verses, to place the latter stage after the first trimester in pregnancy. This consensus is based on the traditions that provide further elaboration of the Qur'anic embryology.

The single most important tradition that has provided religious grounds for legal estimation of fetus inviolability has been reported in both the Sunni and Shi'ite compilations. This tradition describes the embryonic stage when human destiny is recorded by an angel who is sent by God to breathe the spirit either on the fortieth or forty-second night or after 120 days. The jurists have identified this stage as the moment of ensoulment when the fetus attains personhood. The moral-legal implication of the ensoulment is not the subject of these traditions. With the limited knowledge about human embryology, ancient Muslim jurists did not emphasize the distinction between two periods of pregnancy to deduce decisions about the culpability and accruing penalty in the matter of induced abortion. For them

deliberate termination of pregnancy at any stage of the embryonic development was sinful. However, after first trimester abortion was absolutely prohibited. Muslim jurists have reported consensus in the matter of complete inviolability of the fetus after 120 days. The differences of opinion in this matter had to wait for the biomedical advancements in modern times when biological data on the embryonic journey to a full human at times contradicted the traditional account of when conceivable life was scientifically discernible.

The opinions of the early Muslim jurists on abortion can be divided in accordance with the first three stages of forty day each, that is the first trimester, in embryonic development:

- *The drop stage*: Majority of the Hanafi, Shafi'i, and Hanbali, and some of the Maliki and Shi'ite jurists allow it. Majority of the Maliki and Shi'ite and some Hanafi, Shafi'i, and Hanbali jurists prohibit it.
- *The clot stage*: Majority of the Hanafi, Shafi'i and some among the Hanbali jurists permit it. All the Maliki, majority of the Hanbali and Shi'ite, some Hanafi and Shafi'i prohibit it.
- *The tissue stage*: Majority of the Hanafi and Shafi'i, and some among the Hanbali jurists permit it. All the Maliki, majority of the Hanbali and Shi'ite, and some Hanafi and Shafi'i jurists prohibit it, because this is the ensoulment stage.

While in agreement about the abortion before the first trimester, the jurists have disagreed about the legal status of the fetus and the rulings inferred from their comprehension of the biological stages. However, on the basis of the penalties prescribed for feticide, there is an agreement that the fetus before ensoulment cannot be accorded a status of a full person. Also, no funeral rites are to be performed for a fetus before the first trimester.

Overall, the law stipulates the fetus' right to life, even when a universally recognized definition of an embryo that specifies personhood is lacking. Accordingly, it requires postponement of a pregnant woman's execution until after she has delivered her baby and made provisions for its care after her death. A majority of the Hanafi, Shafi'i, Hanbali and some Shi'ite scholars rule that abortion may take place during the first trimester if the woman's pregnancy threatens the well-being of an already existing infant. In the case of a pregnancy that threatens a woman's life, a majority of the jurists have given priority to saving the life of the fetus when ensoulment has already occurred.

The phenomenal advancement of biomedical technology in saving the life of a woman faced with a complicated pregnancy, as well as determining the beginning of a life in a fetus, has led to a reconsideration of some classical formulations about abortion. A number of juristic principles, including the "contrariety between two harms" and "protection against distress and constriction" have been evoked to rule the priority of saving the mother's life on whose well-being depends the life of the fetus. Also, in the case of a rape or incest psychological damage suffered by a woman has been duly recognized as a justification for abortion.

Different legal schools hold conflicting opinions as to the appropriate penalty for the act of feticide, but none of the schools punish the crime as homicide. If a man causes a woman to miscarry (or abort) and the fetus is unformed, his crime carries the penalty of *al-ghurra* (monetary compensation); but if the expelled fetus is formed then it is *diya kamila* (full blood money). An additional penalty may be levied, requiring the aggressor to fast for two consecutive months.

IX. Organ and Tissues Donation and Transplantation

In general, Islam encourages all efforts that promote saving human life. The *Qur'an* clearly states: "Whoso gives life to a soul, shall be as if he had given life to humankind altogether" (Q. 5:33). Organ transplantation can save life and hence, with the advanced medical technologies in place, Muslims have been from time to time reminded about the merit of organ/tissue donation. Islamic law prohibits mutilation of the cadaver and, thus, to cremate it. In early 1980s, rulings were issued on the basis of the principle of public interest (*maslaha*) to allow organ transplant from person to person. However, there are cultural factors connected with a strong commitment to intact burial. From the early 1970s, the expansion of organ procurement, especially viable organs from heart-beating cadavers, whose cardiopulmonary function is maintained by machines, introduced the concept of brain death, which generated ambiguities among Muslim jurists. Although musculo-skeletol tissue transplants have increased in the Muslim world, vital organ transplants like heart and kidney have encountered the difficulty of determination of death on the basis of total and irreversible cessation of brain function. The brain death criterion is not universally accepted by Muslim jurists of all legal schools. Since the organ donor must be kept on machines that maintain respiration and heartbeat in order to keep an organ usable for transplantation, the traditional death criterion in the *Shari'a*, which is cessation of breathing, does not apply in the case of brain death. More recently, with the growing education of legal scholars in medical issues connected with brain death, the jurists have permitted the retrieval of organs, as long as medical institutions obtain permission from families. Such permission has not been forthcoming because of the psychological and cultural factors.

Eye banks have existed in the Muslim world for more than four decades, while organ banks are relatively new. It was not until November, 1998 that Iran saw its first organ bank, whereas Egypt and other Arab countries have had their system for procurement of tissues and organs in place since the early 1980s. Ethical and legal issues connected with organ transplantation revolve around the procurement, transfer and use of organs and tissues from cadavers. Organ transplantation also raises questions about the appropriateness of viewing human body as property. Egyptian jurists have specifically raised the question about the validity of a living will in which advance directives about the donation of organs are included. They argue that human being cannot claim ownership of his body since it is given to him as a trust. Thus, he cannot make a living will in connection with his cadaver, which should be promptly buried within few hours after death. On the same basis, some jurists identify an intimate relationship between personhood and embodiment and view the cadaver as symbolic of the person. Accordingly, they view the sale of organs as unlawful. This latter opinion is not held unanimously by all, since some Shi'ite jurists regard the sale of organs as permissible as long as it causes no harm to the person or does not lead to the mutilation of the cadaver.

In more recent literature there exists a consensus regarding the right of a living person to donate certain parts of the body with the condition that it would not lead intentionally wounding oneself or forfeiting one's life to save another. However, if it is deemed that by risking one's life one may be able to save his fellow-human from impending death, then one could undertake to donate a part or an organ that is needed. At this point, the discretion is given to the person who can decide after a careful risk-benefit analysis in which the probability of saving the recipient's life is substantially greater than the risk to donor's life

or health. It is important to keep in mind that since Islamic tradition emphasizes human relationships as important for individual, if the family opposes the individual's decision to donate, Islamic law favors the family to prevail. In general, the healthcare system is sensitive to the family's wishes, even when the deceased person signed a donor card, and the will can be thwarted after their death (Sachedina, 1988 and 1998).

X. Death and Dying in Islam

Traditionally, Islamic jurisprudence defines death as complete cessation of the heart or respiration. However, a further dimension has been added to this formulation of death in view of the modern medical technology that can intervene to prolong life through the life-support system in the case where all functions of the brain have ceased. This development has given rise to the question whether brain death can be recognized as a valid formulation of death without first defining the criteria of life in Islam. Can innate integration of vegetative functions without cognition in a brain-dead person be used as the necessary and sufficient condition of life? What are the social and moral implications of recognizing brain death as a right criterion for death in Muslim society?

A. Some Conceptual Considerations

Although the Muslim scripture, the *Qur'an*, contains various death themes that add significantly to our insight into the meaning of death, the concept is left undefined and always portrayed in close relationship with the concepts of life, creation, and resurrection. The *Qur'an* is more concerned to determine the nature of death.

> Every person (*nafs*) shall taste of death; and We try you with evil and good for a testing, then unto Us you shall be returned (Q. 21:35-6).

Death is the termination of an individual comprehensive being, capable of believing and disbelieving, and not simply a living organism. Life does not end with death. In the same way that a person does not cease to exist in sleep, so also he does not cease to exist in death. And in the same way that a person comes back to life when waking from sleep, so also will she/he be revived at the great awakening on the Day of Judgement. Hence, Islam views death merely as a stage in human existence. Physical death should not be feared as an evil. One should, however, worry about the agonies of spiritual death caused by living a life of moral corruption. That sinful life is not worth living. Human efforts should be concerned with the revival of human conscience, which will lead to a meaningful life. Does it mean that human body should be simply neglected? No, not at all. It simply means that human death must be viewed as secondary to the spiritual and moral quality of life.

This religious evaluation of death is reflected in Muslim cultural attitudes to life and death. In general, Muslim public does not view, for instance, a persistent vegetative state of an individual as life. Life in Muslim culture has a set of criteria which must be fulfilled in order for the patients, their families, and society in general to regard a person living. These include a person's ability to make decisions and execute them through his own conscious and cognitive competence. In the absence of such competence, close family members or religious and lay leaders in the community assume the guardianship to

protect the person's rights. The principle of public good (*maslaha*) for society in Islam allows the community leaders to act as surrogate decision-makers in cases when the person due to mental or any related incompetency is unable to assume that responsibility.

Significantly, in the case of a patient in the vegetative state, ethical deliberations in Islam are not only concerned with determining the value of the patient's life. The principle of public good demands that an individual's life must be weighed in the scale of general well-being of those who are horizontally related to the patient. End of life decisions require to take into consideration an individual's interpersonal relationship with his own family and society in general. If active medical intervention in the case of a severely brain-damaged patient leads to further suffering of the patient and those related to him in society, then the ethical judgement cannot ignore the ensuing general harm, including the rising cost of prolonging such life for the entire society.

It is for this reason that Muslim jurists have adopted the view that it is permissible for the patient in an irreversible vegetative state, either through a prior living will or his immediate family or supreme legal authority (*hakim al-shar'*), to refuse any treatment that simply prolongs the patient's miserable condition. The point is explicitly made clear that, in the eyes of Muslim public, it is pointless and even degrading to intervene medically in the nature's course towards an imminent death. On the basis of the religious and moral duty of rejection of harm (*'usr wa haraj*), if it is reasonably determined by at least three consultant physicians that pursuing a particular course of treatment is proportionally more harmful than allowing the nature to take its course, then it is obligatory to stop the treatment.

This conceptual and cultural understanding of death in Islam is important to keep in mind as we consider the legal and ethical deliberations that were undertaken by Muslim legalists in providing the criteria to determine death. Their decisions were not deduced solely on the basis of what we would call normative sources like the *Qur'an* and the *Tradition*, the *Sunna*; they also took into account cultural understanding of the nature of life and death in the community. In Muslim culture, until recently when modern medical technology admitted the distinction between cessation of cerebral function and cardiorespiratory function, the pronouncement of death was based upon the criteria provided by the vitality of mutually dependent organic system of human body. The terms "cerebral death" and "brain death" are neologisms in Muslim societies, which continue to see death as the cessation of vital functions in a single organ system rather than a part of the organ. Having said this, the question arises whether the Islamic legal tradition provides any criteria to determine when a person can be regarded as dead.

B. The Traditional Legal Criteria

Until recently, determination of death in Muslim culture was not enigmatic at all. In general, Islamic law has depended upon the opinions of scientific experts and professionals, who have used the pragmatic but traditional criteria for death routinely observed in patients. According to the traditional criterion, the life ends with the permanent cessation of respiration and of circulation. In other words, Muslim jurists regarded complete cessation of heartbeat as a sufficient criterion to declare a person legally dead. The problem arose when modern medical technology acquired the ability to keep the signs of life through respiratory support in a brainstem-dead patient. The patients were regarded alive in accord with the traditional definition of death.

There are two interrelated reasons that have prompted Muslim jurists to reconsider the stance on brain death criteria in the case of patients with irreversible brain damage while the cardiovascular system continues to function by means of new techniques of intensive care:

(1) Can recognition of brain death lead to the unethical and illegal retrieval of organs for transplantation in such patients whose cardiorespiratory physiology can be kept functional for successful retrieval? In many poor countries in the Third World, there is an irresistible temptation to make money from the sale of these organs.

(2) Can the government policy authorize the health care providers to withdraw treatment when organ viability can be maintained by active medical intervention? Until recently, health policies in the Muslim countries generally reflected insensitivity to the public's moral and cultural sensitivities connected with death.

The following decision was made as a government policy in Saudi Arabia under the rubric of *Religious Aspect of Organ Transplant* (The Purport of the Senior Ulama Commission's Decision No: 99 dated 6-11-1402 [AH]/25-08-1982):

> The board unanimously resolved the permissibility to remove an organ, or a part thereof from a Muslim or a non-Muslim (*dhimmi*) living person and graft it onto him, should the need arise, should there be no risk in the removal and should the transplantation seem likely successful.

According to two leading medical doctors Ali al-Bar and Nabil Nizamuddin, the latter being the liver transplant surgeon in King Fahad National Guard Hospital in Riyadh, the above policy statement requires the following elaboration:

> Should the diagnosis of brain death be established unequivocally, the physician in charge may keep the corpse ventilated for the purpose of pre-arranged organ donation until receiving the consent of the heirs, or an order from the *Qadi*, the magistrate, in the case of an unknown corpse. The ventilated corpse is considered dead from the time of declaration of brain death and not from the time of turning off the ventilator.

The last statement is contradicted by the Council of Islamic Jurisprudence (*majma' al-fiqh al-islami*), which includes jurists from all schools of thought in Islam and which meets regularly to review some of these new rulings. Their ruling reads as follows:

> It is permissible to switch off the life support system with total and irreversible loss of function of the whole brain in a patient if three attending specialist physicians render their opinion unequivocally that irreversible cessation of brain functions has occurred. This is so even when the essential functions of the heart and the lungs are externally supported by life support system. However, legal death cannot be pronounced except when the vital functions have ceased after the external support system has been switched off (*al-qarar al-thani*, p. 21).

In none of the rulings examined thus far has any Muslim jurists tried to define or determine the criteria for accepting the validity of brain death from Islamic legal perspective. They have depended on the consultant physicians, who are more interested in getting the approval

for retrieving organs, to provide their expert opinion. Hence, the debate in North America concerning the acceptance of "higher brain formulations of death" and the controversial aspects of providing medical care of patients with advanced forms of dementia and PVS is absent in the juridical literature dealing with the definition of death.

In its third session held in Amman, Jordan, on October 16, 1986, the Council of Islamic Jurisprudence once again took up and discussed the life supportive system in the ICU. After extensive and exhaustive explanation given by physicians specializing in that field of medicine, they decided the following:

> The person is considered legally dead, and all the guidelines provided by the *Shari'a* to determine death are applicable when following signs are confirmed:
> (a) When complete cessation of the heart or respiration occurs, and the expert physicians ascertain that the cessation is irreversible.
> (b) When complete cessation of all functions of the brain occurs, and the expert physicians ascertain that the cessation is irreversible and the brain is in the state of degeneration.

In this condition it is permissible to discontinue the life supportive system from the patient even when some of the patient's organs like the heart are kept functional by artificial means.

The document then proceeds to list the procedure that must be followed as part of the *Brain Death Documentation*:

> Brain death is the irreversible cessation of all spontaneous brain activity including the brain stem. Before any supportive means is discontinued, the family members must be counseled. This should be documented in the patient's chart.

In a question that was submitted by the Ministry of Health in Tehran to one of their leading jurists, Ayatollah Tabrizi, he was asked about the definition of death in Islamic law – whether it is the cessation of brain function or the function of heart. His response reveals the early stages of debate on brain death in jurisprudence. He says that for that distinction, one must refer to a physician. He says:

> It is necessary to refer to the medical specialist in order to decide whether the first or the second conforms to the definition of death. Some experts are of the opinion that if the brain waves show the cessation for more than two and a half minutes, then death is definite and there is no way that life could return.

He then proceeds to define death as it is accepted in the tradition:

> Death is the passing away of the soul from the body, as some commentators have indicated in their explanation of the verse from the *Qur'an*: "Muhammad is not but a messenger; before him also there were messengers." Death is, then, passing away of the soul and cancellation of life from body. Contrast this with murder. Murder is death when the cause is related to premeditation or something like that. Hence, death is distinct from murder. However, when compared with it, death is natural, whereas murder is just the contrary.

In other words, this jurist hesitates to regard irreversible cessation of brain function as a valid form of death. However, the government appointed Council of Islamic Jurisprudence

in Iran, under the section regarding Rulings Concerning Organ Transplantation, writes:

> The criterion for death is that normal pulse and the heart by means of which a person continues to live has come to a complete halt. When a person reaches this stage he is regarded as dead. Reviving the pulse in his heart through an electronic device does not constitute life for him. However, if by means of a ventilator or other mechanical device the heart begins to function or by means of an artificial heart a person's life is restored, then the person is regarded as being alive. Hence,
> (a) As long as he is not dead, if he himself gives the permission to remove an organ, with the conditions stated above, then it is permissible to remove that organ for transplantation.
> (b) After he dies, even when the heart is kept alive by some electronic device, it is permissible to remove his organs for transplant, provided he has made a will to that effect. Or, there is no problem in removing his organs under the two above-mentioned circumstances.

The redefinition or expansion of the traditional criteria of death is virtually dominated by two factors: retrieval of organs and termination of medical treatment. There is little conceptual or philosophical discussion regarding the confusion over the higher brain conceptions and its implications for continuation of treatment. The true state of patients with irreversible brain damage whose other organ systems continued to function remains non-comprehensible among various sectors of Muslim society. In the absence of any public debate geared towards educating the society that has accepted the brain death criterion for practical reasons without questioning its validity in certain controversial cases, it is unlikely that any well considered definition and a set of criteria for determining brain death will emerge among Muslim jurists.

However, if the brain death criterion is rejected as a valid ground in pronouncing death, it raises the critical issue of justice in distribution of meager resources for health care. What is the responsibility of the health care providers to keep the brain dead person alive with expensive intensive care technology? Here the jurists have resorted to practical principles like rejection of harm and proportionality to provide sanctions for turning off the life-sustaining equipment. In the final analysis, it is pragmatic considerations rather than any philosophical or theological evaluation of the obligation that have determined the course of action. And, like any other ethical judgement that takes into consideration the contextual aspects of a given case at hand, the judicial decision in this and many other matters related to the interaction of traditional values and modern biomedicine, is at the most temporary and open to revision as underlying confusion about brain death becomes clearer to not just the medical community but also Muslim jurists, theologians, and politicians.

XI. Access to Healthcare

Islam is concerned with searching for a just solution to deal with problems that face humanity. And, although Islamic theology treats human suffering as part of the divinely ordained spiritual-moral growth, it treats public health as a shared responsibility between individual and the community. Islamic law, in general, does not use the language of rights in any of

its prescriptive directives for the betterment of human society. Its notion of an entitlement is, as a rule, subsumed under its notion of religiously and morally defined duty. A broad range of considerations is recommended in achieving a certain level of the quality of life. Health care needs are treated with everything else a society invests in achieving that end. Dietary laws, prescriptions about habits of eating, drinking, sleeping, physical and moral education: all, according to the *Shari'a*, contribute directly to the development of healthy lifestyles. Taking care of one's health is both an individual as well as a collective obligation. Individually, it requires all men and women to undertake preventive measures to preserve health. Collectively, it puts the responsibility on the community to provide preventive medicine, supportive care, and undertake medical research sufficiently to improve curative medicine (Sachedina, 1999).

There is some tension in the Islamic communitarian ethics between an individual's claim to health care and the well-being of the community as a whole. In Muslim culture, a preoccupation with group rights leads to insensitivity to the needs of individuals. It also leads to an imbalance in source allocation, which are meagre. In many Muslim countries, there is an increasing emphasis on the community's ethical obligation to provide all with equitable access to health care. The community must ensure that all of its members can obtain such care, because health care is so important in relieving suffering, preventing premature death, and strengthening relationships of caring. Since women have been traditionally marginalized in the allocation of health care resources, emphasis on justice-based allocation has led to their preferential treatment with the rest of disadvantaged persons like poor and elderly in the community.

Another problem connected with communitarian ethics in the Muslim world is related to collectively formulating uniform attitudes to societal diseases. The legal tradition and practices in Muslim community are tightly regulated when communicable or non-communicable alcohol, drug, or sex related diseases involve societal interests of the larger community. This causes problems of distribution in publicly administered health care resources, which in many parts of the Muslim world, are limited. When it come to allocation of these resources, the public attitude is informed by religious sensitivities connected with the consequences of willful disobedience of the moral teachings of Islam. Hence, they treat those afflicted diseases like AIDS as undeserving of a share of these limited resources.

Overall, Islamic teachings approach the health care needs of all by prescribing measures within one's control to avoid risky behavior (smoking or overeating) that results in illness. This strategy to deal with improving the health status of the people is secured through family norms and voluntary efforts geared towards sanitation, prevention, and maintenance of religiously prescribed standards. The key to a healthy environment, as the *Qur'an* puts it, is a godfearing individual brought up in a family that is aware of its obligations to God and fellow humans.

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