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[Cross Cultural Issues in Bioethics :The Example of Human Cloning] The Cultural and the Religious in Islamic Biomedicine :The case of Human Cloning

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The Cultural and the Religious in Islamic Biomedicine: The Case of Human Cloning

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Abstract: The present study investigates Muslim opinions about human cloning in the context of Muslim culture that provides the moral presuppositions and formal normative framework for moral choices and justifications. Every ethical system is ultimately a synthesis of intuitive and rational assertions, the proportion of each varying from culture to culture. There is also in every culture an admixture of the ethnocentric and the universal, of that which is indissolubly bound to a particular geography, history, language, and ethic strain, and that which is common to all humans as humans. In the case of human cloning, moral judgements reveal an amalgam of relative cultural elements derived from the particular experience of Muslims living in a specific place and time, verified by the timeless universal norms derived from the scriptural sources that possess common elements applicable to all humans as humans.

Key Words: Islam, Cultural relativism, Istinsakh (making copy), Public good, Natural-artificial, No harm no harrassment, Technically assisted reproduction

1. Introduction

Islam, as a comprehensive religious-moral system, does not divide the public space in terms of spiritual and secular domains with separate jurisdictions. Rather it strives to integrate the two realms to provide total guidance about the way human beings ought to live with one another and with themselves as citizens, or professionals, or workers of one kind or another, or simply as human beings. Various human institutions, cultural and religious practices, and political systems have one major goal, namely, to serve God, the Merciful, the Compassionate. Muslim ethics tries to make sense of human moral instincts, institutions, and traditions in order to provide a plausible perspective on the making of moral judgments, the fashioning of rules and principles, and devising of a virtuous life. Its judgments are ethical in the sense that they deal with the sense of what reasonable people count as good and bad, praiseworthy and blameworthy, in human relationships and human institutions. Ultimate questions connected with human suffering through illness and other afflictions, reproduction and abortion, death and dying, are within the purview of its relig-

iously 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.

How do Muslims solve their ethical problems in biomedicine? Are there any distinctive theories or principles in Islamic ethics that Muslims apply in deriving moral judgments in bioethics? Is the revealed Law, the Shari'a, as an integral part of Islamic ethics, the only recognized source of prescriptive precedents in Islam? Can it serve as a paradigm for the moral experience of contemporary Muslims living under different circumstances? What is the role of human experience/intuitive reasoning, culture in moral justification?

I begin with these questions in the hope of verifying the validity of a poignant observation and its applicability in the Islamic case made by Edmund D. Pellegrino that:

Culture and ethics are inextricably bound to each other. Culture provides the moral presuppositions, and ethics the formal normative framework, for our moral choices. Every ethical system, therefore, is ultimately a synthesis of intuitive and rational assertions, the proportion of each varying from culture to culture. There is also in every culture an admixture of the ethnocentric and the universal, of that which is indissolubly bound to a particular geography, history, language, and ethic strain, and that which is common to all humans as humans.¹

In this paper I will delve into the validity of the above observation in the Islamic case. I will examine the nature of Islamic ethical discourse in order to demonstrate that ethical judgments in Islam are an amalgam of relative cultural elements derived from the particular experience of Muslims living in a specific place and time, verified by the timeless universal norms derived from the scriptural sources that possess common elements applicable to all humans as humans.² In the recent years attempts have been made to engage Muslim scholars in the ongoing debate in the area of biomedical ethics in the West. At the center of this debate is the role of ethical principles and rules in the moral assessment of an action from many different perspectives including those of the agent, the act itself, the end, and the consequences. There are different viewpoints about the meaning and nature of moral principles and rules as they are applied to different types of moral dilemmas. In fact, many disputes in biomedical ethics in the West stem from disputes about the generalizability and appli-

cability of more than one of these normative principles that function as action-guides, categorizing actions as morally required, prohibited, or permitted. Moreover, there exists the great variety of principles-oriented approaches that take into consideration general principles as sources of rules, and rules that specify type of prohibited, required, or permitted actions before any particular judgments can be derived in bioethical cases.³

2. The Nature of Islamic Juridical-Ethical Discourse

For every ethical situation Islamic juridical tradition seeks to address and accommodate the demands of justice and public good. Without adequate training in the legal sciences, especially legal theory, one cannot pinpoint the principles and the rules that Muslim jurists utilize to justify and assess moral-legal decisions within their own cultural environment. Legal doctrines and rules in addition to analogical reasoning based on paradigm cases enable a Muslim jurist to resolve ethical dilemmas that face the community in dealing with immediate questions about autopsy, organ donation, dignity of the dead, and so on. The practical judgments or legal opinions reflect the insights of a jurist who has been able to connect cases to an appropriate set of linguistic and rational principles and rules that actually provide keys to a valid conclusion of a case under consideration.

Undoubtedly, the enunciation of underlying ethical principles and rules that govern practical ethical decisions is crucial for making any religious perspective an intellectually insightful voice in the ongoing debate about a morally defensible ethics of biomedicine cross-culturally. Given all cultures share certain moral principles like beneficence or non-maleficence, all require rules like truthfulness and confidentiality as essential elements in regulating responsible physician-patient relationship, yet there are major issues that generate controversy on a global scale. What kind of ethical-cultural resources do different faith communities possess to provide internationally collaborative efforts in creating a cross-cultural ethical discourse to resolve issues in biotechnology?⁴

In Muslim community there is a raging debate about the normative status of inherited classical juridical tradition. Some scholars maintain their immutability and sacredness and, hence, when it comes to critical assessment of the normative resources by means of which major ethical problems created by the introduction of modern technology in the field of health care can be resolved, they refuse to entertain changed circumstances to extrapolate fresh decisions. This uncritical approach to the

normative sources has deep roots in the theology of revelation in Islam. Briefly stated, there are two major trends about the meaning and relevance of the revelation for Muslims. According to the one, Islamic revelation, in its present form, was 'created' in time and space and, as such, it reflects historical circumstances of that original divine command. According to the other, the revelation was 'uncreated' and hence, its current form is not conditioned by place and time. Most Sunni Muslims reject any hints that the revelation's interpretation is a cultural or historical variable. In the wake of both quantitative and qualitative change in the modern Muslim world, the question arises as to how far traditional readings of the revelation are relevant to their present situation? It is this critical theological question with drastic ramifications for the overall status of normative tradition that is usually resisted by the traditional centers of Islamic jurisprudence.

3. The Question of Cultural Relativism in Ethical Values

Culture and ethics are, as observed by Pellegrino, inextricably intertwined. Human experience is the main source of moral reflection and ethical decision-making. Moreover, in order for any ethical value to attain acceptability, it seeks cultural legitimacy in prevailing economic and political circumstances. Accordingly, these values even they attain universal application can hardly be expected to be free from cultural relativity. Since human reason depends on the data of experience to make correct ethical judgments, moral presuppositions operative in society interact with the specific experience to provide culturally conditioned moral justification.⁵ In fact most objectivist ethical theories, which affirm that value has a real existence in particular things or acts, regardless of the opinion of any judge or observer, include a certain aspect of social or conventional relativism. In the highly politicized debates about the applicability of the International Bill of Human Rights, cultural relativism figures prominently in the arguments made by the non-Western nations against the charter's ethnocentric language that defies its claim to absolute application.⁶ Similar arguments against a single universally acceptable bioethical theory in the inherently pluralistic ethical discourse are commonly heard in national and international biomedical ethics conferences.

However, there is a need to be cautious in overemphasizing cultural relativism in the area of biomedical ethics. This is indispensable because today biomedical technology has become universal by its being adopted globally by health care providers. There is a growing consensus

in the international community to adopt a more or less consensually derived framework of ethical principles and rules that could engage theologians, scholars and policy makers in the health profession in a dialogical mode to search for solutions to the ethical problems in biomedical technology and research cross-culturally.

Although the historical and cultural context of most of the present scholarship in bioethics is Western, the moral reflections and justifications covered in these studies suggest their applicability across cultures, provided particular experiences and cultural expectations of the non-Western societies are meticulously accounted for in testing the coherence between the principles and the moral judgments. More pertinently, by understanding common human conditions cross-culturally, it is possible to speak about universal morality for ethical assessment and judgment in other societies. The need for substantive cultural consensus founded upon common concerns to address some of the issues like human cloning that confront humanity today, require us to look into biomedical ethics that can speak to the world community across socio-political and cultural barriers to communicate its fears and hopes.

In this paper, then, my purpose is not merely to search for Islamic responses to the possibility of human cloning in the context of the success of animal cloning. Rather, I intend to make a strong case for distinctly Islamic, and yet cross-culturally communicable, deontological-teleological ethics that is operative within the Muslim social-cultural context in assessing moral problems of cloning.⁷

Moral assessment of cloning technology has already begun in Egypt and Iran, where religious scholars, medical professionals and the government are searching for ontological foundations of Islamic religious law to enable them to make authentic choices of what is morally and legally justifiable conduct in biomedical research and practice and its application in the Muslim society. I mention Egypt and Iran only because these are the only Muslim countries where religious scholars are engaged in formulating national policies related to health care.

The important thing that deserves serious consideration in Islamic context is that even when the source of normative life is regarded as having been revealed by God in the Shari'a, the procuring of a judgment and its application is dependent upon reasons used in moral deliberation. This moral deliberation takes into account particular human conditions in their cultural context, which affect the way Muslims justify an action to be moral. In other words, Islamic law developed its rulings within the pluralistic cultural and historical experience of Muslims and non-Muslims living in the different parts of the Islamic world. It recognized the auto-

nomy of other moral systems within its sphere of influence, without imposing its judgments on peoples whose cultural beliefs and practices were at variance with its own. More importantly, it recognized the validity of differing interpretations of the same revealed system within the community, thereby giving rise to different schools of legal thought and practice in Islam. In the absence of an organized 'church,' or a theological body that speaks for the entire tradition or the community, as a source for the normative and paradigmatic religious system, Islam was and remains inherently discursive and pluralistic in its methods of deliberation and justification of moral actions. Hence, on the basis of particular application of principles and rules to emerging ethical issues, like human cloning, it is possible to observe differing judicial opinions toward which speculation over the interpretation of revelatory sources that preserve paradigm cases and the principles that were applied to discover them has led.

4. The Paradigm Case of Human Cloning

Since the cloning of Dolly, the sheep, in 1997 a number of Muslim scholars have, on the one hand, deliberated on the ethics of human cloning and, on the other, on the relationship between religion and science, and religion and culture. The urgency and even crisis situation created by the cloning debate in the Muslim world has led to an unprecedented interfaith cooperation in formulating a proper response to the possibility of human cloning and the adverse ways in which this scientific advancement will affect human society in general, and human relationships in particular. Majority of the Muslim legists' ethical-legal rulings studied for this paper show that these concerns are centered on the cloned person's hereditary relationship to the owner of the cell and the egg, and the relational ramifications of that to the other individuals in the child's immediate families. It is not difficult to see that religious-ethical questions are spurred by cultural sensitivities regarding an individual's identity within familial and extended social relationships. In addition, there are questions about the ways human cloning will affect the culture of intense concern with a person's religious and social distinctiveness. It is precisely at this juncture that cross-cultural communication between Muslim and Christian scholars assumes a front position in highlighting cultural variations among their communities. Whereas, individuality of a cloned human being is central to much discussion in the Western-Christians cultures, it is the concern with a child's lineage, familial and social relationships that dominates the Muslim cultural sensitivities.

One of the most important studies dealing with the subject in Arabic is: *al-Istinsakh bayna al-islam wa al-masihyya* (Cloning in Islam and Christianity). The study aims to demonstrate plurality as well as mutuality among the cultures of the people in the Middle East. Leading Christian, Sunni and Shiite scholars, representing shared cultural concerns while holding pluralistic opinions in their respective traditions, have contributed to the debate on the way in which human cloning will adversely impact upon the future of the institution of marriage and parent-child relations. The interfaith discourse is based on a common concern in these communities, namely, concern with the negative impact of human cloning on the culture of human interaction.

To be sure, the guiding principle regarding any scientific advancement in Islam is the cautious note in the sacred law of Islam, the Shari'a. The precautionary note in the Shari'a takes into consideration the norm that there is seldom a thing of benefit without some inherent disadvantage affecting people's religion, life, lineage, reason and property.⁸ Islam's concern to combine noble ends with noble means rules out the idea of good end justifying a corrupt means. Taking the specific case of human cloning, the most important rule is avoidance of anything that might adversely affect human nature and human relationships. Islam forbids any tampering with human nature in any way other than legitimate methods of correction. Anything that is done for prevention or as treatment is legitimate. Ethical judgment on medical procedure is made on the basis of predominance of benefit (*istislah*) that requires rejection of probable harm (*daf' al-darar al-muhtamal*).

5. Scholarly Opinions in their Cultural-Religious Context

Following the euphoria over the latest success in animal cloning in 1997 prominent Muslim scholars representing both Sunni and Shiite centers of religious learning in the Middle East, mainly Cairo, Beirut and Qumm, expressed their opinions on human cloning. Some of these opinions are regarded as official Sunni and Shiite positions.⁹ The Arabic term used for this process in the legal as well as journalistic literature is indicative of the widespread speculation and popular perception regarding the goal of this technology, namely, *istinsakh*, meaning 'clone, copy of the original.' This interpretive meaning is not very different from the fictional cloning portrayed in *In His Image: The Cloning of Man* by David Rorvik in the 1970s when cloning by nuclear transplantation was the topic of the day in North America. It is also because of the popular misperception about human "copies that can be produced at will through cloning" that the leading Mufti of Egypt, Dr. Nasr

Farid Wasil in Cairo declared human cloning as a satanic act of disbelief and corruption that would change the nature with which God created human beings, thereby impacting negatively upon social order and practice. Accordingly, his juridical decision was that the technology had to be regulated and controlled by the government to protect Muslim society from such an inevitable harm.¹⁰

However, this position was disputed by another leading Egyptian legist Yusuf al-Qaradawi who, when asked if cloning was interference in the creation of God or an affront to God's will, asserted in no unclear terms:

Oh no, no one can challenge or oppose God's will. Hence, if the matter is accomplished then it is certainly under the will of God. Nothing can be created without God's will facilitating its creation. As long as humans continue to do so, it is the will of God. Actually, we do not raise the question whether it is in accord with the will of God. Our question is whether the matter is licit or not.¹¹

Although in these early rulings the issue of cloning technology was not given much serious consideration in Muslim ethical-religious discussions of cellular nuclear transplantation,¹² whether involving somatic or germ-line cells, there is much concern with anticipated biological and social effects of cloning on the underlying Islamic ethical framework and social fabric as discussed by al-Qaradawi. In brief, al-Qaradawi raises a fundamental question about the impact of this technology on the human life:

Would such a process create disorder in human life when human beings with their subjective opinions and caprices interfere in God's created nature on which He has created people and has founded their life on it? It is only then that we can assess the gravity of the situation created by the possibility of cloning a human being, that is, to copy numerous faces of a person as if they were carbon copies of each other.¹³

The fundamental ethical question based on the laws of nature, as al-Qaradawi states, centers round a consideration whether this procedure interferes with growing up in a family that is founded upon fatherhood and motherhood. It is in a family that the child is nurtured to become a person. In addition, al-Qaradawi says, since God has placed in each man and woman an instinct to

procreate this individual in the family, why would there be a need of marriage if an individual could be created by cloning? Such a procedure may even lead to a male not in need of a female companion, except for carrying the embryo to full gestation. Moreover, such an imbalance in the nature will lead to the corruption of human society, "leading to the illicit relationship between man and man and woman and woman, as it has happened in some Western countries." This reference to "Western" culture needs to be understood as the central issue in our search for cross-cultural communication about Islamic values of family life that would be affected by an invasive biotechnology.

In general, Muslim religious attitude has regarded Western European culture hegemonic in its imposition over the non-Western world. Traditional scholars have resisted this dominance in all areas of the modern culture in Muslim societies. The negative evaluation has been felt even in the area of International Law, which is regarded by many as the product of European cultural consensus without regard to the multi-cultural reality of the international community. Consequently, major moral problems confronting the world today are seen as the byproduct of Western materialist and anti-religious culture with little regard for the spiritual and moral well being of the people.

Cultural dislocations have evidently gripped many Muslim societies today. As a consequence of imported modernization programs without local cultural legitimacy Muslims have suffered "cultural homelessness" in their own societies since the early part of 20th century. The emerging oppositional discourse against Western encroachment on Muslim social values has symbolically led the militant Muslims to view anything and everything coming even in the form of scientific advancement as imposition of Western values on Muslim cultures. There is a fear of the further deterioration of social and familial values that are already affected by modern secular education and pervasive "CNNization" of mass media. Initial reactions to the news about cloning that were reported in the Muslim world expressed people's deep-seated fear about further erosion of family values through cloning. To be sure, science is not viewed amorally in the Muslim world. Any human action involves cognition and volition, the two processes that determine the moral course of an action. Hence, cloning of human beings was viewed with much suspicion in the beginning, and it was only gradually that more knowledgeable analyses took place in public.

The other issue taken up by al-Qaradawi against cloning is based on the Qur'anic notion about variations and cultural diversity among peoples as a sign from God who created human beings in different forms and colors, just as He created them distinct from other animals. This plurality reflects the richness of life. However, cloning might take away this diversity. A sem-

blance through “copying” might even lead to the errors of marital relationship where spouses will not be able to recognize their partners, leading to serious social and ethical consequences. From the point of health also, as al-Qaradawi argues, one could presume that cloned persons, sharing the same DNA, will be afflicted by the same virus. However, he maintains that it is permissible to use the technology to cure certain hereditary diseases, such as infertility, as long as it does not lead to aggression in other areas pointed out earlier.¹⁴

It is interesting to note that among Muslim scholars there is almost no reference to eugenics in any of the opinions studied for this paper. In contrast, drawing from the modern European history, several Arab Christian scholars mention the danger of the abuse of cloning technology if used with the same intentions that eugenics was used for racial exclusion and generational improvement through extermination.¹⁵

When we examine the Shiite rulings we notice that their legists have endorsed the cloning technology as being part of the possibilities that are actually created within the natural forms of conception. The leading Lebanese jurist, Sayyid Muhammad Husayn Fadl Allah, in his judicial decision states:

There are two points that deserve mention: first, does such a scientific advancement [in the field of cloning] mean that humans are interfering in God’s act or that it is deviation from the religion? We do not regard the biomedical advancement as interfering in God’s work and against religious thought in its doctrinal concern. In fact we have argued earlier in relation to test-tube baby that such a birth is not far from the God’s law of creation. After all, the scientists have discovered this law. They know God’s secret in the matter of procreation, by seeking to be guided by the laws that God has shaped for procreation. This is what we see in this new experiment with cloning, which is not proposing any new law of creation, nor is it formulating a new way of creation that would challenge God’s power over creation. It has simply discovered some secrets of physiology and has cognized the dynamic of these secrets and its potentials in employing them to clone an animal or a human being.¹⁶

Hence, what the scientists are doing is not exactly “creation;” cloning is simply employing all that is potentially within the natural sphere to bring about the conception. However, such interventions are not without harm to the accepted social norms regarding marriage and parenthood. It requires infor-

mation about its negative and positive implications based on the religious norms. These norms can define the ethical and legal parameters of a cloned person’s relationship to his/her mother, with no reference to a father since no sexual intercourse was involved to enable semen to reach uterus. Moreover, since cloning is connected with artificial insemination in which a nucleus that carries the DNA is carried to an ovary and after its fertilization is returned to the uterus of another in order to acquire the fetus, it raises serious questions about the meaning of childhood that carries the DNA of the one whose nucleus is used without any concern for lineage and inheritance of the fetus. In addition, a number of subsidiary issues arise out of the social relations like marriage through proxy.

Obviously, Shiite scholars treat the term ‘clone’ more in its scientific sense of making identical copies of molecules, cells, tissues, and even animals involving somatic cell nuclear transplant cloning. Hence, it takes the position of endorsing the applications of the technology as long as it provides practical benefit in terms of improved human life.¹⁷

6. The Ethical Dimension of the Issue

At the center of the ethical debate about cloning in Islam, as pointed out by Muslim scholars, is the question of the ways in which cloning might affect familial relationships and responsibilities. In large measures, Muslim concerns in this connection resonate the concerns voiced by Paul Ramsey about the social role of parenting and nurturing interpersonal relations.¹⁸ Islam regards interpersonal relationships as fundamental to human religious life. The Prophet is reported to have said that religion is made up of ten parts of which nine-tenths constitute interpersonal relationships, whereas only one-tenth forms human-God relationship. Since the fundamental institution to further these relationships is a family and since human cloning interferes with the workings of the male-female relations, the Muslim scholars have advised their governments to exercise extreme caution in endorsing the technology without necessary caution.

Some Muslim thinkers have raised questions about maneuvering of human embryos in IVF implantation in terms of their impact upon the fundamental relationship between man and woman and the life-giving aspects of spousal relations that culminate in parental love and concern for their offspring. Islam regards spousal relationship through marriage to be the cornerstone of the prime social institution for the creation of a divinely ordained order. Consequently, Muslim focus of the debate on genetic replication is concerned with moral issues related to the possibility of technologically cre-

ated incidental relationships without requiring spiritual and moral connection between a man and a woman in such embryonic manipulation. Biotechnological intervention can jeopardize the very foundation of human community, namely, a religiously and morally regulated spousal and parent-child relationship under the laws of God. It is for this reason that among Muslim scholars the more intricate issues associated with embryo preservation and experimentation with stem cell have received less emphasis in these ethical deliberations. To be sure, since the therapeutic uses of cloning in IVF appears as an aid to fertility strictly within the bounds of marriage, both monogamous and polygamous as recognized in the Shari'a, Muslims have little problem in endorsing the technology. The opinions from the Sunni and Shiite scholars indicate that there is unanimity in Islamic rulings on therapeutic uses of cloning, as long as the lineage of the child remains religiously unblemished. In other words, to preserve the integrity of the lineage of a child reproduction must take place within the religiously specified boundaries of spousal relationship.¹⁹

Besides the significance attached to the spousal relationship for bearing and nurturing of children, another issue in Muslim bioethics is the problem of determining the moral status of the technology itself. In the world dominated by the multi-national corporations Muslims, like other peoples around the globe, do not treat technology as morally neutral. No human action is possible without intention and will. In light of the manipulation of genetic engineering for eugenics in the recent history, it is reasonable for the Muslims, like the Christians and the Jews, to fear political abuse of the reproduction technology through cloning. With its emphasis on egalitarian spirituality, Islam has refused to accord validity to any claims of superiority of one people over the other. The only valid claim to nobility in the Qur'an stems from being godfearing.

It is obvious that ethically cloning for purposes other than therapeutic lays enormously grave responsibility on humans in terms of genetic improvement of quality of human life, the authority that can make these decisions with necessary foresight and wisdom, and the criteria that can be used in evaluating the risks and benefits of such interventions.

7. The Principles of 'Equity' and 'Public Interest' As They Bear Upon Cloning

In Islam although religious, ethical and legal dimensions are interrelated, it is important to underline the legal doctrines that bear upon the decisions made by Muslim legal scholars in endorsing or prohibiting cloning. Without adequate legal reasoning based upon careful interpretation of the Qur'an and the

traditions, in addition to certain rationally derived principles and rules, no Muslim legislator can issue his judicial decisions on the subject. In connection with the cloning the legislators evoked the two fundamental principles of 'juristic preference' (*istihsan*), allowing the legislators to weigh the pros and cons of the technology and choose that which is in the interest of the people; and 'public interest' (*maslaha*), which requires to reject harm and promote the common good. These two principles have provided a religious basis for their legal decisions about the limited use of cloning for therapeutic purposes. Since the subject of technologically-assisted reproduction has no precedent in the classical juridical tradition, Muslim legislators depend heavily on the scientific information supplied by researchers to deduce their judicial decisions.

Closely related to the two above-mentioned principles, there are three subsidiary principles or rules that are evoked to resolve ethical dilemma and derive judgments related to cloning: (1) 'protection against distress and constriction' (*'usr wa haraj*); (2) the principle of 'No harm, no harassment' (*la darar wa la dirar*), and (3) the rule about 'averting causes of corruption has precedence over bringing about benefit' (*dar'u al-mafasid muqaddam 'ala jalb al-masalih*).

8. Postscript on Responses to Inquiries about Cloning

Following the early opinions that were expressed immediately in the aftermath of the animal cloning in 1997, in the last four years more meaningful discussions, and legal rulings based on comprehensive understanding of the case, have emerged among Muslim jurists.²⁰ In fact, most of these rulings have introduction dealing with the scientific information needed by the religious scholars to understand the exact nature of the problem. For example, careful analysis of the kind of embryo splitting is part of the *responsa* literature. It is not uncommon to read the following introduction on human cloning:

There are two ways of acquiring animal or human embryo:

1. Natural: This procedure enables the male semen to reach the female egg through sexual intercourse. In the uterus semen encounters ovary, and enables one of them to fertilize the ovary, thereby coagulating the semen and implanting itself in the uterus. It then goes through the stages of clot, blurb, until it develops into a complete being.
2. Artificial: this is a new method developed some years ago to cure infertility. The method takes male semen and female ovary and fertilizes it outside the womb in a test tube in a

special type of cytoplasm. After it fertilizes the embryo is returned to the womb in order to complete the biological process of becoming a complete being.

What is new in the juridical discussions is the biological science and its relationship to the religion - something that provides Muslims a fresh venue of communicating their rulings on the basis of culturally mutual issues confronting modern societies. The sophistication with which Muslim legists are differentiating and collating information on cloning to formulate their responses is unprecedented in the history of Islamic jurisprudence. The citations from the scriptural sources are kept to the minimum, but the selected passages from the Qur'an are relevant for providing new interpretation of the situation created by scientific breakthroughs. Following is another example of precise scientific information included in deriving fresh juridical decisions:

After much experimentation and application of new techniques scientists have discovered a new method of producing a living being. With the success of the experiments of cloning animals and plants, Muslim scholars have declared that this is among possible techniques that could be applied to human beings. This technique is known as "cloning" of a fetus (*al-istinsakh al-jini*).

The technique employs human female egg, splitting it to separate the nucleus, and implanting it in a cell from which the nucleus is removed. Then the nucleus is cultivated in the cytoplasm of a regular cell inside the female egg. By using electrode pitting the cell begins to divide in order to create embryo. Then this embryo is placed in the uterus of a woman in order to begin its biological development to another being.

Among the features of this new being is its being completely a clone of the person to whom the nucleus belongs. Moreover, the reproduction has occurred without the natural procedure that requires a male and a female to engage in a sexual intercourse for the sperm and ovum to meet and fertilize. This new procedure, which has occurred through nuclear transplantation, needs the female only to carry it to its complete term. In

fact, this creation of an individual in this manner takes place outside the framework of a family. This technique is known as cloning because it is not possible to distinguish the new creature from the original at all. It is said that this procedure will engender lot of ethical problems, especially when the experiments will use condemned criminals. In these situations the two persons will look alike and it will be impossible to ascribe the crime to the right person. It is important to keep in mind that scientists were able to clone Dolly after 337 failed attempts!

According to these rulings, the main objection to cloning, which has caused hue and cry and confusion among people, especially those who believe in and limit the power of creation to God, is that the embryo that is cloned is not in reality a result of a male impregnating a female in a legitimate conjugal relationship. Rather, it is the result of the splitting of a nucleus of one animal and implanting it in the cytoplasm of another. Hence the embryo does not carry the DNA except of one whose nucleus is used to clone. More importantly, as these scholars assert, this way of creating clones, disproves the conventional meaning of childbearing for all the parents.

It is in this light that the rulings become decisive precedents in resolving the problems that arise out of concern for lineage and inheritance of the fetus, and subsidiary issues related, for example, to the concern for regulating social relations that emerge because of the birth occurring outside the conventional marital relationship. Despite the fact that presently this technique does not apply to human beings except in its future application, yet because of this possibility, Muslims have resorted to their religious scholars to seek their opinions about the religious and legal basis for technologically assisted reproduction in general. They are also concerned to understand a stance the religious law takes regarding the relation of the child to the owner of the original nucleus used in cloning.

9. The Problems Raised in the Context of the Shari'a

A variety of questions have arisen in the context of familial and social relationships in Muslim cultures. These questions reveal both communitarian as well as universal ethical/legal concerns regarding the status and social placement of the cloned human being. More pertinently, the raised issues are borderless, they are human, and, as such they have far-reaching

implications beyond Muslim cultures. Consequently, there is a need to examine these questions and their responses, in order to reach a consensus in matters that have cross-cultural application. Let us read these questions:

Q.1: It remains to be established whether there is permission to actually conduct such experiments in the manner described above. If it is permissible, what are the conditions that must be met?

Q. 2: If a child were born in this manner, what would his/her relationship be to the person whose nucleus was transferred to the cell, whether man or woman? Following are possible scenarios:

- Is the child legally an offspring in the conventional sense in the light of the fact that he/she was created through an extracted cell instead of a natural process of being born through the coming together of a sperm and an egg?
- Is the child to be regarded outside the legal relationship? How should he be related to the biological owner of the cell or to the DNA carrying nucleus? In other words, how should he/she be related in accordance with the type of creation that brought it into being?
- How should the child be classified in terms of his religious affiliation? Is he/she to be regarded as Muslim or non-Muslim? Or should he/she be connected to the religion of the one from whose cell he was produced?
- What is his/her lineage?

Q.3: What is the ruling about his religious affiliation while still young: Is he to be considered a Muslim or a non-Muslim? Or, should his religious affiliation be the same as the donor of the cell? [This is in light of the ruling that a child's religious identity is connected with the father.]

Q.4: What is the ruling about the responsibility of the blood relationship and blood wit that must be paid in case of homicide, and the responsibility for the crime? [This is related the Islamic

penal code, where an unintentional homicide has to be compensated by the blood relatives.]

Q.5: Are there any rights and responsibilities between the cloned offspring and the owner of the cell?

Q.6: What is the ruling about marriage with other naturally born children of the owner of the cell, if the cloned child is regarded as an outsider? Can he marry, for instance, his daughter?

Q.7: There is a possibility of cloning human organs in the laboratory and preserve them for that person or for someone else for transplant. Is this permissible? Does this permission include cloning organs of reproduction, since these belong to a person whose privacy must be guarded, according to the rules of decency in the Shari'a? Also, does this permission include cloning of the brain?

Complexity of issues related to emerging relationship between the cloned child and the donor of the cell and the egg is self evident in the above questions. They also reveal the cultural sensitivities specific to Muslim societies, like the rules about privacy and exposure of private parts. However, they also underscore universal legal problems that might arise across nations in settling disputes about ownership as well as accruing responsibilities for the child's welfare.

The following responses show the way some legists understand the technology and its ramifications for society. It is important to keep in mind that there is no unanimity among these scholars. The responses have been selected to provide rulings that would be commonly accepted as representing Islamic values:

A1: As for the permissibility of undertaking to create another being by means of cloning technology, there is permission to produce another living being by means of this technique or any other means, by resorting to discover and apply the laws of nature that God has placed at human disposal. Hence, this procedure is not forbidden unless it involves morally objectionable acts. Moreover, a precautionary measure is necessary to avoid fertilization of the sperm of a stranger with the egg of anyone other than a legal spouse. This way the offspring can be legitimately ascribed to the two parents who are legally married. In principle, then, the experimentation with cloning is not forbid-

den, except when it leads to other forbidden acts that might adversely impact upon man-woman relationship.

However, there are some issues that require precaution and may as well lead to the prohibition of this mode of reproduction:

- a. The argument that cloning is creation of a child outside the framework of a family.

There is no ground to prohibit cloning because of that when there is no evidence in the Shari'a to restrict human scientific activity, and human ability to create by following his potential to discover the laws of nature. Rather, his development is tied to his ability to break new paths and employ the laws of nature entrusted to humanity by God through investigation and intuitive reasoning, within the framework of a family.

- b. The argument that this technique will cause major ethical problems, because of the possibility that the criminals running away from justice might use it.

As mentioned in the context of an earlier response, such a possibility does not necessitate its prohibition. The offenses, even if they happen to be forbidden acts, when a criminal person performs them in order to derive an advantage from them, cannot be prohibited. The criminals use a number of products and find these items more beneficial than this experiment for their criminal ends; and yet, no one has resorted to prohibit them. It is quite likely that cloning technology for cosmetic enhancement might provide great benefit to criminals. Yet, has anyone prohibited cosmetic use of technology because of this abuse?

- c. The success of this technique is preceded by a number of failed experiments in which embryos, before they can develop into a full pregnancy, have been destroyed.

That which is prohibited in any such experiment is destroying a living being whose blood it is forbidden to shed. Also, it is prohibited to kill a fertilized ovum that is on its way to life. This is similar to abortion. It is not forbidden on a person to conduct an experiment in which a living being might die before the conditions for life are completed, without his having intentionally desired so. Hence, it is permitted for a man to approach his wife sexually when she is ready for pregnancy, even though the pregnancy might encounter miscarriage as a consequence of lack of conditions for life being completed. This could be because of weakness in the sperm or lack of other necessary conditions for the embryo to develop and grow into a child. At any rate, we do not see any objection for the technique, as long as it does not lead to any other forbidden act, like looking at the private parts and touching them, as required in the law.

A.2: The relationship of a cloned child to a man or a woman from whom the cell was extracted for nuclear transfer:

If the child was created the way described above, then he/she does not have a father in the conventional sense at all. The reason is that ascription of fatherhood is connected with the fertilization of the sperm and the egg to create a living being, as pointed out by God in the Qur'an: "Then He fashioned his progeny of an extraction of mean water." (K. 32:4). In this experiment there is no role for the sperm; rather it is the separated cell from the body. More particularly, when the cell is extracted from a woman it is inappropriate to attribute to her fatherhood for the cloned child. It has been narrated in several traditions that God created Eve from the rib of Adam. Regardless of the unreliability of these traditions, and depending on the apparent sense of these reports, no one can doubt that these reports necessitate that we must regard Eve as Adam's daughter! This clearly reveals that the standard used to determine the child-father relationship does not include that the off-spring should be created from a part of his body; it simply states that he should be created from his sperm, as mentioned earlier. As for the child-mother relationship, this follows the creation of a new life from her egg. It is clear that not all of her eggs can be

the source of creation. Rather, only some fertilize from her nucleus. It is only then that the ascription of relationship to her materializes.

Nevertheless, it is difficult to rule out any relationship between the clone and the donors of cell and egg, just as it is not possible to rule out that the child is the cell or egg donor's brother, especially when it is the brother who shares with his brother one of the two parents. More importantly, the criterion for this ascription cannot be derived from the fact that the clone is the carrier of specific hereditary traits, because conventionally these factors are not critical for the ascription of relationship between the child and the parent.

It is important to keep in mind that in the final analysis it is the custom and convention that determines the criterion for ascription of relationship. The Sacred Lawgiver has depended on the custom to promulgate the ordinances related to social relationships. It cannot be assumed that the relationship between the clone and the donor is automatic, regardless of the normal, agreed upon social conventions regarding such relationship.

A. 3: The ruling about the child's religious affiliation while still young:

As long as the child remains incompetent to distinguish for himself about his religious affiliation, the rule that applies to the child who is under the custody of another person applies to this child. Similar is the case of a child prisoner in the care of his captor. When he attains maturity to know the good from bad, then he is under the religion to which he converts. Assuming that he adopts a religion other than Islam, he cannot be regarded as an apostate, even if the cell donor happens to be a Muslim. The reason is that the cell donor is not his father in the conventional sense.

A.4. The ruling regarding the child's lineage: (a) In terms of his responsibility to pay the blood-wit in case of a murder committed by his family member or his liability in the case of a crime:

Since the family connection is dependent upon relationship to the father, the clone lacks that connection to the donor of the cell in terms of being a son and the donor's being his father, as discussed earlier, it necessitates negating any relation to the family of the donor. Accordingly, he is not required to have his family to pay his blood-wit. In fact, his blood-wit is restricted to the one who is liable for the crime.

However, inasmuch as there is doubt in his relationship to the owner of the egg, there is also hesitation in connecting him to those related to the donor. In this situation his status appears to be like a grand child to her parents and her sisters are his aunts. In any case, there is no evidence to prove or disprove the relationship. Additionally, there is no proof to establish his vestiges or to deny them. Hence, the case requires caution in specifying definite legal rulings.

A. 5: As for the rights specified by the Shari'a between the cloned individual and the donor of the cell, since the conventionally acknowledged norms to establish relationship are absent, there are no rights.

A. 6: The rulings regarding permission for him to marry children related to the donor:

Since that which determines such close blood relationship between the donor and the clone does not exist, it is out of question to regard the donor's children as the clone's siblings. Nevertheless, some traditions suggest that in the beginning of the creation there was a proscription against marriage between Adam and Eve's children. This text, even when it cannot serve as an incontrovertible evidence to deduce a prohibitory ordinance, confirms the legal precedent for prohibiting marriage between the clone and other children of the donors. Hence, it is necessary to apply a precaution in permitting the marriage because there is a possibility to establish sonship to the donor of the egg. Actually, this precaution extends between the clone and all those who are connected to him through the donor of the egg, such as her sister, her son, her daughter, and so on.

A. 7: Permissibility of using the cloned parts of the body in the laboratory and preserving them for the future use for that person or for others when needed:

It is permissible to clone the body organs, including the sex organs. It is also permissible to look at them because of the lack of its attribution to a specific person, which is the criterion for its prohibition. Since attribution with specificity is the criterion in its prohibition, it is prohibited to transplant a male organ to a woman and vice versa. As for separating them from the body, it is problematic to regard it as prohibition.

In conclusion, we need to be cautious in overly utilizing these advancements of the modern civilization without putting in place proper restrictions to forestall harm and calamity to humanity. Indeed God created this universe to serve humanity and to advance it towards its own betterment, just as God says in the Qur'an: "It is God who has created everything on earth for you [human beings]" (K. 2:29). In another place, God says: "Haven't you seen that God has made serviceable to you all that is in the heavens and the earth, and has showered on you His external as well as internal blessings" (K. 22:63-65). Hence, one should not depart from God's purposes, otherwise we will deserve God's abandoning and punishment, as God says: "Haven't you seen those who exchanged God's bounty with ingratitude, and caused their people to dwell in the abode of ruin?" (K. 14:28).

10. Conclusion

The recent opinions expressed by Muslim legists around the world confirm my assessment of the ethical issues associated with cloning, namely, that in providing religious guidance in matters connected with the future of humanity, Islamic norms have been studied in the context of the social and cultural conditions of Muslim societies. A unanimity has now emerged among Muslim scholars of different legal rites that whereas in Islamic tradition therapeutic uses of cloning and any research to further that goal will receive the endorsement of the major legal schools, the idea of human cloning has been viewed negatively and almost, to use the language of the Mufti of Egypt, "Satanic." A further recommendation among

Muslims seems to be discouraging even the research aspects geared towards improvement of human health through the genetic manipulation because of the rule of prioritization based on the principle of distributive justice. In view of limited resources in the Islamic world and the expensive technology that is needed for research related to cloning, Muslim legists have asked their governments to ban research on cloning at this time.

Since technologically-assisted reproduction in Islamic tradition is legitimized only within the lawful male-female relationship to help infertility, somatic cell nuclear transplant cloning from adult cells for therapeutic purposes will have to abide by the general criterion set for this technology. In the case of cloning specifically for the purposes of relieving human disease, there is no ethical impediment to stop such research, which on the scale of probable benefit outweighs possible harm. I believe that research in human cloning from adult cells in the course of reproduction treatment should be allowed with necessary regulatory clauses to restrict abuse under penalty. My opinion is based on the principle of 'averting (and not interdicting) causes of corruption has precedence over bringing about that which has benefit.'

In our religiously and ethically pluralistic societies where there is a search for a universal ethical language that can speak to the adherents of different religious and cultural traditions, Islamic tradition with its experience in dealing with matters central to human interpersonal relations in diverse cultural settings can become an important source for our ethical deliberations dealing with the ideals and realities of human existence. For instance, I am deeply concerned the way we shy away from considering the subjective dimensions pertaining to human spiritual and moral awareness in setting our goals for research in human embryo. Our policies in the matter of cloning should be seriously informed from the perspective of corrective as well as distributive justice. On hearing my Christian and Jewish colleagues on human cloning I feel that there is a consensus to look into prioritization of national resources to achieve fair distribution of health care resources both nationally and internationally. From a standpoint of common moral commitment to the principle of distributive justice, it will be hard to justify a heavy investment in embryonic research related to animal cloning without addressing some immediate and serious problems of poverty around the globe. Moreover, the wealthy countries have a responsibility to share their material as well as scientific resources with other underprivileged nations whose immediate needs do not go beyond treating common diseases like malaria and tuberculosis.

Notes

1. Pellegrino, Mazzarella, Corsi, 1992, 13.
2. By 'scriptural' I mean not only that which is regarded by Muslims to have been revealed to Muhammad, the Prophet, by God; but also the pattern of conduct left by Muhammad himself, usually known as the sunna. In other words, 'scriptural' also denotes the normative in Islam. Throughout this work I have rendered sunna with capitalized 'T' in the translation of this technical term ('Tradition') meaning, all that is reported having been said, done, and silently confirmed by the Prophet. The translation of *hadith* (the vehicle of the sunna, through which it is reported) is rendered with lower case 't' ('tradition') or simply *hadith*-report. The Sunna (=the Tradition) in religious sciences is comprised of major compilations of the *hadith*-reports which include the six officially recognized collections of the *sahih* ('sound' traditions) among the Sunni Muslims, and the four books among the Shiites.
3. In the recently published essays in the volume DuBose et al. 1994, various authors have critically assessed the relevance of principle-oriented bioethics in the context of growing consciousness about the need to meet the demands of ethical pluralism in the multi-cultural society of North America. There is no doubt that bioethicists need both principles and rules to determine why some moral judgments lead us to classify action as prohibited, required, or permitted, in certain circumstances.
4. To speak about such a possibility in the highly politicized "theology" of international relations is not without problems. Like development language for which modern Western society provides the model that all peoples in the world must follow, any suggestion to create 'meta-cultural' language of bioethics runs the risk of being suspected as another hegemonic ploy from the Western nations. However, there is a fundamental difference in the way development language is employed to connote Western scientific, technological, and social advancement, and biomedical vocabulary that essentially captures universal ends of medicine as they relate to human conditions and human happiness and fulfillment across nations. It is not difficult to legitimize bioethical language cross-culturally if we keep in mind the cultural presuppositions of a given region in assessing the generalizability of moral principles and rules.
5. Contemporary moral discourse has been aptly described as "a mine-field of incommensurable disagreements." Such disagreements are be-

- lieved to be the result of secularization marked by a retreat of religion from the public arena. Privatization of religion has been regarded as a necessary condition for ethical pluralism. The essentially liberal vision of community founded on radical autonomy of the individual moral agent runs contrary to other-regarding communitarian values of shared ideas of justice and of public good. There is a sense that modern, secular, individualistic society is no longer a community founded on commonly held beliefs of social good and its relation to responsibilities and freedoms in a pluralistic society (see Heyd, 1996).
6. Mayer, 1991 in the Chapter 1 on "Comparisons of Rights Across Countries," has endeavored to analyze charges of cultural relativism against the Universal Declaration of Human Rights made by Muslim governments guilty of violating human rights of their peoples. However, in the process of arguing for the universal application of the UDHR document, she has paradoxically led to the relativization of the same by ignoring the historical context that actually produced the UDHR in the first place. See my review of her book in the *Journal of Church and State*, Fall 1992.
 7. Deontological ethical norm determines the rightness (or wrongness) of actions without regard to the consequences produced by performing such actions. By contrast, teleological norm determines the rightness (or wrongness), of actions on the basis of the consequences produced by performing these actions. Deontological norms can further be subdivided into objectivist and subjectivist norms: objectivist because the ethical value is intrinsic to the action independently of anyone's decision or opinion; subjectivist because the action derives value in relation to the view of a judge who decides its rightness (or wrongness). See Hourani, 1985, 17 who introduces the latter distinction in deontological norms.
 8. Ghazali, 1971, 174. Ghazali's "Five Purposes" (*al-maqasid al-khams*) has become an accepted phrase in the Sunni works on legal theory and often quoted in discussions about the principle of *maslaha*. See Shawkani, 1930, 216.
 9. For various Muslim opinions collected from around the world see Campbell, 1997. In addition, for specifically Sunni opinions expressed by their leading religious authorities, see: *al-Majalla*, 1997 and *Sayyidati*, 1997. For the Shiite opinions besides *al-Istinsakh bayna*, 1999, see also Hasan, 1997.
 10. *al-Istinsakh bayna*, 305; for discussion, see *al-Majalla*, 1997, 6.
 11. *Sayyidati*, 1997, 64.

12. Dr. Hasan al-Turabi in his opinion on the subject has pointed out that many scholars have not paid attention to the various scientific facets of the issue, which they need to examine before formulating their responses. See *al-Istinsakh bayna*, 1997, 307.
13. *al-Istinsakh bayna*, 1997, 63.
14. *Sayyidati*, 1997, 62-63.
15. for instance, see the Catholic opinion expressed by Bishop Habib Pasha in *al-Istinsakh bayna*, 1997, 19-21.
16. *al-Istinsakh bayna*, 1997, 289.
17. The opinions regarding cloning coming out of Lebanon and Iran indicate more openness is accepting the technology and even the adult somatic cell transplant. See Ayatollah Khamenehi, 1996, 111-122 dealing with technologically-assisted reproduction.
18. Ramsey, 1970.
19. Among the Shi'ite jurists, Ayatollah Khamenehi, 1996, 117-122 seems to have sanctioned both surrogacy and sperm and egg donation without requiring the donor of the sperm to be the husband as required by the senior jurists like the late Ayatollah Khomeini. See Khomeini et al. (n.d.), 74-81.
20. Much of the information in this section has been collated and compiled from number of new studies dealing directly or indirectly with the ethics of cloning. The main text with which the rulings of other jurists, both Shiite and Sunni, have been compared is Hakim, 1999. The other compilations include Khitab, 1997; Hasan, 1997; Salama, 1996 and Jabiri, 1994.

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The Debate about Human Cloning Among Muslim Religious Scholars since 1997

Thomas Eich

Abstract: For most Muslim religious scholars, cloning is a new technique of procreation within the framework of God's will rather than an infringement of God's prerogative of creation. Consequently, their discussion puts the focus on the effects of cloning rather than on the act itself. Those who wish to forbid cloning argue that it would lead to a blurring of the lines of genealogy (nasab). Therefore, a considerable number of sunni statements have emerged that reproductive cloning can only be forbidden outside marriage. Several shi'i scholars also argue for a redefinition of blood-relationship terms. The argument that cloning is in contradiction with the concept of human dignity is by and large absent from these discussions. However, an analysis of the statements about therapeutic cloning shows that many scholars who consider it permissible only have a limited understanding of the techniques involved. Recently, several scholars have argued in favour of prohibiting it, because it would imply the destruction of an embryo.

This article gives an overview of the arguments exchanged among Muslim religious scholars in the debate on human cloning that has evolved since the birth of Dolly in 1997.

Key Words: Islam, Religion, Shari'a, Cloning, Blood relations (nasab), Argument of social consequences, Argument of human dignity.

Muslim religious scholars do not consider cloning to be an infringement of God's prerogative of creation. They argue that it is nothing but the discovery of a new technique of procreation, which is still within the framework of God's will. Consequently, their discussion puts the focus on the effects of cloning rather than on the act itself. Those who want to forbid cloning argue that it would contradict the principle of variety in God's creation and lead to a blurring of the lines of genealogy (*nasab*). The latter term is only to a limited extent defined biologically. Of equal importance is the legal framework of the procreative act, i.e., the existence of a marriage. Therefore, a considerable number of sunni statements have emerged that reproductive cloning can only be forbidden outside marriage. Several shi'i scholars also argue for a redefinition of blood-relationship terms. The argument that cloning is in contradiction to the concept of human dignity is by and large absent from these discussions. Analysis of the statements about therapeutic cloning shows that many of those Muslim religious

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