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The views expressed in this publication reflect the opinions of the individual authors, not necessarily those of the editors.

Preface

This collection of manuscripts emerged from the international conference "Health Related Issues and Islamic Normativity"[1] which was held at the University of Hamburg between 20th and 23rd June 2012. The conference was jointly organised by the Department for Islamic Studies and the Department for South East Asian Studies and generously funded by the German Federal Ministry of Health (Bundensministerium für Gesundheit) and the Körber Foundation (Körber-Fond Nachwuchsforschung).

As bioethics, and Islamic bioethics even more so, is a comparatively young discipline, bioethicists are very often scattered across various different disciplinary boundaries, and their scholarly work often emerges in isolation. One major concern of the conference was thus to connect scholars from different academic backgrounds with each other and with other, non-academic stakeholders. In acknowledging the entire spectrum that Islamic bioethics could and should address, we also had in the mind the especial importance of such a network for emerging younger scholars. Scholars from diverse specialties (anthropology, economics, Islamic studies, law, medicine, philosophy and political science) and representatives from national government and non-government institutions participated. While posing some challenges of mutual comprehension, the uniting of people from different academic and non-academic networks and different parts of the world, with very different approaches to our subject, served to confirm our central proposition that research on Islamic bioethics can and should be expanded in its scope, in order to take into proper consideration the various stakeholders that contribute to Islamic bioethical discourse generally.

Although there has been extensive previous research on Islamic bioethics, the conference clearly showed four respects in which the scope of the field could be widened. First of all, geographically: most contributions to Islamic bioethics emerge from the Middle East – and within this region from

[1] Conference website: http://www.aai.uni-hamburg.de/Islam&Bioethics/index.html.

a select list of countries such as Egypt and Saudi Arabia – or Western academia. Second, Islamic bioethics has too often been reduced to the study of *fatwas* (Islamic legal opinions) on medical issues: Islamic forms of normativity comprise much more than *fatwas* alone. Third, such discussions largely focus on medical interventions and technological innovation, to the detriment of other topics that might properly be thought of as the concern of bioethics. Fourth, the analysis of Islamic bioethics has concentrated on certain types of Islamic authorities, including religious leaders (e.g. state *muftis*) and religious institutions (e.g. Islamic legal [*fiqh*] academies), but sidelined stakeholders from secular legal institutions, medical associations and government.

With regard to the first point, it is worth remembering yet again that the country with the largest Muslim population lies in South East Asia (Indonesia) and a recent "resurgence" of Islam is obvious in many South East Asian countries, such as Malaysia. The Muslim population of India is also one of the largest in the world, even though India is considered as a Muslim minority country. On the other hand, within the Middle East, Tunisia, for instance, while often being thought of in this context as "not Islamic enough", has a vivid discourse on Islamic bioethics that is often dismissed. For this conference, we decided to focus on countries which have by and large been neglected to date in the discussion of bioethical issues from Islamic perspectives. Tunisia and Malaysia were both strongly represented; countries such as Iran and India were also covered, which greatly enriched our discussions.

To take up the second point, *fatwas* in any case have always to be viewed in context. *Fatwas* may vary not only between countries, but also within the same country. *Fatwas* issued by transnational actors such as international committees and internet *fatwas* from eminent Islamic scholars influence the issuing of state *fatwas* on a national level and vice versa. This contextualisation of *fatwas* was a central theme of the conference, as can be

seen here from the contributions of Jens Kutscher, Morgan Clarke, Aasim Padela, Ayman Shabana and Ismail Ibrahim.

Further, the tensions between Islamic forms of normativity and secular law are seldom addressed in discussions of Islamic bioethics. In part this is owing to the fact that bioethical issues are often not explicitly covered by secular law in many contemporary Muslim majority countries, although in many cases this is because ongoing projects to implement such laws have been significantly delayed. In some cases a bioethical issue may be covered in the secular law of a Muslim majority country, while at the same time being the subject of statements from religious authorities, leading to potential conflict, as Omar Fassatoui and Zaki Morad together with Hirman Ismail discuss here with regard to Tunisia and Malaysia respectively.

Islamic bioethics has concentrated on medical treatment and technological innovation. The conference did not limit the scope of potential bioethical topics to these, but expressly aimed to include issues that have been largely sidelined to date. Islamic bioethics could certainly also include equitable distribution of medical and social services and the moral responsibilities of the media, for instance. While there are contributions here on such familiar bioethical topics as abortion and sterilisation, surrogacy, genetic counselling, cosmetic surgery and organ transplantation, they come from the relatively under-studied contexts of India, Iran, Tunisia and Malaysia, in the essays by Constanze Weigl-Jäger, Shirin Garmaroudi Naef, Habiba Bouhamed-Chaabouni, Sofiane Bouhdiba, and Muhammed Anis Bin Abdul Wahab together with Hirman Ismail. But the volume additionally covers the less common topics of social health protection in the Arab world and the way medical issues are discussed in the contemporary Iranian press, as treated by Markus Loewe and Arash Sarkohi respectively. These are areas that deserve further research.

Lastly, research on Islamic bioethics has mainly concentrated on certain types of Islamic authorities, such as Egypt's al-Azhar University, particular state *muftis* (especially those of Egypt and Saudi Arabia) and institutions like

the Islamic Fiqh Academies of the Muslim World League and the Organisation of Islamic Cooperation (OIC, formerly the Organisation of the Islamic Conference). Other stakeholders, be they medical associations, religious think tanks or government institutions have seldom been the focus of current research. Here, as something of a case study, the diverse stakeholders that contribute to Islamic bioethical discourse in Malaysia in particular are presented in the contributions by Shaikh Mohd Safuddeen Bin Shaikh Mohd Salleh, Nor Safina Binti Zainal, Azizan Baharuddin and Fadhila Zowya Lela Yasmin Mansor.

This collection of manuscripts shows that the Muslim world does not end geographically in the Middle East and that Islamic bioethics is as diverse as the people who realise it. Islamic normativity and secular law are constantly negotiated anew; the category "*fatwa*" is a heterogenous one, and one often with a specific audience. There is thus no such thing as "*the* Islamic bioethics", but rather the multiple interpretations of various stakeholders, within different countries and bridging across them at the transnational level. Islamic bioethics thus demands a multidisciplinary approach.

We should say that this volume represents an account of the proceedings of our conference rather than a peer-reviewed and unified set of academic articles. Bringing together participants from such different fields and backgrounds presents its own challenges. We have thus largely restricted our editorial role to matters of presentation: the views expressed here should be seen, as usual, as those of the authors alone. We end by thanking them, as well as those who participated during the meeting but were unable to submit a written contribution, and all those who helped facilitate the conference.

Hamburg, 31st August 2013

Jenny Schreiber
Thomas Eich
Morgan Clarke

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Medical and Health-Related Issues in the *Fatwas* of Transnational Stakeholders

Jens Kutscher, Erlangen[1]

Introduction

The Internet is without doubt one of the most important tools and media when it comes to transnational *fatwa* counselling (*ifta'*). It is one of the most widely used mass media for the transmission of Islamic messages and content. Online *fatwas* have been published since the mid-1990s and thus for almost as long as the Internet has existed as a mass medium.[2] Since the early 2000s many studies have shed light on the Muslim and Islamic use of the

[1] A research assistant at the Erlangen Centre for Islam and Law in Europe and currently preparing a doctoral thesis about online *fatwas* with regard to the political attitudes and behaviour of Muslims living in the EU and North America, Jens Kutscher holds a degree in Modern Middle Eastern Studies. He studied Political Science, Islamic Studies, and Economics at Friedrich Alexander University Erlangen-Nuremberg and at the American University in Cairo. Erlangen Centre for Islam and Law in Europe, Friedrich Alexander University Erlangen-Nuremberg. Email: Jens.Kutscher@jura.uni-erlangen.de.

[2] Jens Kutscher, "Online-Fatwas – Islamische Rechtsgutachten und ihre Bedeutung für politische Partizipation," in *Von Chatraum bis Cyberjihad, Muslimische Internetnutzung in lokaler und globaler Perspektive*, ed. Matthias Brückner and Johanna Pink (Würzburg: Ergon, 2009), p. 141.

Internet in general and on online *ifta'* in particular.[3] Some of the works on *ifta'* have also addressed medical and health-related issues.[4]

This review presents a number of transnational Muslim media scholars (*'ulama'*, sing. *'alim*) – particularly scholars who actively engage with the Internet for disseminating their opinions and thus reach out to a transnational audience. This does not, however, mean that the Internet is the only or even the most important media channel used by these scholars. Some of them also make apt use of television broadcasts and can, moreover, be reached by phone, fax, or in person. In order to gain a better understanding of who these transnational stakeholders are the focus of this paper is on *muftis* and their supporting institutions whose opinions are relevant to a large audience and characteristic of the broad spectrum of transnational *ifta'* although the list in this paper is by no means exclusionary and exhaustive. Who then are these *muftis*? Where does their influence reach? Which medical and health-related Islamic norms are reflected in their *fatwas*? The different backgrounds and approaches are contrasted with each other in an attempt to develop a tentative typology of *ifta'* in the 21st century.

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[3] Jon W Anderson, "The Internet and Islam's New Interpreters," in *New Media in the Muslim World, The Emerging Public Sphere*, 2nd edition, ed. Dale F. Eickelman and Jon W. Anderson (Bloomington, Indianapolis: Indiana University Press, 2003[1999]), pp. 45-60; Gary Bunt, *Islam in the Digital Age, E-Jihad, Online Fatwas and Cyber Islamic Environments* (London, Sterling, VA: Pluto Press, 2003), esp. pp. 124-204; Alev Inan, *Islam goes Internet, Websites islamischer Organisationen im World Wide Web* (Marburg: Tectum Verlag, 2007), esp. pp. 46-48; and Bettina Gräf, *Medien-Fatwas@Yusuf al-Qaradawi, Die Popularisierung des islamischen Rechts* (Berlin: Klaus-Schwarz-Verlag, 2010).

[4] Birgit Krawietz, *Die Hurma, Schariatrechtlicher Schutz vor Eingriffen in die körperliche Unversehrtheit nach arabischen Fatwas des 20. Jahrhunderts* (Berlin: Duncker & Humblot, 1991); Matthias Brückner, *Fatwas zum Alkohol unter dem Einfluss neuer Medien im 20. Jhdt.* (Würzburg: Ergon, 2001), pp. 89-93; Muhammad Al Atawneh, *Wahhabi Islam Facing the Challenges of Modernity, Dar al-Ifta in the Modern Saudi State* (Leiden, Boston: Brill, 2010), pp. 134-46; and Jens Kutscher, "Towards a solution concerning female genital mutilation? An approach from within according to Islamic legal opinions," in *Religion and the Body*, (Based on papers read at the symposium on Religion and the Body held at Åbo, Finland, on 16–18 June 2010), ed. Tore Ahlbäck (Åbo: Donner Institute for Research in Religious and Cultural History, 2011), pp. 216-36.

The *muftis* and their *fatwas*

In the context of the present paper the term *mufti* refers to any *'alim* qualified to issue *fatwas* and is therefore not restricted to a scholar who Muslims in countries with a government-affiliated *fatwa* body, like, for example, Egypt, often understand to be the head of this institution, that is, the state *mufti* or Grand Mufti or Mufti of the Republic. Moreover, all of the *muftis* presented in this paper are scholars who share a Sunni outlook whatever else their diverse interpretations of Islam may be.[5]

Arguably, their opinions are relevant because of the popularity of the scholars and their potential to compete with each other for the conclusive authority of their Islamic normative interpretations over Muslim minds worldwide. Their *fatwas*, which feature prominently on their websites (or TV programmes), represent a multitude of different backgrounds and serve to guide Muslims and categorize their behaviour according to religiously forbidden (*haram*) or permissible (*halal*) actions.

The term *fatwa* refers to a non-binding religious normative opinion on any aspect of the sharia including human and communal relations of people with each other (*mu'amalat*) as well as ritual matters and questions of worship which involve the relationship of people with God (*'ibadat*). *Fatwas* about medical, bioethical, and other health-related issues such as abortion, birth control, blood donation, circumcision, cosmetic surgery, doctor-patient relationships, medication containing alcohol or gelatine, organ transplantation, and stem cell research, all of which has been dealt with by the *muftis* presented in this paper, touch upon both *mu'amalat* and *'ibadat*. The relevant *fatwas* are therefore more normative and less purely medical than it may seem at first glance. Besides, these *muftis* would usually give informed answers not only based on their interpretations of the Quran and the

[5] For a Shi'i perspective on *ifta'* see Morgan Clarke's paper in this volume.

prophetic traditions (*hadiths*, Sunna), but also on medical diagnoses and research.[6]

However, some scholars caution the questioners against misunderstanding the institution of *ifta'*. A disclaimer on IslamiCity.com's question-and-answer page, for example, reads that the answers given on the website "should not be interpreted as a detailed fatwa (religious rulings)" even though they are "prepared with the best effort and intention to help the community."[7] Matthias Brückner discusses this problem of correct designation albeit without solving it. He suggests thinking of all the answers as *fatwas* as long as the opposite cannot be proven, because the readers can hardly ascertain the status of the answers in terms of their being *fatwas* or something else.[8] Taking this argument a bit further one could maintain that the distinction between what one might call a *fatwa* proper on the one hand and the simple answer of any question-and-answer setting on the other is hardly relevant as long as the text in question comes from an authoritative source.

The *fatwas* consulted for this paper were authored by media-savvy "global *muftis*"[9] such as the Egyptian-born and possibly most famous *mufti* Yusuf al-Qaradawi (IslamOnline.net, OnIslam.net) as well as the Saudi Arabian sheikhs Muhammad Salih al-Munajjid (IslamQA.com) and Salman al-'Awda (IslamToday.net). Their websites and those associated with them can be accessed in several languages and thus serve to provide orientation and guidance for a broad Muslim audience. al-Qaradawi, al-Munajjid, and al-'Awda together with the South African sheikh Ebrahim Desai (AskImam.org) and the American *muftis* of IslamiCity.com are private

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[6] Cf. also Johannes Grundmann, "Shari`ah, Brain Death, and Organ Transplantation: The Context and Effect of Two Islamic Legal Decisions in the Near and Middle East," *American Journal of Islamic Social Sciences* 22, no. 4 (2005): 3.

[7] "Important Notice," in IslamiCity.com (Culver City, August 2012), <http://www.islamicity.com/qa/>.

[8] Brückner, *Fatwas zum Alkohol*, p. 50.

[9] Cf. Jakob Skovgaard-Petersen and Bettina Gräf, eds., *Global Mufti, The Phenomenon of Yusuf al-Qaradawi* (London: Hurst, 2009).

scholars, who are joined by the government-related *muftis* of the Egyptian and Saudi Arabian *fatwa* offices (Dar-alifta.org and alifta.org respectively), to name but a few protagonists in this transnational *ifta'*.

In addition, Muslim lay preachers (*du'a*) also articulate their opinions publicly on the Internet and on television. Accountant-athlete-turned-media-stars such as the Egyptians Amr Khaled (former accountant) and Moez Masoud (former IT entrepreneur),[10] the Malaysian Azhar Idrus,[11] the Indonesian Abdullah Gymnastiar (former student of a technical school),[12] and the German Pierre Vogel (former professional boxer)[13] attract large audiences from diverse backgrounds and present themselves as detached from academic scholarship as embodied by the '*ulama*'. Their activities are usually not restricted to a particular place, but have inspired Muslims in the Arab world, in Western Europe, in America, and Asia alike. Technically, however, they are not scholars and do not claim to be so. Amr Khaled, for instance, clearly states that he does not issue *fatwas* even though his followers consider his opinions to be authoritative.[14] The same is true of the Saudi

[10] Julia Gerlach, *Zwischen Pop und Dschihad, Muslimische Jugendliche in Deutschland* (Bonn: bpb, 2006), pp. 27-31; Sara Lei Sparre and Marie Juul Petersen, *Islam and Civil Society, Case Studies from Jordan and Egypt* (Copenhagen: DIIS, 2007), p. 64; and Kevin Sullivan, "Younger Muslims Tune In to Upbeat Religious Message," *The Washington Post*, 2 December 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/01/AR2007120101803.html?sid=ST2007120101923> (August 2012).

[11] His activities were pointed out to the author at the international conference "Health related issues and Islamic normativity", Hamburg, June 21, 2012.

[12] Conrad W. Watson, "A Popular Indonesian Preacher: The Significance of Aa Gymnastiar," *Journal of the Royal Anthropological Institute* 11 (2005): 780.

[13] Julia Gerlach, "Die lässigen Gehirnwäscher, Der seltsame Erfolg von Pierre Vogel und anderen Predigern eines radikalen deutschen Islams," *Zeit Online*, 5 October 2007. <http://www.zeit.de/2007/41/Islam-Prediger/komplettansicht> (August 2012); and Wolf Schmidt, *Jung, Deutsch, Taliban* (Berlin: Christoph Links Verlag, 2012), pp. 83-88.

[14] Lindsay Wise, "Words from the Heart': New Forms of Islamic Preaching in Egypt" (M.Phil Thesis, Oxford University, 2003), 5.

Arabian lay preacher Ahmad al-Shugairi (holding an MBA), who exclaims: "I am not a sheik."[15]

It is noteworthy that none of these scholars and lay preachers is a trained physician or has any other medical expertise. Indeed, to find the two qualities – being a medical doctor and a religious scholar (*'alim*) – united in one person is rather rare (for an example see chapter 4). Unfortunately, the data set is too limited to be able to compare *fatwas* by *muftis* with a background in medicine with those by *muftis* without such a background.

Transnational Authority

Peter Mandaville's work on transnational Islam and Islam on the Internet serves well to provide a framework in which transnational Muslim actors – such as stakeholders in *ifta'* – can be located. "Transnationalism" then refers to the potentially global interaction across national borders of mostly private actors, individual and collective, who may include, but are certainly not limited to governments and states considered sovereign under international law.[16]

One non-negligible aspect which makes the examined *fatwa* websites particularly relevant in a transnational context is the fact that all of them have an English section. Moreover, most of them – the exceptions being AskImam.org and IslamiCity.com – are at least bilingual with Arabic as the second language though not necessarily identical in the different language sections. Muslims from all over the world can access information and *fatwas* from these websites provided that they have a computer or smartphone with a working Internet connection. In addition, some of the aforementioned

[15] Robert F. Worth, "Preaching Moderate Islam and Becoming a TV Star," *The New York Times*, 2 January 2009. <http://www.nytimes.com/2009/01/03/world/middleeast/03preacher.html?_r=1&pagewanted=all> (August 2012).

[16] Peter Mandaville, *Global Political Islam* (London, New York: Routledge, 2008), p. 276.

scholars like al-Qaradawi,[17] al-Munajjid,[18] and al-'Awda[19] host or used to host religious TV shows on Arab Islamic satellite channels whose programmes are broadcast to households worldwide.

In short, the *muftis'* authority derives from two important factors.[20] One of them is their being "the heirs of the prophets"[21] through their religious training and education and thus some sort of divinely bestowed quality. The other is the simple fact that Muslims recognise the *muftis'* standing, their work, and their interpretations as legitimate. Authority can be defined as outstanding expertise and knowledge, which commands obedience without using either force or persuasion.[22] Derived from Roman law (*auctoritas*) it refers to more than an advice, but less than a command.[23] Thus, it does not imply real commanding power. The definition of a *fatwa* as a non-binding religious normative opinion should be kept in mind. However, there are two instances, which may be considered exceptions to this definition. First, *fatwas* can serve to solve legal cases in court when the judge (*qadi*) adopts them or

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[17] Jakob Skovgaard-Petersen, "The Global Mufti," in *Globalization and the Muslim World, Culture, Religion, and Modernity*, ed. Birgit Schäbler (Syracuse: SUP, 2004), pp. 153-65; and Ehab Galal, "Yusuf al-Qaradawi and the New Islamic TV," in *Global Mufti, The Phenomenon of Yusuf al-Qaradawi*, ed. Jakob Skovgaard-Petersen and Bettina Gräf (London: Hurst, 2009), pp. 149-80.

[18] Admin, "Muhammad Saalih al-Munajjid," in Islamopedia Online (Cambridge, August, 2012), <http://islamopediaonline.org/profile/muhammad-saalih-al-munajjid>.

[19] Madawi Al-Rasheed, *Contesting the Saudi State, Islamic Voices from a New Generation* (Cambridge: CUP, 2007), p. 90; and Mansoor Jassem Alshamsi, *Islam and Political Reform in Saudi Arabia, The quest for political change and reform* (New York, London: Routledge, 2011), p. 203 et al.

[20] Cf. Bryan S. Turner, "Max Weber on Islam and Confucianism: The Kantian Theory of Secularization," in *The Oxford Handbook of the Sociology of Religion*, ed. Peter B. Clarke (Oxford: OUP, 2011), p. 88.

[21] Abu Dawud, *Sunan*, own translation (Vaduz: Thesaurus Islamic Foundation, 2000), p. 620 (Kitab al-'ilm – bab al-haththth 'ala talab al-'ilm).

[22] Hannah Arendt, "Communicative Power," in *Power*, ed. Steven Lukes (Oxford: Basil Blackwell, 1986), p. 65.

[23] Hannah Arendt, "Was ist Autorität?," in *Zwischen Vergangenheit und Zukunft, Übungen im politischen Denken I*, ed. Hannah Arendt and Ursula Ludz (Munich, Zurich: Piper, 1994), p. 189; Cf. Albert Dietrich, "Autorité personnelle et autorité institutionnelle dans l'islam: à propos du concept de 'sayyid,'" in *La notion d'autorité au Moyen Age, Islam, Byzance, Occident, Colloques internationaux de La Napoule (Session des 23-26 octobre 1978)*, ed. George Makdisi, Dominique Sourdel, and Janine Sourdel-Thomine (Paris: Presses Universitaires de France, 1982), p. 83.

incorporates them into his decision (*hukm*, *qada'*). In this case they become binding on the concerned parties and can be enforced by the appropriate law-enforcement institutions. Technically, though, what they enforce is the *hukm* or *qada'* and not the *fatwa*.[24] Second, in several countries government-affiliated or state-run *fatwa* offices may serve as supreme bodies to answer religious-normative questions (see below chapter 9). Sometimes governments would ask them for their opinion about a specific issue, which then becomes government policy or even law, like, for example, the justification for declaring war or making peace. Often these *fatwa* bodies were installed by the government or are dependent on it. So it seems that more often than not governments would (ab)use their request to solicit the answer they need to lend religious legitimacy to their policies.[25]

Nevertheless, Muslims usually adhere to specific *fatwas* only on the basis of the authority of a trusted *mufti*, someone who gives religious advice conforming to the sharia without being able to enforce it. A well-known consequence of this voluntary relationship between *muftis* and questioners is the theoretical possibility of "*fatwa* shopping".[26] This means that if the questioner does not like the answer given, he or she can simply ask a different *mufti* until the answer is "desirable". The binding character of *fatwas* and the authority of those issuing them derive from the fact that Muslims want to abide by the norms set and from the fact that there are *muftis* whom

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[24] E.g. David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: CUP, 2002), p. 229; and Haim Gerber, *State, Society, and Law in Islam, Ottoman Law in Comparative Perspective* (Albany, NY: State University of New York Press, 1994), p. 80, 83 and 94.

[25] E.g. for the Ottoman Empire of the 16th century Gerber, *State, Society, and Law in Islam*, p. 88, 92, and for 20th century Egypt Gordon Hadler, "Modernes politisches Ifta' am Beispiel von ägyptischen Fatwas zu Friedensverträgen mit Israel," in *Beiträge zum Islamischen Recht III*, ed. Hans-Georg Ebert and Thoralf Hanstein (Frankfurt a.M.: Peter Lang, 2003), p. 108 and 125.

[26] This phenomenon still seems to be underresearched, but has been described more or less anecdotally by Nadirsyah Hosen, "Online Fatwa in Indonesia: From Fatwa Shopping to Googling a *Kiai*," in *Expressing Islam, Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White (Singapore: ISEAS Publishing, 2008), p. 164; and John Foster, "How Sharia-compliant is Islamic Banking?," *BBC News*, 11 December, 2009. <http://news.bbc.co.uk/2/hi/business/8401421.stm> (October 2012).

they trust in spite of the fact that they might not like their answers every now and then.

Altogether, transnational *ifta'* entails the development of a variety of diverse actors who have had to compete with each other for followers and supporters.[27] It is not so much the nature of authority that has been changing due to this development,[28] but rather the perception of who bears it. The existence of new and more Muslim scholars and lay preachers has led to a fragmentation of authority.[29] However, fears of "a hydraulic engineer moonlighting as an amateur *alim*"[30] can be dispersed in the context of this paper. In fact, all of the *muftis* discussed below have publicly known credentials as religious scholars.

IslamOnline.net, OnIslam.net, and Yusuf al-Qaradawi

One of the *muftis* who can claim such authority and manage to command voluntary obedience is Yusuf al-Qaradawi. He was one of the driving forces behind the launch of the Islamic web portal IslamOnline.net in 1999 and certainly lent his standing as a public scholar to its founders.[31] Thanks to his multifaceted involvement in transnational *ifta'* activities, al-Qaradawi like no other *mufti* managed to achieve international prominence and enjoyed widespread attention for his opinions, some of which – like his relentless support of Palestinian suicide bombings or martyr operations[32] – have caused much controversy. He is usually portrayed as the representative of a

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[27] Mandaville, *Global Political Islam*, p. 299.

[28] Mandaville, *Global Political Islam*, pp. 299-300.

[29] Peter Mandaville, "Reimagining the *ummah*? Information technology and the changing boundaries of political Islam," in *Islam Encountering Globalization*, ed. Ali Mohammadi (London, New York: RoutledgeCurzon, 2005), p. 70.

[30] *Ibid.*, p. 79.

[31] Betttina Gräf, "Media Fatwas, Yusuf al-Qaradawi and Media-Mediated Authority in Islam," *Orient* 51, no. 1 (2010): 10.

[32] Bettina Gräf and Jakob Skovgaard-Petersen, "Introduction," in *Global Mufti, The Phenomenon of Yusuf al-Qaradawi*, ed. Jakob Skovgaard-Petersen and Bettina Gräf (London: Hurst, 2009), p. 7.

pragmatic interpretation of Islam. That is, he supports the interpretation of Islamic norms derived from the Quran and the prophetic traditions (*hadiths,* Sunna) which adapt to the changing circumstances of time and place. In this context he is a supporter of the so-called middle trend in Islam (*wasatiyya*). Born in Egypt in 1926 al-Qaradawi was educated at al-Azhar University. He has also been associated with the Muslim Brotherhood. Since the mid-1990s al-Qaradawi has been keen to make use of new media at his long-time residence in Qatar. With the launch of the pan-Arab satellite TV station al-Jazeera, he became a regular guest on the *fatwa* call-in show The Sharia and Life (*al-Shari'a wa-l-Hayat*). Besides, in 1997, he was one of the protagonists founding the European Council for Fatwa and Research (ECFR), a transnational *ifta'* body,[33] and until 2010, he was the chairman of the board of the Al-Balagh Cultural Society. The latter organization is involved in the administration of IslamOnline.net,[34] which according to Alexa Internet traffic ranking is still among the top twenty most popular Islam-related websites (as of June 21, 2012).

After major problems between the employees of IslamOnline.net and the board of Al-Balagh Cultural Society in March 2010, the website was shut down and re-launched in a new layout under a different leadership. Former employees of IslamOnline.net have meanwhile launched their new website OnIslam.net, which in style and content is very similar to IslamOnline.net as it used to be. OnIslam.net was at least initially funded by Saudi Arabian donations.[35]

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[33] Sarah Albrecht, *Islamisches Minderheitenrecht, Yusuf al-Qaradawis Konzept des* fiqh al-aqalliyat (Würzburg: Ergon, 2010), pp. 37-49. For details see chapters in Skovgaard-Petersen and Gräf, *Global Mufti.*

[34] Bettina Gräf, "IslamOnline.net: Independent, interactive, popular," *Arab Media & Society* 4 (2008), in Arab Media Society website (Cairo, February 2012), http://www.arabmediasociety.com/articles/downloads/20080115032719_AMS4_Bettina_Graf.pdf>; and Mona Abdel-Fadil, "The Islam-Online Crisis: A Battle of Wasatiyya vs. Salafi Ideologies?," *CyberOrient* 5, no. 1 (2011). <http://www.cyberorient.net/article.do?articleId=6239> (May 2012).

[35] Abdel-Fadil, "The Islam-Online Crisis."

The IslamOnline.net story is a very successful story when it comes to *fatwas*. The English and Arabic *fatwa* sections featured prominently on the website which also provided news about Islam and Muslims worldwide. As of September 17, 2006, the *fatwas* published came from a variety of different *muftis* such as al-Qaradawi himself, but also from the Indian-born Canadian *mufti* Ahmad Kutty and Muzammil Siddiqi, chairman of the Fiqh Council of North America, to name but a few. However, in early 2010, with the removal of al-Qaradawi there was a change in the management of IslamOnline.net. At first it looked like an ideological conflict between the *wasatiyya* approach at IslamOnline.net and the *salafiyya* outlook of the Qatari organization. But in the end it is probably "a question of poor management" and an overstretch of the online content due to the website's increasing popularity.[36]

The *fatwa* section at OnIslam.net has its own "Health & Science" category, which contains 128 *fatwas* almost half of which deal with issues of "medicine" (as of August 31, 2012). In one of these *fatwas* the *mufti* and physician (!), Hatem al-Haj,[37] gives a characteristically multifaceted answer to a question about the permissibility of medicine containing alcohol. Citing two *hadiths* as well as several classical and modern scholars (Ibn Taymiyya, al-Qaradawi, the ECFR, the Saudi Arabian Permanent Committee for Scientific Research and Ifta' et al.) he points out that what is forbidden (*haram*) is the intoxication following the consumption of alcohol. Consequently, solutions containing only a little amount of alcohol (less than five percent) may be permissible (*halal*) provided that there is no alternative. In line with the Islamic Fiqh Academy of the Muslim World League (MWL) al-Haj also considers the topical external application of creams and lotions

[36] Abdel-Fadil, "The Islam-Online Crisis."

[37] According to the biography on his homepage (http://www.drhatemalhaj.com/ar/, accessed October 2, 2012) al-Haj is an Egyptian-born paediatrician based in the U.S. with a Bachelor in Medicine and a doctorate in *Sharia* Studies. He is also the dean of the College of Islamic Studies at the Islamic University of North America (cf. also "Dr. Hatem al-Haj," Mishkah University, accessed October 2, 2012, http://www.mishkahuniversity.com/?page_id=713).

containing alcohol to be *halal* if, for instance, it serves the sterilization of wounds.[38]

Apparently, to name but one example, the vast majority of the *fatwas* issued by al-Haj are best categorized to be health-related rather than medical. That is to say in many, if not most, of his *fatwas* he refers to the Quran or *hadiths* so that they relate more to ethical and religious guidance than to medical counsel. His medical expertise may best be reflected in the statement that "[b]arley has tryptophan, which is a precursor of serotonin and an important neurotransmitter in the brain that causes mood elevation" in a *fatwa* where he enumerates steps of how to treat a psychotic depression.[39] Despite his additional training as a physician his line of reasoning hardly ever reveals his medical knowledge. This is arguably a tribute to his questioners who do not usually seem to have medical training and therefore require an easy to understand answer – even more so on the Internet with no face-to-face communication. It may also be a characteristic feature of *fatwas* which Muslims request for religious, moral, ethical, and spiritual guidance in the first place.

IslamQA.com and Muhammad Salih al-Munajjid

Compared to al-Qaradawi most other *muftis* must seem to be of little relevance. If the number of Wikipedia entries in different languages is any indication at all then, as of June 21, 2012, al-Qaradawi is linked in 21 languages, while the Saudi Arabian sheikh Muhammad Salih al-Munajjid is only linked in two languages: English and Arabic. He rose to some prominence in 2008 when he was quoted in the international press to the

[38] Hatem al-Haj, "Medicine Containing Alcohol: Halal?," *OnIslam*, 14 May 2012. <http://www.onislam.net/english/ask-the-scholar/health-and-science/medicine/457088-medicine-containing-alcohol-halal.html> (August 2012).

[39] Hatem al-Haj, "Remedy for Psychotic Depression," *OnIslam*, 19 April 2011, in On Islam website (Egypt, October 2012), <http://www.onislam.net/english/ask-the-scholar/health-and-science/faith-and-science-medicine/178998-remedy-for-psychotic-depression.html?Science/Medicine>.

effect that he had issued a *fatwa* calling for the death of Mickey Mouse.[40] Nevertheless, al-Munajjid is a popular media *mufti*. His TV presence, however, is largely restricted to the Gulf region[41] while his Internet activity is notably transnational.

He is the founder of IslamQA.com (Islam Question & Answer), which was first launched in English in 1996. al-Munajjid argues that English was the lingua franca of the Internet and most of his followers came from the U.S. and other countries where Muslims live as minorities and did not usually have access to ethical and normative Islamic guidance.[42] al-Munajjid's *fatwas* are, for example, discussed in online forums by German *salafi* Muslims[43] and the *fatwas* can also be downloaded with a smartphone app.[44] Since the early days, IslamQA.com has expanded its language offers to twelve including Arabic, Chinese, French, Indonesian, and Urdu. The *fatwas* are translated by volunteers who want to help al-Munajjid share his interpretation of Islam.[45] Similar to IslamOnline.net his message is hence also one of inviting others to Islam (*da'wa*). al-Munajjid was born in 1960 and was a student of the former Saudi Arabian grand *mufti* 'Abd al-'Aziz ibn 'Abdullah ibn Baz.[46] This distinguishes him from al-Qaradawi in two ways: His religious education was based in Saudi Arabia, the home of *Wahhabi* Islam, and he is the representative of a younger generation.

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[40] Jens Kutscher, "The Politics of Virtual Fatwa Counseling in the 21st Century," *Masaryk University Journal of Law and Technology* 3, no. 1 (2009): 34.

[41] "Muhammad Saalih al-Munajjid," in Islamopedia Online, (Cambridge, August 2012), <http://islamopediaonline.org/profile/muhammad-saalih-al-munajjid>.

[42] Muhammad Salih al-Munajjid, interview with author, al-Khobar, Saudi Arabia, October 11, 2009.

[43] Paula Schrode, *Sunnitisch-islamische Diskurse zu Halal-Ernährung, Konstituierung religiöser Praxis und sozialer Positionierung unter Muslimen in Deutschland* (Würzburg: Ergon, 2010), p. 92.

[44] Jonathan Schanzer and Steven Miller, *Facebook Fatwa: Saudi Clerics, Wahhabi Islam and Social Media* (Washington, DC: FDD Press, 2012), p. 51.

[45] Muhammad Salih al-Munajjid, interview with author, al-Khobar, Saudi Arabia, October 11, 2009.

[46] "Biography of the supervisor of Islam Q&A website Shaykh Muhammad Saalih al-Munajjid," in IslamQA.com (May 2012), <http://www.islamqa.info/en/ref/islamqapages/5>.

The *fatwa* categories on IslamQA.com do not display a specific section about health-related queries. As of August 31, 2012 a cursory search of the database for the key word "medicine" yields 272 results. To cite but one notable example regardless of the search results: In one of his *fatwas* al-Munajjid explicitly quotes a physician and a female gynaecologist to support his altogether favourable opinion on female genital mutilation.[47] In another instance, however, he is quite cautious to support organ donations and refers the reader to a 1988 decision of the Saudi Arabian Islamic Fiqh Council (*majma' al-fiqh al-islami*) chaired by Ibn Baz. In his introductory comment, al-Munajjid states that the permissibility of donating organs "is most likely to be the correct view".[48] As will be seen this caution seems to be a rather common theme in *fatwas* about health-related issues which appear to be less absolute than opinions regarding matters less concerned with life and death.

IslamToday.net and Salman al-'Awda

Another scholar of this middle-aged generation is the Saudi sheikh Salman al-'Awda, who was born in 1955. He counts among the "most influential preacher[s] in Saudi Arabia"[49] and was once called the Saudi Khomeini because he opposed the ruling family by making use of what has been termed "small media"[50] and recording his sermons on audio tapes. His close association with the Saudi Islamic awakening (*sahwa*) movement makes him – much like al-Qaradawi – a highly political figure who also spent several years in prison. On the other hand, like al-Munajjid, al-'Awda completed his studies in Saudi Arabia and generally represents a *Wahhabi* interpretation of

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[47] "Medical benefits of female circumcision," in IslamQA.com (February 2011), <http://www.islamqa.com/en/ref/45528>.

[48] "Ruling on organ donation," in IslamQA.com (August 2012), <http://www.islamqa.com/en/ref/107690 (emphasis added). Cf. Al Atawneh, *Wahhabi Islam*, 144-45>.

[49] Mamoun Fandy, *Saudi Arabia and the Politics of Dissent* (New York: Palgrave, 2001), p. 93.

[50] Annabelle Sreberny-Mohammadi and Ali Mohammadi, *Small Media, Big Revolution, Communication, Culture, and the Iranian Revolution.* (Minneapolis, London: University of Minnesota Press, 1994).

Islam.[51] However, since his release from prison in 1999 al-'Awda has advocated "moderation" (*i'tidal*), which is closely connected to the *wasatiyya* trend represented by al-Qaradawi and IslamOnline.net.[52] Even though his activities were and still are largely addressed to a Saudi audience, he is a prominent media *mufti* with regular appearances on Saudi television and with his website IslamToday.net.[53] Moreover, according to Forbes, al-'Awda is the most active cleric on Twitter.[54]

In 2001, al-'Awda founded the website IslamToday.net to further his missionary (*da'wa*) activities.[55] IslamToday.net is a general Islamic web portal with news, *fatwas*, and other content in Arabic, English, French, and Chinese. It has a small section specifically addressing "medical issues" containing 30 *fatwas* in English. Ever since a 2010 royal decree banning non-sanctioned clerics (like al-'Awda) from issuing *fatwas* in Saudi Arabia[56] IslamToday.net's Arabic *fatwa* section cannot be accessed any longer.

However, al-'Awda is not the principal *mufti* for health-related *fatwas* on the website. They were given by a number of different *muftis*. One of these *fatwas* also reveals a cautious approach. It was issued by sheikh Yusuf al-Qasim, who addresses a question concerning the sale of organs. While he acknowledges the permissibility of organ donations in general based on a 1985 decision of the Islamic Fiqh Council, he states that selling organs "seems" to be permissible in cases of necessity.[57]

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[51] Mansoor Jassem Alshamsi, *Islam and Political Reform in Saudi Arabia, The quest for political change and reform* (New York, London: Routledge, 2011), pp. 2-6; and Fandy, *Saudi Arabia*, pp. 89-90.

[52] Nushin Atmaca, "Die neue Mitte? Gegenwärtige Positionen Salman al-'Audas zur Rolle der Frau, religiösem Extremismus und Gewalt," in *Saudi-Arabien, Ein Königreich im Wandel?*, ed. Ulrike Freitag (Paderborn: Ferdinand Schöningh, 2010), p. 172, 177.

[53] Alshamsi, *Islam and Political Reform in Saudi Arabia*, pp. 145-48.

[54] Cited in Schanzer and Miller, *Facebook Fatwa*, p. 47.

[55] Gräf, *Medien-Fatwas@Yusuf al-Qaradawi*, p. 250.

[56] Hussein Shobokshi, "A Wise Royal Decree," *Asharq Al-Awsat*, 19 August 2010. <http://www.asharq-e.com/news.asp?section=2&id=22020>. (March 2012).

[57] "Selling one's kidneys," in IslamToday (August 2012), <http://www.islamtoday.net/quesshow-106-857.htm>.

AskImam.org and Ebrahim Desai

Another single-scholar website is operated by the South African *mufti* Ebrahim Desai. He and his students run AskImam.org. Desai was educated in India where he attended a school that taught the Deobandi interpretation of Islam,[58] which has often been (unfavourably) compared to Wahhabism because of its puritan and reformist outlook.[59] While the Deoband school follows the Hanafi tradition, it tends to concentrate on the literal interpretation of the Sunna and follow the school's founder with little regard to changing times and circumstances. Similar to the *salafiyya* they are concerned with the correct practice of religious rites. In the specific South African context, Desai and other scholars like him were representatives of Muslim exclusivity.[60] This approach is also reflected in Desai's *fatwas* at AskImam.org.

Two observations are worth mentioning in the context of this paper. While emphasizing the overruling importance of necessity (*darura*) in the case of medical treatments, the *muftis* seem to be particularly careful about phrasing their *fatwas*. In one instance they cite a health-related website as the source of their information about a specific medicine containing gelatine.[61] In another case the *muftis* give a lengthy *fatwa* about the debate surrounding embryonic stem cell research, which they consider forbidden except within strict limits. Yet once more they stress that their opinion is based on their

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[58] Bunt, *Islam in the Digital Age*, 167, and "About," in AskImam.org (July 2012), <http://askimam.org/about>.

[59] In this context "reformism" (*islah*) denotes recourse to the "golden age" of "true Islam" when Muhammad was still alive (Dietrich Reetz, "Dar al-'Ulum Deoband and its Self-Representation on the Media," *Islamic Studies* 44, no. 2 (2005): 210).

[60] Cf. Vanessa Steinmayer, *Islamische Ökonomie in Südafrika, Eine Untersuchung muslimischer Unternehmen in Johannesburg, Kapstadt und Durban* (Berlin: Hans Schiler, 2004), pp. 210-12.

[61] *Fatwa* no. 19675, 2 January 2012, in AskImam.org (August 2012), <http://askimam.org/public/question_detail/19675>.

own, presumably amateur medical understanding of the scientific prerequisites.[62]

IslamiCity.com

The only private *fatwa* website among those discussed here which cannot be associated with a particular scholar is IslamiCity.com. It is similar to IslamOnline.net because it is a web portal providing news, *halal* shopping opportunities, and a separate *fatwa* section and because more than one *mufti* answers the questions posed by Muslims all over the world, but particularly in the U.S. Launched in 1995 the producers reached out to the Muslim community at large with the aim to promote peace, justice, and harmony and further the dialogue between different cultures.[63] The relative anonymity of particular scholars at IslamiCity.com makes it difficult to categorise the *fatwas*. It seems, however, that they are influenced by the Muslim Brotherhood and sometimes Wahhabi notions of Islam.[64]

There is no category for health-related issues in the *fatwa* section at IslamiCity.com. Instead, the *fatwas* are displayed in alphabetical order of their topics. For instance, 30 *fatwas* deal with "abortion", while a search with the key word "medicine" yields 84 results. Regarding abortion the *muftis* of IslamiCity.com avoid clear statements by pointing at the "different views" among Muslim scholars as well as between them and medical doctors. Abortion before the 120th day of a woman's pregnancy "is a matter of disagreement."[65]

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[62] *Fatwa* no. 17594, 27 February 2009, in AskImam.org (August 2012), <http://askimam.org/public/question_detail/17594>.

[63] "Important Notice," in IslamiCity.com (March 2012), <http://www.islamicity.com/qa/>; and "Welcome to the IslamiCity," in IslamiCity.com (March 2012), <http://www.islamicity.com/support/AboutUs.asp>.

[64] Brückner, *Fatwas zum Alkohol*, p. 49.

[65] Quoted from *fatwa* no. 2423, 28 December 1997 in IslamiCity.com (August 2012), <http://www.islamicity.com/qa/>; Cf. also *fatwa* no. 4246, 1 January 1995 in IslamiCity.com (August 2012), <http://www.islamicity.com/qa/>.

Government institutions

Finally, private *muftis* are not the only competitors in the field of transnational *ifta'*. A look at government institutions or government-affiliated institutions like the Egyptian and the Saudi Arabian *fatwa* offices is therefore in order. Their public impact is clearly a result of their long institutional history as well as the possibility to contact them via a number of communication channels, be they regular mail, phone, or a visit to most mosques. Their most eminent spokesmen are the two grand *muftis*, sheikh Shawky Ibrahim[66] of Egypt and sheikh 'Abd al-'Aziz Al al-Shaykh of Saudi Arabia[67] although the latter's predecessor in office, Ibn Baz (d. 1999), is still venerated throughout the Kingdom.[68]

Both the Egyptian and the Saudi Arabian *fatwa* offices launched or re-launched their official websites in the mid-2000s presumably in a response to counter the popularity of private *muftis* and their websites.[69] For instance, a visit to Cairo in March 2010 revealed that the Egyptian Dar al-Ifta' has a quite sophisticated translation department where questions from Germany, France, Malaysia or elsewhere are translated into Arabic so that the Egyptian scholars can answer them. Then their *fatwas* are translated back into the questioners' languages so that they will understand the responses.

Whereas the Saudi Arabian *fatwa* office published an electronic version of a whole book in English with its *fatwas* on medical issues and the sick,[70] the Egyptian Dar al-Ifta' website offers 22 *fatwas* on "medical treatment".

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[66] Elected in February 2013. Mai Shams El-Din, "Opposing currents: Internal rifts may risk the credibility of Egypt's religious institutions," *Almasry Alyoum English Edition*, 25 February 2013. <http://www.egyptindependent/prin/1523706>.

[67] Kutscher, "The Politics of Virtual Fatwa Counseling," p. 40.

[68] Al Atawneh, *Wahhabi Islam*, pp. 31-34.

[69] Cf. Christopher Boucek, "The Sakinah Campaign and Internet Counter-Radicalization in Saudi Arabia," *CTC Sentinel* 1, no. 9 (2008): 3. <http://www.ctc.usma.edu/wp-content/uploads/2010/06/Vol1Iss9-Art1.pdf> (September 2012).

[70] "Fatwas on medical issues and the sick," in Portal of the General Presidency of Scholarly Research and Ifta' (August 2012), <http://alifta.org/Fatawa/FatawaChapters.aspx?MenuID=0&View=tree&NodeID=1&PageNo=1&BookID=17&Rokn=true>.

Here, too, the *muftis* interpret actions otherwise forbidden (*haram*) or abominable (*makruh*) to be permissible (*halal*) in cases of necessity, for example, when a female patient can only attend a male gynaecologist.[71]

Conclusion

In conclusion, two important observations can be made. First, the most popular *fatwas* of transnational stakeholders come from private scholars who can be associated with Islamic trends and currents outside Muslim mainstream. This is true of Yusuf al-Qaradawi, the *muftis* at IslamiCity.com, Muhammad Salih al-Munajjid, Salman al-'Awda, and Ebrahim Desai. Second, the two main trends or currents that can be identified are either Wahhabi / *salafi* concerned with orthopraxis or they are close to the Muslim Brotherhood. This latter trend involves a pragmatic approach to everyday questions with the aim to establish Islam as a universally valid social order. The Wahhabi / *salafi* trend is more precisely identified as puritan or purist, that is, inimical to the contamination of Islam with aspects of non-Muslim life.

As far as medical and health-related issues are concerned two findings stand out, even though they would have to be bolstered by more thorough research in the future. First, this rather brief review of online *fatwas* reveals a cautious approach of many *muftis* with regard to questions outside their jurisprudential (*fiqhi*) comfort zones – even more so when they cannot rely on mixed medical-religious committees where responsibility is shared. Second, their interpretations of the normative sources of Islam leave much room for the application of the principle of necessity (*darura*). In short, patients are usually exempted from unnecessary hardship. *Fatwas* are the domain of religious scholars, not medical doctors. Life and the physical inviolability of

[71] Fatwa Council, "Females visiting male obstetrician-gynecologists," *Dar-Alifta Al-Misrriyah*, 14 May 2008, in Dar-Alifta website (August 2012), <http://dar-alifta.org/viewfatwa.aspx?id=366&text=medicine&Home=1&LangID=2>; and Muhammad Al Atawneh, *Wahhabi Islam Facing the Challenges of Modernity, Dar al-Ifta in the Modern Saudi State* (Leiden, Boston: Brill, 2010), p. 139.

men and women rank high in the opinions of the presented transnational stakeholders in *ifta'*.

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Generating 'Islamic Medical Ethics': Ayatollah Fadlallah's Q&A Service (*maktab al-istifta'at*)

Morgan Clarke, Oxford[1]

In this paper, I discuss how opinions as to 'Islamic medical ethics' are generated in one particular context, the Q&A service (*maktab al-istifta'at*) of Lebanon's late Ayatollah Muhammad Husayn Fadlallah (d. 4 July 2010). Ayatollah Fadlallah was an important focus of my first major research project, which was on Islamic legal debates over assisted reproduction (IVF in particular) in Lebanon in 2003-4 (see Clarke 2009).[2] I was very quickly directed towards Ayatollah Fadlallah as being an especially 'contemporary' (*mu'asir*) and 'open-minded' (*munfatih*) scholar: 'the Sayyid keeps up with the times' (*al-sayyid yuwakib al-'asr*), as the saying went. His positive reaction towards the possibilities of cloning, for example, was especially well-known.[3] Indeed one of the *shaykhs* working in his offices answered my question as to how he had become involved with Fadlallah with the response: 'Cloning. I was [studying] in Qom when this issue first hit the news. I heard an

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[2] I returned to Lebanon for another major project on sharia discourse in 2007-8, for which I conducted further research on Ayatollah Fadlallah and his offices.

[3] See Clarke 2009: p.66, 85n21 for further references. I have written at length elsewhere on Fadlallah's 'contemporaneity' (Clarke n.d.).

interview with Sayyid Fadlallah – he talked about it in a scientific manner, explained how it worked – you take a cell, you empty it of its nucleus and so on. This was when some of the *ulama* didn't even know the meaning of the word'. And Fadlallah's lectures to scientifically-minded audiences at the American University of Beirut and the Jesuit St Joseph University were well-remembered.

It should be noted, of course, that Fadlallah was known for much more than his interest in the cutting edge of scientific issues. He was a controversial figure, both within the Twelver Shi'i tradition of which he was a part and in the West. In the Shi'i tradition that was because of his ecumenical, progressive and rationalising positions towards various elements of traditional doctrine, and, at least in part, because of his independence from the traditional Shi'i scholarly centres of Najaf and Qom, especially when his followers claimed for him the status of *marja' al-taqlid* ('source of emulation'), the highest rank in the Shi'i scholarly hierarchy, in the mid-1990s. In the West it was because of his radical politics and putative relationship with Hizballah (Rosiny 2001; Sankari 2005; Clarke n.d.). His offices were, however, despite the political tensions of the times, most generous in allowing me access, and I am, I should say, very grateful to them for that.

But here we are concerned with Islamic responses to medical ethical dilemmas; and, as I have already hinted, Fadlallah engaged with medical and scientific issues in a number of different ways. He was a prolific writer and speaker, and his opinions and ideas circulated through lectures, press statements and interviews. Indeed the density of his public presence was a source of concern for some within the tradition (Clarke 2010: 365): as a *marja'*, was not his every word in some sense binding guidance for his followers? But we, I think, should in our own analytical readings take care not to collapse these different genres. Even if we concentrate on the more formal instances of Islamic legal guidance, these also took different discursive forms: ranging from his *risala 'amaliyya, Fiqh al-shari'a* (Fadlallah 2002-2003), the

comprehensive, three-volume handbook as to the sharia that included some limited material on medical ethical issues in its sections on family relations for instance, to the little collections of 100 questions and answers that were distributed free of charge in the great Masjid al-Imamayn al-Hasanayn mosque in Beirut's southern suburbs where he delivered the Friday sermon.

One did not need to confine oneself to his published opinions: one could also seek his particular guidance for one's individual needs. Ideally, one would do that in person; and I in fact myself met him twice, once for an extended interview discussing the Islamic legal ramifications of assisted reproduction. Fadlallah's openness and engagement, not just with visiting foreigners, but more especially with the Shi'i masses, was a key plank of his project and his appeal. This very much came across in interviews conducted by my colleague, medical anthropologist Marcia Inhorn, with male IVF patients in Lebanon in 2003, which we analysed together in a recently published article (Clarke and Inhorn 2011). A good number of the Shi'i patients she interviewed were avowed followers of Sayyid Fadlallah, and were vocal in their enthusiasm for him. His personality came through strongly, unlike that of the other *marja'* mentioned, Ayatollah Khamenei, Supreme Leader of the Islamic Republic of Iran. That was no doubt in no small part to be explained by his local presence and by local (Arab, national) solidarity. And several of these men spoke of asking Fadlallah for his opinion on their ethical dilemmas – as to the use of donor eggs for instance – in person at his regular question and answer sessions at the mosque. His accessibility was, then, important.

However, Fadlallah had many thousands of followers across the world, and they could not of course access him in person in the same way. They would do so through the *maktab al-istifta'at*, the office for dealing with questions as to his opinion as to points of the sharia (on which, see also Clarke 2010, 2011). I have avoided translating this here as '*fatwa* office', following the offices' lead of 'Q&A' as the appropriate English translation for *istifta'*, which might otherwise naturally be construed as the process of

seeking a *fatwa*. To deem these responses *fatwas* – with what is now the connotation of a definitive public statement of a *marja'*s position – seems to put rather too much weight on these more ephemeral answers, or at least that is what the translation 'Q&A' (and the Arabic title *Mi'at su'al wa-jawab* of the 100 Q&A volumes), among other indications, suggests to me. Through the kindness of the office's head, Shaykh Muhsin 'Atwi, I was able to visit on a number of occasions and come to understand something of its operations. It is now, along with other departments of Fadlallah's offices, housed within a newly constructed building in Beirut's southern suburbs, on the site of the old building which was destroyed, along with Fadlallah's neighbouring house, by Israeli bombardment in the war of 2006; it continues its work after the Ayatollah's death, relaying his established opinions.

Questions could come through a variety of channels. Sometimes people might come in person, to consult with Shaykh 'Atwi, or his junior colleague, also a shaykh. (Indeed even outside of the office – in the mosque or on the street, for instance – Shaykh 'Atwi is pressed with such questions.) And the telephone rings almost constantly with further queries. But most commonly nowadays they come by email, via Fadlallah's website (www.bayynat.org.lb). And of course every established or aspiring Ayatollah these days has a website, Fadlallah's linked to Facebook and Twitter, with links to his radio and television stations on YouTube.

The emailed questions are printed out and translated if need be: many arrive in English and French, for instance. These latter are sometimes from second-generation immigrants to Europe and North America, and even converts; but they are also sent by Arabic speakers abroad whose computers are not Arabic-enabled. They are then brought to Shaykh 'Atwi or his colleague in a great sheaf of papers at the beginning of the day. On Mondays they have the most, because of the backlog built up over the weekend: perhaps 100-150, Shaykh 'Atwi estimated. On other days it would be 50-70, perhaps a hundred on a particularly busy occasion. Certain times of year bring increased traffic: the *hajj* pilgrimage season, or Ramadan, for instance.

There may also be more if there is a pressing political issue or something in the news, as in the furore over the cloning of Dolly the sheep, or if Fadlallah had had an interview on television.

The shaykh responsible writes the answers in pen on the printed out sheets of questions over the morning. Of course, very often he knows the answer well, having dealt with the same question many times, and being very familiar with the Ayatollah's positions. He might on occasion have to have recourse to Fadlallah's published legal works, or even, in the past, have rung the man himself to ask. At the end of the day the sheets get taken away by a functionary to be typed up, and then, during Fadlallah's lifetime, he himself would have reviewed and approved them. They then get translated if necessary and sent off.

So there are several layers of mediation that lie between petitioner and 'source': and sometimes wires do become crossed. But it is worth saying here that, in contrast with the similar web-based provision of some ayatollahs, Fadlallah's offices would appear to have offered a reliable and routinised service that ostensibly guaranteed the attention of the *mujtahid* himself, a concern for many lay Shi'i Muslims. I base this, I should say, on the testimony of Shi'i Muslims, especially in the UK, who also told me that Fadlallah's service was comparatively efficient, providing a reply in days rather than months, as with some. Fadlallah's avowed stance of up-to-the-minute engagement was thus borne out in the operations of this core part of his enterprise.

The correspondence is compiled on a searchable database for reference purposes, and notable examples are posted on the website; some find their way into other publications such as the little volumes of 100 questions and answers. For my work on Islamic medical ethics I requested a search for responses on assisted reproduction and received some fifty questions and answers dated between 2005 and 2008. Most were in Arabic but some were in French or English. This is not, one should note, the entirety of correspondence on the topic, since the compilers of the database seek to

avoid repetition of content. If there is already a question on an identical matter then subsequent correspondence is not here recorded. The responses are numbered sequentially and my latest example was number 101,180, which gives some idea of the scale of the phenomenon. Fadlallah's offices would appear to have been processing tens of thousands of petitions.

These are of course most often particular responses to personal problems. Take the example of a petition in the archives from a man asking for a 'legal loophole' or 'way out' (*manfadh shar'i*) of his dilemma: after divorcing an earlier wife, he suffered from the atrophy of one of his testicles and became totally infertile. He travelled abroad and married another woman, telling his new wife that he could no longer have children, which she accepted. But then they came to Lebanon and she found the social stigma of not being able to have children unbearable. As Fadlallah did not allow the use of donor sperm, the response of his offices was that: 'The problem will not be solved except by her divorce from you, and her marriage to someone else, the placing of the sperm of that person in her womb by insemination, then her divorce from him, waiting until the delivery of the pregnancy and then remarrying you.' (And the child, one should note, would be considered that of the second husband, the provider of the sperm.)

Now, I have, it is true, picked an example that makes this point especially clearly. But I think that it is, to say the least, problematic to see such individual, casuistical responses to followers in ethical need, examples of which could be found from any number of other *maraji'*, not to mention scholars outside of the Shi'i tradition, as examples of 'bioethics', if we mean by that policy recommendations intended to shape the regulation of medical and scientific practice as produced by British or American bioethical committees, for instance. And so I have elsewhere (Clarke 2012) argued at some length for a corresponding need for caution in the use of terms like 'Islamic bioethics' (not that I have not used them myself). Certainly, even if Fadlallah had a reputation as especially 'contemporary', he was in no sense a specialist bioethicist. His responses to medical ethical issues were just a set of

instances within what was a comprehensive address towards the whole of the sharia.

Now, this is not to say that these responses did not have an effect on medical practice: they did. As Marcia Inhorn documented and as we discuss in our article (Clarke and Inhorn 2011: 422-3), one such email response, allowing the use of donor eggs, created a precedent in one of the Beirut IVF clinics that was cited by the clinic to other patients in the same situation and that allowed them to go ahead with such procedures. Nor is it, of course, to say that these were not expert opinions: they were, tested in discussions with Fadlallah's leading students, and informed by recourse to trusted medical advisors. Further, although these are particular responses, they fed into the larger project of producing settled and generalised bodies of Islamic legal discourse (*fiqh*), such as the *risala 'amaliyya*, the legal handbook, or the volumes of detailed *fiqh istidlali* that recorded Fadlallah's lectures to his research students and thus also the reasoning behind his often controversial rulings (on which see Clarke n.d.). Fadlallah's contemporaneity depended on being in touch with his followers' real life ethical dilemmas, and he described himself in a volume of interviews with Lebanese writer Mona Sukkariyya (2007: 220-1) as a pupil as much as a teacher. And thus his distinctive *fiqh* production was informed by, even depended upon such 'Q&A', while not being in any sense reducible to it.

But, with all that borne in mind, I have nevertheless argued (Clarke 2012) that if we are to use the term 'Islamic bioethics', it might be best reserved not for such productions of an institution that remains within the tradition, even if an especially 'contemporary' instance of it, but for newly emergent constellations of relations between political, religious and biomedical authorities, in self-ascribed 'Islamic' settings, some examples of which are discussed in this volume. 'Islamic bioethics' would thus be constituted by those distinctive patterns of social relations, more than by any 'religious' or scriptural content. As I hope this consideration of Ayatollah Fadlallah's 'Q&A service' has helped suggest then, in debating 'Islamic bioethics' we are

not investigating the ways in which faith can relate to reason, as some commentators might allege. Rather we are exploring the social relations and institutions through and in which different forms of authority are accumulated and distributed.

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Fiqh Councils and Health Policy Actors: Gaps in the Applied Islamic Bioethics Discourse around Vaccines with Porcine Components

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Introduction[2]

To begin with let me introduce myself. I am an emergency medicine clinician and health researcher. My academic interests lie in the ways the Islamic tradition engages with modernity with a particular focus on health. Thus I

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This paper represents an edited transcript of an oral presentation given at a conference on "Health related Issues and Islamic Normativity" at the University of Hamburg in June 2012. Two manuscripts covering some of the material presented here have been published from the time this talk was given. 1) Padela, AI, Furber, SW, Kholwadia, MA, Moosa, E. "Dire Necessity and Transformation: Entry-points for Modern Science in Islamic Bioethical Assessment of Porcine in Vaccines", *Bioethics* (2013) [epub]; and 2) Padela, AI. "Islamic Verdicts in Health Policy Discourse: Porcine-based Vaccines as a Case Study", *Zygon* 48 (2013): 655-670.

[2] There is a Prophetic tradition that to a close approximation states that "one who does not show gratitude towards people does not show gratitude towards God." Thus I want to thank the conference organizers for their invitation and hospitality. In particular my thanks go to Prof. Thomas Eich and Dr. Jenny Schreiber. I also want to extend my gratitude to my mentors and collaborators, in particular Shaykh Amin Kholwadia of Darul Qasim, Shaykh Musa Furber of the Tabah Foundation, Prof. Ebrahim Moosa of Duke University, and Drs. Curlin and Sulmasy at the University of Chicago.

study how Islamic beliefs, values and identity influence American Muslim patients' health behaviours and healthcare challenges and study how Islam animates the medical practices of Muslim physicians and how Islamic bioethics inform their professional obligations. My research on ethics pertains to applied Islamic bioethics. Applied Islamic bioethics is the field that seeks to (1) examine the way in which Islamic authorities approach ethical questions raised by Muslim healthcare providers, religious leaders, and patients in their dealings with medicine and biotechnology and to (2) study how healthcare providers, patients, and healthcare stakeholders use Islamic verdicts pertaining to biomedicine. The source-material for applied Islamic bioethics inquiries are ethico-legal opinions (*fatawa*, sing. *fatwa*) of Islamic jurisconsults and verdicts (*qararat*) issued by groups of Islamic jurisconsults.

Background

With that said, the *fatawa* and *qararat* represent the primary fount for the study of Islamic bioethics. These expressions of the Islamic ethico-legal tradition are used by a variety of actors. Healthcare providers look to *fatawa* and *qararat* for ethical guidance concerning their practices, patients also use *fatawa* and *qararat* for guidance as to what types of medical therapies are permissible, Imams and chaplains use this material when advising patients and doctors about bioethics, and academicians use these sources to study how Islamic law looks at the world and to derive normative goals of healthcare according to Islam. While *fatawa* and *qararat* are integral to the study of Islamic bioethics it is imperative to recognize the limitations of fatawa as a source of ethico-legal guidance and to pay attention to the particulars of these verdicts, so as to avoid misapplication and/or misappropriation of *fatawa* and *qararat* in the policy realm.

Today, in this presentation, we will examine Islamic bioethical deliberations around the use of vaccines with porcine components from an

applied Islamic bioethics perspective. We will use the Islamic ethico-legal verdicts issued by the Islamic Organization for Medical Sciences (IOMS) and the Indonesian Ulama Council (Majlis Ulama Indonesia; MUI) as windows into this discourse. My aims are to (1) illustrate the interplay between the opinions of Islamic juridical bodies and health policy actors and then use this interplay (2) to highlight the need for a better appreciation of particular constructs used in *fatawa* and (3) the need to pay greater attention to the limitations of "*fatawa* / *qararat* hunting" as a methodology.

Discussion

To begin with let me discuss the IOMS and MUI. The Islamic Organization for Medical Sciences (IOMS) is an organization that brings together medical scientists and Islamic jurisconsults from across the world to "address modern medical and health care issues from an Islamic perspective." (Recommendations of the 8th Fiqh-Medical Seminar 1995). This group then performs collective *ijtihad* (*ijtihad jama'i*) and issues religious ethico-legal opinions (*qararat*) on biomedical issues. The Indonesian Ulema Council (MUI) is a state-sponsored religious council that issues *fatawa* on a wide range of issues with varying degrees of legal authority. With respect to foods and medicines, Indonesian law gives the MUI authority to determine whether or not products are *halal* (permissible to use). The question these councils dealt with is: "Is it Islamically permissible (*halal*) for Muslims to partake of vaccines with porcine components?"

The IOMS dealt with variants of this question during their 8th annual Islamic medical seminar in 1995 and then again at the 9th annual Islamic medical seminar in 1997. The 1995 meeting brought together many Islamic ethico-legal scholars and medical experts from the IOMS roster and was also attended by representatives from Kuwait's Ministry of Health and the World Health Organization (WHO). The end-product of this meeting was a ruling that refers to the Islamic ethico-legal construct of transformation, *istihala*, to

permit the use of porcine gelatine in medicines (Recommendations of the 8th Fiqh-Medical Seminar 1995). *Istihala* is a construct introduced into the Islamic ethico-legal code signifying the transformation of a previously prohibited substance into a permissible one. The paradigmatic example was the transmutation of wine into vinegar. The chemical change allowed the Prophet to forbid wine but to endorse the use of vinegar. The 1997 gathering reaffirmed the permissibility of *istihala* and the 1995 verdict, further approving (considering *halal*) the use of pig enzymes in medicine production (Recommendations of the 9th Fiqh-Medical Seminar, 1997). They used the established Islamic ethico-legal construct of assimilation, *istihlak*, as the basis for their ethico-legal judgment.

The MUI, on the other hand, issued a *fatwa* in 2008 where they banned the use of a meningitis vaccine produced by GlaxoSmithKline (GSK) citing the use of porcine products, specifically pig enzymes, during its manufacture. Yet, when it was brought to the attention of the Council that there were no alternative non-porcine vaccines available, and when the Saudi authorities refused to waive the meningitis vaccine requirement for *hajj* pilgrims, the MUI made use of the ethico-legal concept of *darura*, extreme necessity, to permit Indonesian pilgrims to use the GSK vaccine. In 2010, however, the MUI updated their *fatwa* by declaring two meningitis vaccines (one by Novartis and the other by Zhejiang Tianyuan) to be free of porcine components and thus *halal*. As an effect, their contingent *darura* based ruling allowing the use of the GSK vaccine was no longer operative.

From a health policy perspective these verdicts, I argue, actually spoke to the pharmaceutical industry by opining on the "permissibility" of a porcine-based vaccine supply and to Muslim state authorities considering vaccine policies for their Muslim constituency. As I mentioned there were several health policy stakeholders present at the IOMS meetings who sought to apply their verdict. Illustratively in 2001 the WHO wrote an official letter to address Muslim concerns about the use of medicines containing substances derived from pigs based on the IOMS verdict. The WHO notes that the letter

was motivated by a desire to "relieve the burden of all Muslims" and excerpted the IOMS verdict permitting the use of porcine products in medicines (Gezairy 2001). The letter was diffused widely to vaccine manufacturers, physician groups, the United Nations Children's Fund (UNICEF) and the Institute for Vaccine Safety. A personal reflection is that the WHO letter was used to support the procurement of vaccines that had some porcine gelatine in them as part of the H1N1 vaccination programme noting that Muslims in the United States should have no ethical objections to these vaccines in light of the IOMS verdict (Padela 2010). The most important policy stakeholder to be influenced by the MUI verdict was the Indonesian Health Ministry. In 2008, they halted a GSK vaccine-based public inoculation programme at a potential loss amounting to millions of dollars and, in 2010, purchased the 'approved/*halal*' vaccines at a cost of $6.8 million. Notably these vaccines cost three times as much as the GSK vaccine.

While both the IOMS and the MUI verdicts influence health policies tangibly I believe that several integral concepts germane to Islamic ethico-legal discourse were overlooked in applying the verdicts to health policy. In particular I will argue that the application of the MUI verdict was more consonant with the Islamic ethico-legal tradition than was the usage of the IOMS verdict. First let us look at verdicts by recalling the difference between a *fatwa* and a *hukm*[3] in Islamic law. A *fatwa* is by definition a non-binding Islamic religious verdict based on the scholarly opinion of trained ethico-legal scholars. Thus the one seeking a *fatwa* is free to solicit other opinions rooted in Islamic law. A *hukm* on the other hand can, in many cases, be seen as both morally and legally binding. The end-product of the process of *ijtihad*

3 The word *hukm* is used to describe many different things in the Islamic ethico-legal tradition. Within the Islamic ethico-legal tradition a *hukm* signifies a communication from the lawgiver about moral boundaries for human action. In this paper we will use the term *hukm* to represent a judicial decision that is both morally and legally binding, i.e. *hukm al-qadi*. The *hukm al-qadi* represents the law issued by a Muslim state authority. According to Sunni legal theory a Muslim living under an Islamic state authority (here we use the term to indicate that the state must be using the sharia as the source of law although the exact nature of how the sharia is used remains a point of controversy) is bound to follow the law of the land, the *hukm al-qadi*, provided that it does not contradict a religious obligation that is universally agreed upon and of a higher priority to be fulfilled.

using the sciences of *usul al-fiqh* is an ethico-legal assessment, *hukm taklifi* or *hukm wad'i*. These rulings may be ensconced within a *fatwa* or *qarara*. However, the type of *hukm* I am talking about is a *hukm qadi*, a legal judgment. Here, a state authority integrates a specific *fatwa* or ethico-legal assessment into the law of the land. Thus the legal force of a state authority makes the individual legally liable for following the *fatwa*. In terms of moral sanction, when a Muslim state authority is the governing body, then a Muslim individual is morally responsible for obeying the Muslim state authority in so far as possible. This moral culpability is derived from the Islamic theological concept of *wilaya* (governance). Seen from this angle the MUI verdict represents a *hukm* since it is imbued with legal authority from the Indonesian government and moral authority since the state authority is a Muslim one in charge of meeting the religious and worldly needs of a Muslim populace.

The IOMS verdict, on the other hand, is a *fatwa*. It is not enforced by any Muslim or non-Muslim state authority and thus holds no added legal obligation for Muslims to follow. Further, by its nature as a legal opinion (*fatwa* or *qarara*), it holds no more moral or ethical sway over an individual Muslim than any other *fatwa*. Thus Indonesian state authorities interpreted the MUI verdict to be a *hukm* and implemented it legally and, I would argue, preferred it morally. The IOMS judgment, however, remained as one *fatwa* amongst many (including the MUI one) and thus was potentially misinterpreted by non-state actors as definitive and conclusive. The WHO letter did not note the plurality of views on the permissibility of using porcine-based medications within Islamic law, nor did they particularize their letter as being applicable to Muslims who consider IOMS as an ethical authority. Rather, the WHO letter has enabled pharmaceutical companies to maintain the status quo, using porcine gelatine in vaccines, believing the process to be sanctioned as Islamic and actionable. Attesting to this health policy effect the Institute on Vaccine Safety, the Michigan department of community health, Sanofi-Pasteur and other health policy stakeholders note

in their publications that Islam permits porcine-vaccines unequivocally by referencing the WHO letter. Had the WHO letter mentioned dissenting opinions or particular limitations of the IOMS judgement perhaps Muslims would have greater recourse to non-porcine based vaccines.

Aside from the distinction between *fatwa* and *hukm* the nature of the ethico-legal argument used in the particular verdict is important to consider when using a *fatwa* to inform health policy. Specifically it is important to bear in mind that schools of law may differ in their acceptance of Islamic ethico-legal tools. The use of the Islamic ethico-legal construct/tool of *istihala* within the IOMS verdict is of relevance here. The basis for allowing the use of porcine products in medicines, as offered in the IOMS judgment, was that a complete transformation (*istihala*), akin to when wine turns into vinegar, occurs during the pharmaceutical processes. It is important to realize that there is disagreement among Sunni schools of law about whether porcine products can undergo *istihala*; in other words whether *istihala* can be validly used in ethico-legal arguments about the use of porcine components in medicine or foodstuffs. In the Sunni ethico-legal tradition the Hanafi and Maliki schools offer that *istihala* purifies porcine products yet the standard Shafi'i view is that *istihala* does not apply to porcine products (Ibn Nujaym 1983; Al-Hattab 1995; al-Shirbini 1994; Ibn Qudama 1994). The Hanbali school has both opinions (Ibn Qudama 1994). Even where the Hanafis and Maliki scholars do apply *istihala* to porcine products controversy exists on whether pig gelatine undergoes transformation during vaccine production processes. This granular detail is critical when seeking to apply a *fatwa* in policy. In order to achieve a maximum agreement on the ethico-legal assessment offered by a particular *fatwa* the argument must be as free of controversial constructs and tools of Islamic law as possible. The IOMS' opinion however relied on an *istihala* which is not accepted by, at least,

traditional Shafi'i doctrine.[4] It is possible that this oversight motivated the MUI, which aligns itself predominately with the Shafi'i school of law, to issue their own verdict about the permissibility of using medicines with porcine components.

One further concept that may have been overlooked in the policy arena is the subtle difference between contingent and normative rulings. Here attention must be paid to the contextual framework and the ethico-legal argument utilized by the *fatawa*. The IOMS verdict recommends "the necessity of utilizing… (*halal*) animals for gelatine" even though they permit the use of porcine gelatine in medicine (Recommendations of the 8th Fiqh-Medical Seminar 1995). This statement suggests that the ideal scenario would be to use non-porcine components within medicine and by implication reflects that the IOMS verdict may be quasi-non-normative or a contingent ruling. The MUI on the other hand clearly referred to the ethico-legal concept of *darura*, dire necessity, when allowing for the GSK vaccine containing porcine products to be used. The ethico-legal tool of *darura* stands for overturning a normative prohibition due to a dire circumstance as is captured within the legal maxim *ad-dururat tubih al-mahzurat* (*darura*/extreme necessity overrules prohibitions). Further, *darura* is invoked when a primary objective of the sharia such as the preservation of life, religion, intellect, honour and lineage – *al maqasid* – is at risk. In these cases a dire necessity derived from the context may motivate the verdict. Almost by definition, when *darura* is invoked a non-normative case exists and one must be cautious when applying the ruling across different circumstances as different circumstances may yield to a different evaluation of necessity.

[4] Scholars who adhere to Shafi legal doctrine are present on IOMS juridical committees; however, in the consensus verdict there is no mention of Shafi dissenting opinions. The full proceedings of the meeting may better capture the debate on *istihala* at the meeting. However, access to the full proceedings is limited and health policy actors look to the consensus decree for ethical guidance that is actionable. Indeed sifting through voluminous proceedings, even if accessible, requires considerable expertise in Islamic legal theory and practice; requiring individuals to gain such expertise prior to acting upon a particular fatawa is antithetical to a tradition that seeks to provide guidance to, and respond rapidly to, the needs of lay Muslims.

In summary it may have been inappropriate for the WHO to suggest that the IOMS verdict could "relieve all Muslims" as *istihala* is not universally accepted across the Sunni legal schools, and to ask that the verdict be "disseminate(d) to all health ministries" for application as the verdict was not a *hukm* in the sense that it did not have privileged moral authority nor did it carry the legal weight of a state sponsor. Further, given the questionable non-normative status of the verdict, it may not be universally applicable were contextual factors to change, a further cause to apply the verdict with caution.

I would like to make a final comment about a neglected real-world significance of this *fatwa*. It is notable that until 2008 the pharmaceutical industry found no reason to utilize non-porcine media in vaccine production, in part because of the IOMS approval. Yet, the 2008 MUI verdict rejecting the use of porcine-based vaccines persuaded the pharmaceutical industry to develop alternative non-porcine based vaccines. Indeed vaccine supply for a market greater than 200 million persons was a sizeable motivation to innovate. Thus in effect the more 'stringent' *fatwa* provided Muslims with agency to transform an industry. As juridical bodies consider their approach to biomedicine this story offers a valuable lesson. Moving from contingent to normative opinions may move Muslim scholars from advocating for medicines that are only permissible, *halal*, to a consideration of that which is ideal, *tayyib*, and it is possible that Muslim market forces and juridical bodies may align so as to transform health industries. It is worth considering whether this transformative agency is an objective of the sharia in itself.

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Lineage between Law and Biology: The Reconstruction of the Islamic Boundaries of Parentage in Surrogacy Arrangements

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New genetic and reproductive technologies pose several challenges to the established structure of Islamic lineage regulations.[2] For example, DNA technology enables precise identification of biological paternity and therefore raises questions about the primacy of legal factors over biological factors in the determination of paternity. The majority opinion of modern Muslim jurists follows the consensus of the classical jurists and upholds the standard legal definition of paternity. Artificial insemination and surrogacy arrangements challenge the classical definition of both paternity and maternity. Parentage is no longer confined to the relationship between a child and his genetic parents, regardless whether pregnancy results from licit or illicit relationship. Surrogacy arrangements not only necessitate the legal (re)definition of paternity but they also transform the standard biological foundations of maternity. With the availability of different types of mothers

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[2] See, for example, my papers: "Paternity between Law and Biology: the Reconstruction of the Islamic Law of Paternity in the Wake of DNA Testing", *Zygon* 47 (2012): 214-239; and "Negation of Paternity in Islamic Law between *Li'an* and DNA Fingerprinting", *Islamic Law and Society* 20 (2013): 157-201.

(genetic, gestational, and social), competing maternity claims call for clear criteria for the legal definition of motherhood.

This paper is part of a larger study that examines the juridical treatment of surrogacy in modern Islamic (mainly Sunnī) legal discourse.[3] The scope here is limited to relevant institutional *fatwas*, statements, and decisions. The paper focuses primarily on normative juristic discussions concerning the consequences of surrogacy arrangements on the (re)definition of parental relations. Although the majority opinion of modern (Sunnī) Muslim jurists does not allow surrogacy because it involves a third party in the marital relationship, Muslim jurists still investigate its implications on parental relations, if it is/were pursued. The paper argues that this attitude of Muslim jurists reflects an understanding of sharia as a legal system that can both institute rules for ideal situations that match its moral vision and also regulate less than ideal situations that do not match that vision.

The Sunni consensus on the ban of a third party involvement in reproductive processes is anchored in substantive sharia based-arguments on the importance of marriage as the general framework within which human reproduction should occur. It is also the result of successive institutional *fatwas*, decisions, and recommendations issued by a number of reputed and authoritative organizations dating back to the early 1980s, shortly after the successful birth of the first IVF baby in England in 1978. In this paper I explore the emergence and development of the Sunni consensus in a number of institutional *fatwas*, recommendations, and decisions that have formed the cornerstone of the consensus on the ban against surrogacy arrangements. As these statements indicate, surrogacy arrangements are usually discussed within the larger framework of modern reproductive technologies in general and artificial insemination in particular, both internal and external. The statements of four main institutions are discussed here: al-Azhar; the Islamic

[3] A larger version of this paper will be published in *Islamic Law and Society* under the title "Foundations of the Consensus against Surrogacy Arrangements in Islamic Law" forthcoming (2014)

Organization for Medical Sciences (IOMS); The Islamic Fiqh Council (IFC); and the International Islamic Fiqh Academy (IIFA).

The *Fatwa* of al-Azhar

One of the earliest *fatwas* that address the question of surrogacy as one of the options that external artificial insemination enables was given by the former grand Shaykh of al-Azhar Jad al-Haqq ʿAli Jad al-Haqq in March 23, 1980.[4] The central focus of the *al-Azhar fatwa* is on artificial insemination and it deals with surrogacy as one of the consequences of external artificial insemination. The *fatwa* is categorical in prohibiting any third party involvement either in the form of oocyte or sperm donation. The *fatwa* does not address the case of gestational surrogacy - in which the gametes of a married couple are fertilized externally and then implanted into the uterus of a surrogate mother – but it disapproves of a similar case in which the embryo is implanted temporarily into the uterus of an animal before it is transferred to the wife's womb. More than twenty years later, the *fatwa* was confirmed by a decision from the al-Azhar-affiliated Islamic Researches Council (Majma' al-Buhuth al-Islamiyya) in March 29, 2001 prohibiting all types of surrogacy arrangements involving a third party including postmarital or postmortem insemination.

Recommendations of the Islamic Organization for Medical Sciences

In 1983, the Islamic Organization for Medical Sciences (IOMS), based in Kuwait, held a symposium to which prominent physicians, legal experts, and jurists were invited to discuss the legal and ethical implications of new reproductive technologies, including in vitro fertilization and surrogacy

[4] *Al-Fatawa al-Islamiyya min Dar al-Ifta' al-Miṣriyya*, 20 vols. (Cairo: al-Majlis al-A'la lil- Shu'un al-Islamiyya, 1993), 9: 3213-28.

arrangements.[5] The consensus of the participants in this symposium was that all types of surrogacy arrangements should be prohibited because they violate the sanctity of the marital relationship. The passage on artificial insemination and surrogacy in the recommendations of the symposium indicates that artificial insemination is allowed between couples within a valid and existing marriage as long as there is no doubt over the mixing of gametes. As for surrogacy arrangements, the recommendation was categorical in prohibiting it in all its types due to the involvement of a third party whether in the form of a gamete, embryo, or womb. Several important questions, however, were raised at that symposium regarding the proper characterization of surrogacy procedures if they were performed, despite categorical prohibition. They include comparison between surrogacy and adultery; proper punishment for it, if any; definition of legal motherhood and whether it is the genetic or gestational one; relationship between the child and possible multiple types of mothers. In addition to these specific questions, the participants also pointed out several ethical concerns that are usually associated with reproductive technologies in general such as abortion, disposal of surplus embryos, cryopreservation, postmortem/ postmarital reproduction, transplantation of reproductive organs, and gamete banking.

Decisions of the Islamic Fiqh Council

Some of the most authoritative and influential decisions on surrogacy arrangements have been issued by the Islamic Fiqh Council (IFC), based in Mecca and affiliated with the Muslim World League. The IFC issued four different decisions on this subject. The first was the fourth decision, issued at the conclusion of the fifth session in February 4, 1982. After highlighting the

[5] Aḥmad Rajaʾi al-Jindi, ed., *al-Islam wa-l-Mushkilat al-Ṭibbiyya al-Muʿaṣirah, al-Injab fi ḍawʾ al-Islam, Thabt Kamil li-Aʿmal Nadwat al-Injab fi ḍawʾ al-Islam al-Munʿaqida bi-Tarikh 11 Shaʿban 1403 A.H., al-Muwafiq 24 May 1983* (Kuwait: al-Munaẓẓama al-Islamiyya lil-ʿUlum al-Ṭibbiyya, n.d).

legal and ethical implications of artificial insemination and surrogacy arrangements, it deferred judgment on the issue until the following session.[6] It was, however, discussed in the seventh session (January 15-19, 1984) and the conclusion was included in the fifth decision of this session.[7] The decision again dealt with surrogacy arrangements within the framework of artificial insemination, which was divided into seven types, two through internal insemination and five through external insemination. The internal artificial insemination types are: 1) direct injection of a husband's sperm into his wife's womb to facilitate natural conception; and 2) direct injection of a stranger's sperm into the womb of another's wife to facilitate natural conception, mainly due to male-factor infertility. The external artificial insemination types are: 3) fertilizing the egg of a wife by the sperm of her husband in vitro and then reimplanting the embryo into the wife's womb in due time to develop naturally; 4) fertilizing the egg of a woman by the sperm of a man in vitro and then implanting the embryo into the womb of the man's wife in due time to develop naturally; 5) fertilizing the egg of a woman by the sperm of a man in vitro and then implanting the embryo into the womb of another married woman; 6) fertilizing the egg of a woman by the sperm of her husband in vitro and then implanting the embryo into the womb of a volunteering surrogate; and 7) fertilizing the egg of a woman by the sperm of her husband in vitro and then implanting the embryo into the womb of a volunteering surrogate, who is another wife of the same man.

Out of these seven types, the decision identified only three as being conditionally permissible: the first, the third, and the seventh. The decision justifies the permissibility of the first type on the grounds that artificial insemination satisfies a legitimate need on the part of infertile spouses to have children. This legitimate need would in turn justify the uncovering of private parts to the extent that the procedure is undertaken successfully but depending on the availability of competent physicians, priority will be for a

[6] *Qararat al-Majmaʿ al-Fiqhi al-Islami bi-Makka al-Mukarrama* (Mecca: al-Majmaʿ al-Fiqhi al-Islami, 2004), p. 97; *Majallat Majmaʿ al-Fiqh al-Islami* 2, no. 1 (1986): 330-1.
[7] *Ibid.*, 332-7.

Muslim female physician, non-Muslim female physician, Muslim male physician, and then a non-Muslim male physician. In all circumstances, the woman undergoing the procedure should not be left alone with the treating physician but should be accompanied by the husband or by another woman. The third type, although deemed acceptable in principle and in itself from the sharia perspective, is questionable in view of the many risks that it involves. Therefore it should be resorted to only in cases of extreme necessity (*darura quṣwa*). The seventh type is deemed permissible in case the second wife chooses to bear the embryo voluntarily and again should be resorted to in cases of urgent need and within the general parameters that determine permissibility in comparable situations. The decision indicates that in these three cases maternal lineage will be determined on the basis of the genetic connection. Accordingly the legal mother will be the genetic mother who provides the oocyte. The volunteering surrogate will be treated like a milk mother because similar to the latter, if not to a larger extent, the gestational mother provides necessary and indispensable nourishment to the baby. As for the other four types, they are deemed impermissible due to the involvement of a third party other than the married couple. It should be noted that the decision was not unanimous because some of the convened jurists objected either to all the three approved cases or to some of them.

In the following session held in January 19-28, 1985, this decision was revised by disallowing the seventh type in which a wife volunteers to carry an embryo to term on behalf of another wife of the same husband. The rationale given is the possibility that the embryo could be the result of a fertilized egg that was produced by the surrogate herself, since she is also married to the same man, not the donating wife.[8] This revised decision was confirmed by the second decision of the 12th session on February 7, 1990.[9]

[8] *Ibid.*, 161-8.

[9] *Ibid.*, 275-6.

Decisions of the International Islamic Fiqh Academy

Following the important IFC decision issued in 1985, the International Islamic Fiqh Academy (IIFA) deliberated the questions of artificial insemination and surrogacy arrangements during its second session, held in December 22-28, 1985 in Jeddah. The Jeddah-based IIFA is affiliated with the Organization of the Islamic Cooperation (OIC) and is considered the second main transnational organization in the Muslim world. The deliberation concluded with a decision (no. 5) to defer the issuance of a statement on these issues until the following session.[10] A statement was issued at the conclusion of the third session held in October 11-16, 1986 in Amman, Jordan. The statement enumerated the same seven types of artificial insemination that the IFC identified and, following the revised and later confirmed IFC decision, the IIFA decision (no. 4) concluded that with the exception of the two cases that the IFC decision approved, all the other ones that involve a third party are prohibited.[11]

In general the reservations expressed during the IIFA deliberations against artificial insemination and surrogacy arrangements are grounded in several religious and ethical concerns over the potential negative implications of these reproductive technologies. We can broadly categorize these concerns under three main labels: legal, psychological, and social. The legal concerns that artificial insemination and surrogacy arrangements raise pertain mainly to two main issues: adultery, or at least doubt thereof; and genetic connections. As far as the comparison of artificial insemination with adultery, similar to the IOMS discussions, although the jurists often point out the distinction between the physical act of adultery and the technical process of artificial insemination, they also often emphasize the similar consequences, in the case of third-party involvement, resulting from the

[10] *Majallat Majma' al-Fiqh al-Islami* 2, no. 1 (1986): 381.

[11] *Majallat Majma' al-Fiqh al-Islami* 3, no. 1 (1987): 515-6.

combination of the gametes of unmarried couples.[12] In addition to the comparison with adultery (or doubt thereof), the most important legal concern that artificial insemination and surrogacy arrangements raise is the mixing of genealogies. This problem cannot be solved by anonymous artificial insemination because the latter raises the problem of unknown parenthood, which creates a host of other problems.[13] In addition to these two main issues there are also several other ones such as: the uncovering of private parts (*ʿawra*); disposal of surplus embryos; postmarital or postmortem insemination; sex (pre)selection; genetic counselling; selective abortion; and transplantation of sexual organs.[14] Taken together, these are the reasons why artificial insemination, even in the two approved types, is considered a type of treatment that should be resorted to in cases of extreme necessity or urgent need, not for convenience. It should be evaluated on an individual case-by-case basis rather than being a normal or standard procedure. Therefore any religious dispensations, exceptions, or relaxation of law should be determined accordingly.[15]

The psychological concerns over artificial insemination and surrogacy arrangements result from the separation of the reproductive process from the intimate relationship between married couples, which is considered one of the important objectives of a healthy marital relationship. This, in turn, reduces human reproduction into a mere mechanical process, which can seriously impact the emotional and psychological bonds both between

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[12] ʿAbd al-Raḥman al-Bassam, "Aṭfal al-Anabib," *Majallat Majmaʿ al-Fiqh al-Islami* 2, no. 1 (1986): 254.

[13] Muḥammad ʿAli al-Barr, "al-Talqiḥ al-Ṣinaʿi wa-Atfal al-Anabib," *Majallat Majmaʿ al-Fiqh al-Islami* 2, no. 1 (1986): 290.

[14] Muḥammad ʿAli al-Barr, "al-Talqiḥ al-Ṣinaʿi wa-Aṭfal al-Anabib," *Majallat Majmaʿ al-Fiqh al-Islami* 2, no. 1 (1986): 269, 290, 296-8.

[15] Bakr ibn ʿAbd Allah Abu Zayd, "Ṭuruq al-Injab fi al-Ṭibb al-Ḥadith wa-Ḥukmuha al-Shar'i," *Majallat Majmaʿ al-Fiqh al-Islami* 3, no. 1 (1987): 438. Similar to the IFC, some jurists objected to artificial insemination in principle and noted that the ban against the procedure should be absolute, see *Majallat Majmaʿ al-Fiqh al-Islami* 2, no.1 (1986): 358-9, 372-4, *Majallat Majmaʿ al-Fiqh al-Islami* 3, no. 1 (1987): 498, 506. At the end the decision, which approved the two types of artificial insemination, was issued on the basis of a majority vote of fifty against nine.

married couples on the one hand and between the couples and their offspring on the other. Moreover, unlike natural insemination, artificial insemination violates the privacy of married couples and, even when extreme precautions are taken, it leaves room for doubt over actual genealogical connections.[16]

The social concerns include serious implications for the institution of family as the basic unit in the social structure and order. It also opens the door for eugenic experiments to ensure certain biological specifications in future offspring by combining the gametes of individuals with certain biological features. Some participants pointed out the need to investigate the root causes of infertility that is treated through artificial insemination and surrogacy arrangements. While it is granted that in certain circumstances, infertility is a natural disability, it is also noted that it is often caused by sexually promiscuous behaviours. This also relates to the question of social justice and the proper allocation of resources given the high cost of the procedure and the average success rate.

Conclusion

Although surrogacy has been conditionally allowed by a minority opinion, among Sunni but mainly among Shiʿi scholars,[17] the overwhelming majority of Muslim scholars do not support any form of surrogacy. The ban against surrogacy arrangements under Islamic law is rooted in both strong sharia-based substantive arguments and also in successive institutional *fatwas*, recommendations, and decisions. In the absence of clear and binding legislation on surrogacy in most Muslim-majority countries, individual *fatwas* and court decisions rely mainly on major institutional *fatwas*, recommendations and resolutions, which have repeatedly expressed outright

[16] ʿAbd al-Raḥman al-Bassam, "Aṭfal al-Anabib," *Majallat Majmaʿ al-Fiqh al-Islami* 2, no. 1 (1986): 243, 371.

[17] K. Aramesh, "Iran's Experience with Surrogate Motherhood: An Islamic View and Ethical Concerns," *Journal of Medical Ethics* 35 (2009): 320-22.

prohibition of all types of surrogacy. Despite the explicit condemnation of surrogacy arrangements, however, the jurists discuss in detail the potential impact and consequences that these arrangements may entail in terms of applicable punishment, if any, restriction to certain protected rights, such as those of the husband of the gestational mother, and construction of new forms of family structures and relationships.

The Development of *Fatwas* in Malaysia with Special Attention to Bioethical Issues

Ismail Ibrahim, Cyberjaya[1]

Introduction

In Islam, the main sources of *hukum* (rulings) can be found in the Quran and the Sunna. For new issues that arise in this modern age, general guidelines can still be found in these two primary sources of *hukum*. However, to address these new issues in a more precise and specific manner, learned Muslim jurists and scholars use the instrument known as the *fatwa*. In essence, a *fatwa* allows for Muslims to address contemporary issues based on the basic tenets of the teaching of Islam derived and deduced from the two primary sources of *hukum*, namely the Quran and the Sunna.

This paper is divided into the following parts. The first part looks at the importance of *fatwas* for Muslims. The second part identifies the challenges in issuing *fatwas* with regard to bioethical issues. The third part discusses the role of the National Fatwa Committee in Malaysia in the development of *fatwas*, in particular with regard to bioethical issues. Finally, the paper

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concludes by putting forward several suggestions for a better understanding and awareness of contemporary *fatwas*.

The importance of *fatwas*

Fatwas are important to Muslims when tackling issues which are not specifically mentioned in the primary sources of Islam, namely the Quran and the Sunna. A *fatwa* is regarded as an essential guideline for Muslims, especially in the modern era where challenges in many areas including science and technology have to be answered. While the Quran and the Sunna do provide general guidelines on all matters, the general public does not have the capability to deduce *hukum* from these primary sources. Therefore in Islam, Muslims are encouraged to ask guidance from those who are qualified.[2]

This is why the tradition of *fatwas* in the Muslim community is upheld until this very day where the influence of *fatwas* remains strong.[3] As a means to fully comprehend the Revealed Law and deduce *hukum* systematically from the sources of sharia, Muslim scholars have developed the field of *fiqh* and *usul al-fiqh*.[4] Aside from referring to the Quran and the Sunna, Muslim scholars have also recognised a number of secondary sources of *fatwas*, namely *ijma'* (the consensus of Muslim scholars and jurists) and *qiyas* (analogical reasoning), as well as other principles such as *al-masalih al-mursala* (public interest), *istihsan* (juristic preference chosen in the best interest of the public) and *sadd al-dhara'i'* (prevention of harm).

In its literal sense, a *fatwa* is an answer for a specific problem.[5] In its technical sense, a *fatwa* is an explanation and an answer to a question forwarded by

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[2] The Quran: Surat al-Nahl (Chapter 16): Verse 43.

[3] The influence of *fatwas* can be seen for example in the writings of Muslims on the issues of science and technology. *Fatwas* are referred to as the Islamic perspective on these issues.

[4] In general, *usul al-fiqh* can be understood as a branch of knowledge on how to deduce rulings from evidences found in the sources of *sharia*.

[5] Yusuf Al-Qaradawi, *Fatwa: Antara Ketelitian dan Kecerobohan*, trans. Ahmad Nuryadi Asmawi (Batu Caves: Thinker's Library, 1996), p. 1.

any individual or group on matters pertaining to a ruling (*hukum*)[6] regarding any aspect of life. A *hukum* is derived from the two primary sources of Islamic law, i.e. the Quran (Divine Revelation) and the Sunna (tradition of the Prophet Muhammad).

A *fatwa* is issued by a *mufti*.[7] A given *fatwa* may change from time to time depending on the needs and the development of knowledge of a particular matter.[8] A *fatwa* is known to be an end-product of *ijtihad*, a process of self-exertion by a *mufti* to deduce *hukum* on any issue that does not have direct guidance in the primary sources of sharia[9] namely the Quran and the Sunna.[10] In the academic and intellectual context, *ijtihad* can be easily defined as conducting deep and serious research involving data collection and data analysis before coming up with suggestions and conclusions.[11]

A *mufti* must be a qualified Muslim scholar who is '*adil* (just),[12] has a sound mind and broad knowledge of *fiqh*[13] and other related fields.[14] According to al-Qaradawi, a *mufti* in today's modern world should possess the following characteristics, among others: (i) Has a command of a very broad range of Islamic knowledge including the Arabic language; (ii) Has a

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[6] Abd Al-Karim Zaidan, *Al-Waj z fi Us l al-Fiqh* (The Digest in Fundamentals of the *Fiqh*) (Beirut: Muassasat al-Risala, 2001), pp. 23-24.

[7] Mohammad Saedon Awang Othman, "Etika mufti: Tugas dan peranan dalam menghadapi alaf baru," in *Mufti dan Fatwa di Negara-negara ASEAN*, eds. Abdul Monir Yaacob and Wan Roslili Ab. Majid. (Kuala Lumpur: Institut Kefahaman Islam Malaysia, 1998), pp. 80-83.

[8] Othman Ishak, "Fatwa dalam sistem pemerintahan dan kehakiman," in *Mufti dan Fatwa di Negara-negara ASEAN*, eds. Abdul Monir Yaacob and Wan Roslili Ab. Majid. (Kuala Lumpur: Institut Kefahaman Islam Malaysia, 1998), p. 9.

[9] Al-Abdul A'la Mawdudi, *Towards Understanding Islam* (rev. ed.) (Kuala Lumpur: Dar Al Wahi Publication, 2010), p. 150.

[10] Muhammad Sayyid Tantawi, *Konsep Ijtihad dalam Hukum Syarak*, trans. Safri Mahayedin (Kuala Lumpur: Institut Terjemahan Negara Malaysia, 2008), p. 3.

[11] Mahmood Zuhdi Ab. Majid and Paizah Ismail, *Pengantar Pengajian Syariah* (Kuala Lumpur: Al-Baian Corporation Sdn. Bhd, 2004), pp. 119-120.

[12] Ahmad ibn Hamdan Al-Harrani, *Sifat al-Fatwa wa al-Mufti wa al-Mustafti* (Beirut: al-Maktab al-Islami, 1984), p. 13.

[13] *Fiqh* is an expansion in application of the sharia. Literally *fiqh* means knowledge or deep understanding. It is knowledge of the rules of sharia as deduced from particular evidences in the sources of the Quran and the Sunna. Mohammad Hashim Kamali, "Fiqh and adaptation to social reality," *The Muslim World* 86, no. 1 (1996): 62-84.

[14] *Ibid.*

proper understanding of the reality of the life of human beings and is capable of deducing rulings by using the method of *ijtihad*; (iii) Should be open to any critique regarding his *fatwa* and is ready to correct any mistakes; and, (iv) His *fatwa* should only be based on the truth that he knows.[15]

At the international level there are at least three influential *fatwa* organisations, namely the International Islamic Fiqh Academy (Majma' Fiqh al-Islami al-Duwali), the Muslim World League in Jeddah and the Dar al-Ifta in Egypt. In Malaysia, matters pertaining to the issuance of *fatwas* come under the jurisdiction of the Fatwa Committee of the National Council for Islamic Affairs Malaysia (commonly referred to as the National Fatwa Committee). This committee is headed by a chairman, and its members include all the fourteen state *muftis* as well as several independent Muslim jurists and scholars. In each of the fourteen states in Malaysia, there are also state-level *fatwa* committees headed by the state *mufti*.

Challenges of Issuing *fatwas* on Bioethical Issues

The rapid advancement in the areas of science and technology has brought about many challenges to Islam. It is pertinent that Muslims respond to these challenges in a proactive manner. Issues such as genetic modification of organisms, organ transplantation, artificial reproductive techniques and cloning are among the issues that have arisen out of the developments in the area of medicine and biotechnology.

There are a number of challenges facing *fatwa* bodies in issuing *fatwas* regarding contemporary concerns of particular issues related to science and technology. In this paper, two challenges will be looked at. Firstly, the challenges posed by the rapid development of science and technology. The second challenge is the different *fatwas* issued on a particular matter.

[15] Yusuf Al-Qaradawi, *Fatwa: Antara Ketelitian dan Kecerobohan*, p. 17.

Rapid development of science and technology

The first challenge is the nature of science and technology itself, in that the development of science and technology especially in the past century has been very rapid. Even a scientist may find it difficult to keep track of the development in science and technology. The dynamic pace of scientific and technological developments requires Muslim jurists and scholars to be dynamic as well. Science and technology has progressed so much that things that have been considered impossible before have been made possible.

One such impossibility is seen in the area of biotechnology which has catapulted mankind into a new and challenging era often dubbed the Age of Biotechnology. While Gregor Mendel in the 19th century is credited with establishing the field of genetics, it was only in 1953 when James Dewey Watson and Francis Harry Compton Crick suggested the double-helix structure of deoxyribonucleic acid (DNA) that genetics took a quantum leap in terms of research and development.

Since then, much progress has been made in areas related to genetics such as genomics, proteomics, metabolomics, biotechnology, biomedicine, bioinformatics and many others. Some of these developments are welcome and embraced without many disagreements, while others are shrouded in controversy and seemingly endless debates. Some religious and ethical controversies can be seen, among others, in areas such as the genetic modification of organisms, reproductive cloning, gene therapy, eugenics and biobanking. These ethical controversies revolve primarily around concerns that science and technology are seemingly tampering with the natural order of things,[16] as well as safety and health concerns.

Therefore, one of the major challenges awaiting Muslim jurists and scholars in addressing religious and ethical concerns of biotechnology lies in

[16] Shaikh Mohd Saifuddeen Shaikh Mohd Salleh, "Genealogy and preservation of the progeny in the 21st century," in *Genealogy and Preservation of the Progeny: An Islamic Perspective*, ed. Shaikh Mohd Saifuddeen Shaikh Mohd Salleh (Kuala Lumpur: Institute of Islamic Understanding Malaysia, 2006), p. 40.

the ability to keep abreast with the rapid development in these areas. In order to do this, Muslim jurists and scholars should continuously conduct consultations with scientists and technologists in various related fields so that the jurists and scholars will obtain the correct information on the developments that are taking place. Only then would the process of *ijtihād* be able to take place based on accurate information. This is critical in order to make sure that the *fatwa* issued is not based on sentiments or emotions but rather on informed academic deliberations.

Different *fatwas* issued on a particular matter

As *fatwas* essentially address contemporary issues based on the basic tenets of the teaching of Islam derived and deduced from the two primary sources of *hukum*, there are bound to be differences in interpretation. This can be a source of confusion to the general public. Even for a simple and straightforward matter like smoking, there are *fatwas* that say smoking is prohibited (*haram*) while other *fatwas* state that it is discouraged (*makruh*) but not to the extent of being prohibited.

On health related and biotechnological issues, there are also differences in opinion when it comes to juridical interpretations in coming out with a *fatwa*. Take the issue of brain death as an example. This issue was first discussed in 1985 by international Islamic jurists and scholars who gathered in Jeddah, Saudi Arabia, although at that time, no decision was made. A year later, the issue of brain death was once again deliberated at greater detail at a conference organised in Amman, Jordan where it was decided that death can occur for two reasons, i.e. when the heart stops functioning and when the brain's functions stop completely.[17] While the international jurists and

[17] Shaikh Mohd Saifuddeen Shaikh Mohd Salleh, Mazilan Musa, Muhammad Zaki Ramli, Siti Noorzuraidawati Mihat, Nor Adyani Marsom and Mohd Rezuan Masran, *Organ Transplantation from the Islamic Perspective* (Putrajaya: Ministry of Health Malaysia, 2011), p. 28.

scholars accepted that brain death is equivalent to death, there are some Muslim jurists and scholars who do not agree to this ruling.[18]

In countries where there is no single body to issue *fatwas*, juridical rulings will be issued by respected Muslim jurists and scholars. The probability of differences in opinion and interpretation occurring is high, especially in matters pertaining to biotechnology and health. When the public is presented with differing (and often contradictory) *fatwas* on one particular matter, there is bound to be confusion and problems. This is a challenge for contemporary Muslim jurists and scholars to address in an academic manner in order to thrash out the differences of opinion and interpretation that may take place.

Role of the National Fatwa Committee in Malaysia in the development of *fatwas* vis-à-vis bioethical issues

In many ways, Malaysia is fortunate to have a centralised *fatwa* body to discuss and deliberate on issues of concern. The body is officially known as the Fatwa Committee of the National Council for Islamic Affairs Malaysia, and is usually simply referred to as the National Fatwa Committee. This committee is headed by a chairman and its members include all fourteen state *muftis* as well as several independent Muslim jurists and scholars. This committee was established in 1970 under Article 11 of the Regulation of the National Council for Islamic Affairs. The duties of the National Fatwa Committee are to consider, decide and issue *fatwas* on any matter pertaining to Islam. The committee will submit its views to the National Council for Islamic Affairs which then forwards the recommendations to the Council of Rulers.

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[18] "In a document issued by the *Majlis al-'Ulama'*, Port Elizabeth, South Africa, dated 14 February 1994, it is stated that removing any organs from a person pronounced brain dead entails two major crimes, namely, the perpetration of murder and perpetrating the unlawful act of misappropriating organs." cf. Abul Fadl Mohsin Ebrahim, *Organ Transplantation: Contemporary Islamic Legal and Ethical Perspectives* (Kuala Lumpur: A.S. Noordeen, 1998), p. 105.

It must be noted however that the *fatwas* issued by the National Fatwa Committee are not legally binding. This is because a *fatwa* falls under the jurisdiction of Islamic affairs which is under the purview of the respective 14 states that make up the Federation of Malaysia. A national level *fatwa* is only binding when the respective states adopt or gazette the *fatwa* at the state level. It should also be noted that at the state level, there is also a state *fatwa* committee headed by the state *mufti*.

The mechanism which the National Fatwa Committee uses to address new and emerging issues such as bioethical and health-related issues is by consultation and research. The issues are first examined and discussed by a sharia research panel at the Malaysia Department of Islamic Development before being submitted to the National Fatwa Committee for a decision. Experts in the relevant fields are also called in to give a briefing on the matter to be discussed. After the experts have given their briefing, the members of the National Fatwa Committee will deliberate on the issue based on the primary sources of *hukum* (the Quran and the Sunna) as well as the secondary sources of *hukum* (*ijma'*, *qiyas*, *al-masalih al-mursala*, *istihsan* and *sadd al-dhara'i'*).

One example is the latest *fatwa* ruling on the consumption of genetically modified food[19] issued by the National Fatwa Committee in 2011:

> The '*Muzakarah*' (dialogue/forum) of the Fatwa Committee of the National Council for Islamic Affairs Malaysia, at its 95th sitting on 16-18 June, 2011, discussed the Rules on the Consumption of Genetically Modified Food.
>
> 1. After hearing a briefing and explanation by Professor Dato' Dr. Yaakob Che Man, Director of the *Halal* Products Research Institute (IPPH), University Putra Malaysia, and examining the arguments and views expressed, the '*Muzakarah*' took note that genetically modified foods involves the transfer of both *halal* and non-*halal* genes, from animals and also plants to provide the desired characteristics as food or medicine.
> 2. In this instance, the '*Muzakarah*' is of the view that Islam requires its followers to choose good foods (*toyyib*), which are *halal*, pure and do

[19] This *fatwa* can be downloaded from http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-memakan-makanan-terubahsuai-genetik-genetic-modified-food.

not cause harm to the human soul and mind, and their production process should also not cause harm to humans or the environment.

3. In relation to this, the *'Muzakarah'* agreed to decide that, for the production of genetically modified food, the use of materials that are haram as well as harmful to humans and the environment is prohibited. Whereas the use of halal livestock is allowed, as long as the animal is slaughtered according to Islamic rules.

In essence, the National Fatwa Committee responds to issues of concern raised by the public on various topics, which include bioethical and health-related issues. Over the years, a number of *fatwas* have been issued on these matters. The following table summarises selected *fatwas* on bioethical and health-related matters[20] as issued by the National Fatwa Committee:

Table: Selected *fatwas* on Bioethical and Health-Related Issues

Year	Issue	Fatwa Ruling
1970	Organ donation – heart and eye transplants.	Heart and eye transplants are permissible in Islam.
1984	Drug use in heart disease patients who fast.	Medication used to treat patients with heart complications that is not inserted through holes does not invalidate fasting provided that saliva does not get through the pores.
1984	Gelatine in medicine.	The use of gelatine in medicine is permissible because of necessity (*darura*). If there is any other alternative medicine, the use of gelatine will no longer be permitted.
1988	Rubella vaccination.	The rubella vaccine provided by the Ministry of Health is not unclean and the injection is permitted to prevent the spread of rubella.
1988	Hepatitis B immunisation.	Hepatitis B vaccine extracted from yeast is not unclean and is permitted to be used for immunisation.

[20] All these *fatwas* can be downloaded from Fatwa Malaysia's Official Portal: http://www.e-fatwa.gov.my.

Year	Issue	Fatwa Ruling
1989	Separate treatment of brain death.	Separation of brain dead patients from other patients with chances of recovery in the Intensive Care Unit is not contradictory to Islam.
1993	Preservation of a corpse.	Preservation of a corpse in extreme situations (*darura*) is permissible. Example of *darura*: Military personnel who are killed in action during their service under United Nations' Peacekeeping efforts in foreign countries.
1995	Use of tissue grafts in medical practice.	The use of tissue grafts in medical practice is permissible but not for trading or other purposes.
1999	Biotechnology in food and drink.	Goods, food and beverages processed through biotechnological methods using pig DNA are contrary to Islamic law and therefore are not permissible. The use of biotechnology using pig DNA has not yet reached a state of emergency (*darura*) as there are other options.
2002	Reproductive human cloning.	Human cloning for reproductive purposes is prohibited as it is against the nature of human creation.
2005	Therapeutic cloning and stem cell research.	Therapeutic cloning for medical treatment, for instance to create certain cells or organs to replace damaged cells or organs, is permissible. Using extra frozen embryos for in vitro fertilisation is permissible for research purposes, but permission must be obtained from the married couple under treatment. The research on the embryo must be done before the embryo reaches the blastocyst (*'alaqa*) stage.

Year	Issue	Fatwa Ruling
2006	Virtual autopsy as an alternative to postmortem.	If virtual autopsy has the capacity to meet the objective of acquiring the evidence needed (in criminal cases), then it should be given priority instead of the usual current practice of conducting postmortem examination.
2008	Using BioThrax and RotaTeq vaccines.	As the vaccines use sources of pig origin, using these vaccines is not permitted because there is no urgent need and there are alternative substances that can be used as medications.
2009	Using Clexane and Fraxiparine medicines.	These medicines are forbidden because of the availability of alternative medicine, i.e. arixtra that is produced from lawful sources which has the same function and efficiency as clexane and fraxiparine.

Conclusion

Without a doubt, *fatwas* are an important guideline for Muslims. The role of *fatwas* in the modern age is made even more crucial in view of the rapid developments in science and technology. In this regard, the National Fatwa Committee in Malaysia uses a collective approach to produce *fatwas* on bioethical and health-related issues. This approach involves briefings and discussions by relevant experts in related fields of science and technology. The *fatwa* given is a consensus of all members of the council based on the sources of sharia and the principles of *fiqh*.

The process of developing a *fatwa* related to science and technology is a multidisciplinary task. It requires dialogue between people of various disciplines. As such, there is a need to understand and respect the "language" of one another. It is critical that continuous dialogue between the general public, Muslim jurists and scholars, as well as scientists is promoted to ensure that concerns regarding developments in science and technology

applications are carefully studied based on scientific facts and religious guidelines. In addition to this, *fatwa* outreach programmes for the general public should be conducted regularly focusing on education in *fiqh* relating to science and medicine. This will help in creating a better understanding of *fatwas* on bioethics and health-related issues.

The challenge brought about by the rapid development of science and technology is indeed tremendous. It is imperative that Muslim jurists and scholars keep themselves abreast with the latest developments, in particular regarding biotechnology and medicine. Each development has the potential to bring great impacts on the community, including the Muslim community. Biotechnology has the prospect to improve our quality of life. However, if this technology is abused or misused, it will also pose great threats and dangers. This is why Muslim jurists and scholars must always be aware of these developments in order to provide timely guidelines in the form of *fatwas* to the general public.

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The Mufti: A Religious Player in Biomedical Legislation in Tunisia?

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Legal texts can express the fundamental values of a society. Biomedical laws specifically may allow us to understand how society faces progress in science or modernity in general. Linked with the very essence of humanity (human life, human health, human procreation, DNA etc), biomedicine is a sensitive issue. Its legal regulation is a tough task as the legislator has to find a balance between the social need for health solutions and the social need for the respect of the social values in the legal texts.

In the Muslim world, religion is still very present and its role in the law making process can vary from one Muslim country to another:

Sharia as a unique source (Kingdom of Saudi Arabia)
Sharia as the most important source (Egypt)
Sharia as a secondary source (Tunisia)

Since the country's independence in 1956, Tunisia has been in a distinctive situation between Islam and positive law. This is why Tunisia was seen as an exception in the Muslim world. I will first discuss this Tunisian specificity and then go on to explain the role of the *mufti* of Tunisia in biomedical legislation.

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The Tunisian exception

Since the country's independence and the establishment of a modern state, the legislature has not hesitated to break with Islamic law (sharia). As stated in the first article of its constitution (1959), Islam is the official religion of Tunisia: "Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its type of government is the Republic".

The Arabic version of this article was very ambiguous about the holder of this official Islam, i.e. whether it be Tunisia the state or Tunisia the country, and this is still under debate today. This did not keep Tunisia from choosing a progressive secularization of its positive laws, thanks to the vision of Habib Bourguiba. Habib Bourguiba, the father of the independent Tunisian nation, became the first president of the republic after the deposition of Lamine Bey, the last representative of the Husseinite dynasty, which had ruled the country since 1705. Bourguiba, who wanted "to remove Tunisia from the influence of the eastern winds",[2] considered Islam "anachronistic or contradictory to his development project or vision for the country".[3] He launched a process of modernization across the board and aimed at the religious field in particular. Inspired by the model of Kemalist Turkey, he decided to break with an archaic vision of Islam and proceeded to a complete restructuring of the religious field with the further aim of secularizing the country.

This restructuring took several forms and concerned two levels: the state level first, through the creation of a directorate of religious affairs (decree of October 5th, 1967) and the appointment of a *mufti* of the Republic; and second on a societal and legal level through:

[2] Michel Camaudir, *Tunisie au présent. Une modernité au-dessus de tout soupçon?* (Paris: Éditions du CNRS, 1987), p. 12.

[3] François Burgat, *L'islamisme au Maghreb, la voix du Sud* (Paris: Karthala, 1988) p. 124.

Abolition of certain religious institutions like the "*habous*"[4] and religious marriage.
Suppression of all religious courts (for Tunisian Muslims and Jews) and their replacement by a single civil court.
Legalization of full adoption.
Suppression of polygamy and repudiation.
Only allowing monogamous marriage and judicial divorce as the only way to dissolve a marriage.

These last two points, as well as other questions of personal status, were organized by a special code which is considered as being "the most progressive of Arab countries", the code of personal status (Code du statut personnel). This code is the best example of the new Tunisian normativity after independence. Through the CSP, the private sphere, up to then under the control of the religious authorities, passed under the control of positive laws. According to Yadh Ben Achour, "the CSP imposed a new state constraint on Tunisian society and released it from religious constraints in matters of personal status."[5]

Instead of being under the rule of religion, it appeared wiser to integrate it into positive law through reference to this distinctive Tunisian vision. Since then, the Tunisian legal system has continued in the same spirit, with the single exception of inheritance: in Tunisian law, as in the sharia, brothers and sisters are unequal when it comes to inheritance. These laws are still under debate as they are in contradiction with the Tunisian constitution, which establishes equal rights for woman and men.

When it comes to biomedical laws, Tunisia had to deal with biomedical issues at an early date compared to other countries of the region. Organ transplantation began in 1986 with a kidney transplant, followed by a heart

[4] A special contract of Islamic land property legislation.

[5] Mohamed Fadhel Ben Achour, *Politique, religion et droit dans le monde arabe* (Tunis: Cérès Editions, 1992), p. 210.

in 1993 and a liver in 1998. To reflect on matters related to biomedical techniques, a national committee of medical ethics was created by the law N°63-91 of July 29th, 1991, on sanitary organization. In article 8 this law provided for the creation of a National Committee of Medical Ethics. The decree N°94-1939 of September 19th, 1994, and the decree N°2001-2133 of September 1st, 2001, fixed the attributes, the composition and the operating procedures of the National Committee of Medical Ethics.

In the terms of the first article of the decree of 1994, "the National Committee of Medical Ethics' mission is to express its opinion on the moral problems which are raised by research in the domains of biology, medicine and health, as these problems concern man, social groups or society as a whole."

In addition to its President, the National Committee of Medical Ethics has 28 members from different disciplines. Ten are called "ex-officio". These are the deans of medicine, dentistry, and pharmacy faculties, and the presidents of the national councils of the orders of physicians, dentists, veterinarians and pharmacists. Twelve members are nominated by their respective institutions: the Constitutional Council, the Higher Islamic Council, the Higher Committee for Human Rights and Fundamental Freedoms, the Supreme Court, the Administrative Court, a professor of higher education in philosophy, a professor of higher education in sociology, a professor of higher education in law, two researchers interested in the questions within the scope of activity of the committee, a representative of the Ministry of Social Affairs, and a personality from the information sector. Six persons interested in medical ethics are designated by the Minister of Public Health.

In spite of the fact that biomedical law projects are prepared by the national committee, the religious imprint is obvious. Indeed, in the context of the Tunisian exception (its distinctive relationship between religion and positive law), biomedical laws were the occasion for religion to have a more intensive role in the process of law making. The examination of two

important texts of the biomedical laws corpus allows us to notice that the Tunisian *mufti* appeared clearly as an active participant.

The *mufti*: an active participant in biomedical legislation in Tunisia

The upstream role of the mufti

It is very interesting to see how, in a country that nearly broke with the sharia, a religious institution became an active player when it dealt with one of the most controversial faces of modernity. To explain how the *mufti* became this active participant in biomedical legislation in Tunisia, we will focus on two main legal texts of the Tunisian biomedical legal corpus: Law N°91-22 of March 25th, 1991, on organ transplantation and Law N°2001-93 of August 7th, 2001, on reproductive medicine. We also noticed that the role of the *mufti* in biomedical legislation is not limited to an upstream role (prior to the law) but can also be downstream (after the law).

Law N°91-22 of March 25th, 1991, on organ transplantation

Thinking about how medicine should be practiced is not new. Doctors since the Greek era have thought about medical ethics. But biomedicine is a new science. More than just healing people, it is today able to create life thanks to ART[6] or to prolong and improve life thanks to a transplant. These new "powers" lead all societies to reflect on how acceptable the new biomedical techniques are.

Having their own conception of life, death and how the body should be treated, religions were strongly involved in these reflections on bioethics. In the Muslim world, where religion tends to apply to all fields of a follower's life, a need for Islamic bioethics was obvious. This is maybe why even in Tunisia, where laws were not made with the consent of religious authorities,

[6] Assisted reproductive technology.

the Tunisian committee for medical ethics asked the *mufti* for his opinion on organ transplantation.

The *mufti* answered with a long *fatwa* opinion giving precise answers to all the different points raised by transplantation as:

Autotransplantation
From a deceased or living donor
And thus the concept of the gift in Islam and the concept of interest/benefit (*maslaha*)
And what is forbidden by Islam concerning the genital organs and why (mainly rules of *nasab*[7])

If we analyze the content of the final text of Law N°91-22 of March 25th, 1991, on organ transplantation, we notice that the law is a legal transcription of the *mufti's* opinion. Even without any reference to the reasons mentioned in the *fatwa*, article 5 of the law provides that: "It is strictly forbidden to take reproductive organs carrying heritable genes from living or deceased persons for the purpose of transplantation."

The law on organ transplantation signified a return to a situation where what was *ḥaram* perfectly matched what was legally forbidden, which before was not the case of Tunisia as some *ḥaram* situations were legal (full adoption) and some *halal* situations were illegal (polygamy).

This may not be obvious in the law on organ transplantation but in 2001 the *mufti* played a more important role during the legislative process regarding a health related issue - the law on ART.

Law N°2001-93 of August 7th, 2001, on reproductive medicine

The national committee of medical ethics followed the same procedure. A request was sent to the *mufti* to make a statement on ART in Tunisia. The

[7] Filiation.

mufti [8] answered: "about artificial insemination with the aim to have a child (...) it can be used only with the husband's sperm and in the presence of the couple with the doctor [who will do the insemination] and with the opportunity to prove paternity with certainty. But if this was the semen of someone other than the husband or even a mixture of seeds it is not permitted ..." He also noticed that the use of a third party donor (of sperm, ovum or embryo) is – on the level of consequences - comparable to a situation of *zina* (adultery). The use of ART should never lead to such results, and the couple's material should be handled with great caution to avoid a mix-up of gametes (with reference to the *nasab* rules)

The impact of the *mufti*'s opinion on ART in Tunisia is visible in the conditions of access to ART and the techniques ruled out by the law:

Access conditions

Article 4 of Law No. 2001-93 of August 7, 2001, on reproductive medicine states: "reproductive medicine can be practiced between living members of a married couple, with only their gametes. They must be of childbearing age." According to this article, the use of the "allowed" techniques of ART in Tunisia is only permitted when some conditions are met.

The condition of the couple

The couple remains the only framework within which the use of ART is possible in Tunisia. Unlike many countries which, for the empowerment of women or by application of a population policy, enable single women to use ART in order to have a child without a partner, a unilateral desire to use ART to have a child (i.e. an unmarried mother) cannot find a positive response in Tunisian law. This condition is confirmed by article 5 of the law, which requires the presence of both partners in acts of gamete fertilization or

[8] Kameleddine Djait (Mufti from 1998-2008).

embryo implantation. The written consent of the couple is collected beforehand for both these acts.

The condition of marriage

The law reserves the use of ART to married couples only. Even the exception contained in article 6 of the 2001 law is confronted with this condition. An unmarried person who has suffered or is preparing to undergo treatment or an act that could affect their ability to procreate can resort to freezing gametes for later use. But the gametes can only be used if the person is married, as the legislature requires that these frozen gametes be used within the framework of a "legal marital relationship".

Following the same logic, the law stipulates in article 11 "that in case of divorce, the couple - both members or one of them - can ask the court hearing the divorce case to order the freezing of embryos to be terminated after the pronouncement of divorce".

The condition of a living couple

The law does not permit the use of ART in a context other than a couple where both spouses are alive. This excludes any possibility of post-mortem recourse to ART following the death of one spouse. Consider for example that a man meeting the requirements of article 6 mentioned above has been keeping his gametes. He is married and subsequently decides to use the stored gametes to have a child. If he dies during the process, then his spouse may not claim the use of gametes.

This condition excludes all practices relating to the storage of gametes or cryo-preservation. The desire to have a child can be strengthened by the death of a spouse. Worldwide, the application of this technique has raised several questions. It also had several responses that ranged from acceptance on the part of supporters of a right to the child to the refusal of those who

believe that the model of a two-parent family is more appropriate for a child. The Tunisian legislator joined the position of the French one, which also excludes this possibility even if other Muslim authorities (Shia) permit this possibility during the period of *'idda*.[9]

The condition of age

The law restricts access to ART to people of childbearing age. This effectively excludes the use of hormonal treatments for women over a certain age.

The condition of infertility

After having defined ART in article 2, the legislator outlines the object of ART or reproductive medicine in these terms: "... it seeks to overcome the infertility of the concerned couple." Facing different types of infertility, ART today offers a wide range of techniques:

The intra-oocyte injection, used in certain types of male infertility characterized by sperm that lack the capacity of fertilization under normal conditions. This technique allows the injection of sperm directly into the oocyte thus bypassing the blocking of sperm that occurs at the membrane of the oocyte.

Artificial insemination within a couple or making use of a donor when the natural father's sperm is defective.

In vitro fertilization within couples or making use of a donor when the natural mother is infertile or suffering from a serious illness that prevents her from producing eggs.

The donation of embryos derived from hormone therapy.

The loan of a uterus or surrogate mothers.

[9] The waiting period that a woman has to observe after a marriage is broken by divorce or the death of the husband.

We noticed in the 2001 law on reproductive medicine that not all available techniques are accepted by the law. Some of them are clearly prohibited, condemning a number of couples to never have children. All techniques involving the intervention of a third party donor are prohibited. Third party donation is explicitly prohibited under Article 14 of Law No. 2001-93 of August 7, 2001, relating to reproductive medicine, which states that "Recourse to third party donor gametes within reproduction medicine and embryo donation are strictly prohibited."

Third party donation is prohibited on two levels. The first level is the prohibition of gamete donation. ART can only be used with the genetic material of the parents (husband's sperm, ovum of the woman). This condemns couples with defective sperm on the husband's side or women who cannot produce eggs to never be able to have children even if it is scientifically possible. The second level of prohibition under the 2001 law is embryo donation. It is a double ban since in addition to article 14 of the law this prohibition is confirmed in article 15, stating that "The embryo conceived in the context of reproduction medicine can in no case be placed in the uterus of another woman."

It is interesting to see that Tunisian law permits full adoption and refuses embryo implantations or a third party donor, which are very close to a full adoption. It is also interesting to see that Islam, which is used as a basis for the refusal of third party donor techniques, admitted other forms of parenthood than blood parenthood such as "breastfeeding parenthood" (*rada'a*) and social paternity[10] (*al-walad li-l-firash*).

The downstream role of the *mufti*

It can be pointed out that the *mufti* can also play a downstream role when it comes to biomedical laws. On the one hand, we can notice that the *mufti* is

[10] The child is supposed to be of the mother's husband (in Arabic, the one who shares the mother's bed).

involved in promoting organ donation by making public promotion campaigns. This may be explained by the *mufti* being part of the state agency encouraging state policies to face the current organ shortage. On the other hand, the *mufti* is involved in answering the questions of some patients on religious details that the law on assisted reproductive technologies does not mention. We have to say here that even if biomedical laws in Tunisia are made after consulting the *mufti*, no religious reference is included in the final text of the law. This may lead some Tunisians – not knowing how laws are made - to consider the content of positive laws as religiously doubtful. Having a *fatwa* may be more reassuring.

Together with patients asking for *fatwas* due to the lack of clear religious references in the positive laws on reproductive medicine, we find another category of patients submitting questions to the *mufti*. The lack of a central authority in the Muslim world can give rise to many questions on what can be called alternative normativity. Other *fatwas* coming from other Muslim authorities, especially from Shia authorities, may be very problematic for Sunni Muslims.

Conclusion

To conclude, I would say that in an unexpected manner, a religious figure has been back on the legislative scene of Tunisia, a country considered as an exception in the Muslim world for its secular laws. It seems almost paradoxical to see how religion has marked the laws ruling a very modern field such as biomedicine. With the Arab Spring, the role of the *mufti* is expected to develop. Religion returned to the country's political scene and this will in one way or another affect the Tunisian exception.

The New Legislation on Transplantation in Malaysia: How it Emerged and Problems Encountered During the Process

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Hirman Ismail, Putrajaya[2]

Introduction

Organ transplantation was perhaps the greatest advancement in medical science and practice of the 20th century. Experimental organ transplantation in the early 1900s developed into a full therapeutic service by the 1950s when the first successful kidney transplantation was performed. This was soon followed by successful liver and heart transplantations. Advancement in surgical techniques led to other organs such as the pancreas, lungs, and intestines being transplanted. In very recent times there has also been success in face transplants. Advances in understanding immunobiology and

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therapeutics have allowed novel drugs to be developed which extended the lifespan of transplanted organs. These medical interventions have saved thousands of lives. Patients with kidney failure have an alternative treatment in the form of dialysis but those with other organ failures (e.g. terminal heart failure) can only hope for successful organ transplantation in order to survive.

No other form of treatment has attracted as extensive ethical, legal and religious considerations as organ transplantation. This is quite understandable as organ transplantation unlike other forms of medical intervention invariably involves two parties – one that donates the organ and the other that receives it. The person who donates could be someone who has died or is still living. Ethical and religious issues abound in such a situation. The success of organ transplantation has led to a great demand for such treatment. This has led to unsavoury practices including the selling and buying of organs and in some cases the criminalisation of the transplant process. Hence many countries enacted laws to govern the practice of organ transplantation. Malaysia, presently, has no specific law on organ transplantation. There is a law, the Human Tissues Act of 1974 (reference 1), that regulates the use of human tissues for therapeutic, education and research purposes and that is being applied for the purposes of cadaveric organ transplantation. It is inadequate and does not address many of the contemporary issues of modern day transplantation practice. Among areas not addressed are a definition of death that includes brain death, live-related donation, a definition of close relatives and a prohibition of organ trading. In late 2011, the Ministry of Health formed a technical working group (TWG) to develop a new law that will comprehensively address all aspects of organ and tissue transplantation. During the process of formulating the law, the group has to take into consideration the sensitivities and viewpoints of various religions in the country. Malaysia, a middle-income country of 28.3 million people has a multi-ethnic and multi-religious population (ref. 2). While Islam is the predominant religion (61.3% of the population are

Muslims) other religions including Buddhism, Christianity, Confucianism, Taoism and Hinduism are practiced by a significant segment of the population (2). This paper focuses on the Islamic viewpoint of the proposed organ transplantation law in Malaysia. The TWG consists of practising as well as academic lawyers and doctors who are involved in organ transplantation and healthcare managers.

Background preparation for the formulation of the Organ Transplantation law:

To prepare the proposed law, the TWG perused various documents relating to organ transplantation in the country. It adopted the following steps:

Study the views of religious leaders and organisations on organ transplantation.
Assess the community's views on organ transplantation.
Study the current policies and administrative circulars pertaining to organ transplantation by the Ministry of Health of Malaysia.
Study organ transplantation laws of various countries in the world.

Views of religious leaders and organisations on organ transplantation

All religions in the country support organ transplantation (3). For Muslims in particular, there has been considerable guidance through various *fatwas* (religious edicts) issued which supported the practice of organ transplantation. The National Fatwa Council (NFC) formed by the Federal government pronounced in 1970 that transplantation of an eye (cornea) and a heart from cadaveric donors is permissible in Islam (4). By extension, it was decided that transplantation of other organs is also permitted. Transplanting organs from living donors is also permissible provided that no harm comes to the donors and that it is done with the permission of the donors. One of the conditions of the *fatwa* is that there is no organ trading, which is

considered a violation of human dignity. The *fatwas* were derived from opinions, which were *ijtihad* (legal interpretation) in nature and thus are open to further discussions. There has been no serious objection to these *fatwas* thus far, although there are individual *ulamas* (religious scholars) who expressed differing views.

In a multi-religious country like Malaysia, a major source of concern is whether Muslims can donate to or receive organs from non-Muslims. This question usually arises in the cadaveric organ donation setting. The *fatwas* have clarified that this is permissible as a non-Muslim in Malaysia is considered a *Thimmi* (a non-Muslim living under the protection of an Islamic state). In Saudi Arabia, the Senior Ulama Commission's Decision No. 99, dated 25-08-1982, unanimously resolved upon the permissibility of removing an organ or part thereof from a Muslim or *Thimmi* (5).

From the legal perspective, if there is an unambiguous decision by religious authorities to forbid certain forms of transplantation, then it will have to be reflected in the law. The TWG noted there was none.

Views of the community on organ transplantation

It is important to ascertain the views of the community on organ transplantation before the law is enacted. The enactment of such a law when the community is not ready or has widely differing views can be divisive. The TWG assessed the community's views through various sources. In general the community at large has approved and supported organ transplantation. This can be seen from various comments in the newspapers and the electronic media. There has been good response from the public to talks and seminars conducted on the subject. A number of studies have been conducted about awareness of and attitudes towards organ donation. Of great interest is the attitude of Muslims. A questionnaire survey of 300 Muslims of varied background was carried out in 2003 (6). Of the 270 respondents, 90% stated that they understood organ transplantation.

However only 25% of the respondents were willing to donate their organs voluntarily. The major reasons for not wanting to donate were that the organs may be needed by family members and fear about transplantation. Interestingly 19% said that religion prohibited organ donation. Another study conducted amongst the general public in Kuala Lumpur involving 719 respondents from different religious groups showed that Muslims were less likely to donate compared to those from other religions (7). There was, however, another study which showed a changing attitude amongst Muslims (8).

Another indicator of the views of the public is the increasing number of organ donor pledges. Similarly there is also an increase in the number of cadaveric organ donors over the last few years although the numbers are still far from satisfactory. A major concern with these statistics is that the Muslim population contributed only 5% of cadaveric kidneys but formed 60% of the recipients (9). They constituted only 17% of those who pledged their organs upon death.

There are two aspects of the community's attitude that are worthy of mention and to which the TWG needed to pay close attention. Firstly, there appears to be reluctance or inhibition within the Muslim community to donate organs, especially upon death, in spite of the various *fatwas* and encouragement from religious leaders. This is borne out by the statistics on organ pledges as well as actual cadaveric donation data. Secondly, while most Malaysians expressed abhorrence at the selling of organs by poverty stricken live donors from certain countries or the selling of organs from executed prisoners, few Malaysians have any reservations about going to these countries to get a kidney transplantation when they need one. This is evident from the 18th report of the Malaysian Dialysis and Transplant Registry, which showed that more than half of the kidney transplantations reported each year from 2001 until 2010 were performed in China (10).

Current policies and administrative circulars pertaining to organ transplantation by the Ministry of Health of Malaysia.

Corneal transplantation started in Malaysia in the early 1970s with corneas donated by the eye bank in Sri Lanka. It was in December 1975 that the first solid organ transplantation, a live donor kidney transplantation, was performed in the country. To date, more than 1500 kidney transplantations have been done, mainly from live donors. Subsequently heart, liver and lung transplantations were performed. As the number of organ transplantations increased, the Ministry of Health formed a National Transplantation Council, which consisted of medical professionals and lay persons including leaders from the various religions. The Council through its committees developed a number of guidelines on various aspects of the practice of transplantation. These guidelines included the accreditation of centres that perform transplantation, the licensing of personnel involved in transplantation and the establishment of registries. Many aspects of the Council's recommendations were incorporated in the proposed organ transplantation law.

In 2007 the Ministry of Health produced the National Organ, Tissue and Cell Transplantation Policy (10). The policy reiterated the Ministry of Health's stand on organ transplantation being based on voluntary consent in both cadaveric and live related donors. It forbids the commercialisation of transplantation. The policy provided clear guidelines on implementing an organ transplantation programme in the country. No parts of the policy were in contradiction to the Islamic or other religions' guidance on organ transplantation (12).

Study of similar legislations on organ transplantation from various countries

The TWG perused legislations from many countries on organ transplantation. As the Malaysian laws are patterned after the British and

Commonwealth laws, the countries included the United Kingdom, Singapore, India, Pakistan, Australia and USA. There are similar approaches in most of the important aspects of organ transplantation. The TWG was particularly interested to find out if there are any laws that make special dispensation to any religious or other groups with respect to organ donation. In 1987 the Singapore parliament enacted the Human Organ transplantation Act (HOTA), under which Muslims were exempted from the "opting-out" law. This was based on the opinion of the Islamic religious authority then. The law, however, was amended in August 2008 to include Muslim Singapore Citizens and Permanent Residents who were excluded from HOTA when it was first enacted in 1987 (13). This reflected the prevailing view of the Islamic religious authority in Singapore in recent years and was consistent with the *fatwas* in Malaysia. This is an important development as Malaysian Muslims have close family and social ties with Muslims in neighbouring Singapore. Any conflicting religious views on organ transplantation would lead to problems of acceptance by Muslims in both countries.

Elements incorporated in the proposed Organ, Tissue, Cell and Transplantation Act

The general approach of the law – "opting-in" or "opting-out"

The first major decision for the TWG was to determine what form the proposed Organ transplantation law should take – should it be an "opting-out" or an "opting-in" legislation. The group decided on the latter for a number of reasons. Firstly, there is a perception of compulsion in an opting-out law, which may not be acceptable to the Malaysian public. In particular, from the Islamic point of view, the various *fatwas* in the country (3) and in other Islamic countries stressed the need to obtain permission from the donors or family members. The *fatwa* of Majma' al-Fiqh al-Islami (the Fiqh Academy in Jeddah) from 1988 also stressed the need to obtain consent from

the donor before death or from the deceased's guardian after death (3). The TWG is aware of the *fatwa* from Kuwait stipulating that the act of transplanting organs from the deceased is permissible with or without the deceased's consent (5).

Secondly, there is still a large segment of the Malaysian population that is reluctant to be organ donors and it was felt that the best approach is through education rather than through an opting-out law. Thirdly, there are also logistical challenges in managing the process of declaring to opt-out in a country where a large proportion of the population still lives in rural areas. This is in relation to the difficulties of communication in the rural areas: postal services for example are not at their best; hence, residents may not receive correspondence on opting-out if such a law was in place. The final concern is the level of functional literacy in the population, especially regarding such a niche area as organ transplantation. Many may not understand or appreciate the implications of not opting-out.

Scope of the proposed law

The second major decision was to determine the scope of the Organ Transplantation Act. Should it just be confined to organs and tissues (e.g. cornea, heart valves) or should it include cells? The group finally decided to include cord blood cells, but excluded blood cells for transfusion purposes, blood components, sperm, ova, gametes and embryos. There are enough *fatwas* to guide the group on solid organ and tissue transplantation and the TWG did not face major problems in this respect. However, recent advances in technology, particularly in the therapeutic use of stem cells, posed some issues from the religious point of view. The National Fatwa Council at its meeting in February 2005 stated that stem cells from adults who have given permission or from children whose parents have given permission are allowed to be used provided the procedure does not cause them harm. It is

also permissible to use stem cells from the placenta and from cord blood provided that prior permission is obtained (3).

Definition of live related donor

The group defined certain terms, many of which are standard definitions consistent with the act of organ transplantation, while others were defined to harmonise with existing healthcare laws in the country. Of relevance to organ transplantation was the definition of "close relative", which means a person who is genetically related or a legal spouse. There was no guidance from *fatwas* in the country or elsewhere on the issue of who constitutes a close relative for the purpose of becoming a live-related donor. The restrictions on live organ donation to only close relatives are usually based on ethical considerations and concerns regarding the abuse of vulnerable individuals. The group thus adopted definitions of close relatives from other countries' laws.

The group discussed at length the Islamic tradition of hierarchy in decision-making and whether it should be reflected in the law, especially for consenting to cadaveric organ donation. It finally decided against taking a stand on it for the following reasons – firstly, there was no clear indication of any hierarchy from available *fatwas*, and secondly, the adoption of any hierarchal order might contradict provisions on consent in existing laws. A final consideration was that in almost all cases involving Muslim donors, the decision was reached by consensus amongst relatives and not just the spouse of the deceased (11).

Definition of Death

In the proposed law the TWG has defined death as irreversible cessation of blood circulation or irreversible cessation of all functions of the brain. Although brain death has been accepted by medical personnel and made a

criterion in the cadaveric organ donation programme, its inclusion in the law will strengthen the programme further. The NFC has agreed to separate brain dead patients from other patients in an Intensive Care Unit in its resolution of December 1989. There is also the resolution of the Council of Islamic Jurisprudence on Resuscitation Apparatus, Amman 1407H (1986 G) No.86-07-3D (5), which supports the concept of brain death.

Organ trading

One of the major impetuses to develop the new law is concern about the rising and rampant commercialisation of organ transplantation with organs traded as commodities. In all cases the poor were the ones being exploited. The World Health Organisation and The Transplantation Society have taken a strong stand against organ trading. Although such trading in organs has not happened within the country, Malaysians with kidney failure have been going abroad to procure kidneys. The National Fatwa Council's *fatwa* on organ transplantation placed as a condition to permitting organ removal and transplantation that there should not be any trading of organs, as it is an affront to human dignity. It did not specifically state that it is *haram* (prohibited). The proposed law provides for punitive measures for those caught trading in organs, including a fine or imprisonment or both. In addition, the Ministry of Health recently restricted the subsidy of immunosuppressive drugs for patients who had their transplant overseas, through an administrative circular.

Allocation of organs

The proposed law dictates that organs be allocated according to a national waiting list, thus ensuring fairness and transparency. This is in keeping with the Islamic principles of justice. Islam stresses that all human beings are equal and their deeds and intentions will only be judged by Allah (SWT).

Accreditation of transplant centres and of doctors involved in transplantation work

The proposed law requires that a centre doing transplantation be accredited and a person performing organ transplantation work have the right credentials. This is to provide legal authority to what is presently done administratively. This will ensure that those performing transplantations are trained and experienced in the field and that centres providing such services have adequate facilities. From the Islamic perspective, it is important that a living donor does not come to harm during organ donation. All *fatwas* stressed this condition when permitting organ donation. This can be assured by having competent personnel doing the procedure. Islam also stressed that the dead should not be mutilated. In this respect a cadaveric donor's body will not likely be mutilated in the process of organ retrieval if the procedure is performed by a credentialed person.

Ensuring that views from Islamic authorities are always respected

Under the proposed legislation the National Transplantation Council (NTC), which hitherto was established under an administrative edict from the Director-General of Health, will now be a legal entity. This will enhance its statute and better define its powers. The membership of the NTC will include a representative from the Department of Islamic Development (JAKIM), which is a body under the Prime Minister's department. There will also be one person to represent other religious groups. Such representations are important as views from Islamic authorities and other religions will be solicited from time to time in the light of new advances in organ transplantation.

Conclusion

Organ transplantation is a life-saving treatment, which invites many religious, ethical and legal considerations. Laws are essential to regulate the practice and prevent exploitation and abuse of the transplantation programme. Malaysia is in the process of enacting a comprehensive law on organ, tissue and cell transplantation. In doing so, it has to take into account the perspectives of Islam and other religions in the country. *Fatwas* from Islamic authorities in the country and elsewhere have permitted organ transplantation and certain conditions are put in place to ensure that the act of donating an organ is voluntary and causes no harm to the donor.

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The Islamic Fiqh Academy India: Abortion and Sterilization in the Context of Islamic Law and its Impact on Muslim Women's Decision-Making

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The Islamic Fiqh Academy

Major aims and organizational structure

The Islamic Fiqh Academy India (IFA) is a national organization of Islamic law located in New Delhi, North India. It was founded in 1988 and is today registered as an NGO. Its major aims and objectives are to answer questions and to solve problems of these days for which no evidence can be found in the primary sources of Islamic law (Quran and Sunna). The IFA examines contemporary medical and bioethical issues, e.g. abortion, cloning, brain death and organ transplantation. However, the IFA deals not only with medical issues, but also works on social (e.g. sex education in school, educational loans, women's employment) and economic issues (e.g. bank interest, economic transactions, insurance) with the principles and methods of Islamic jurisprudence (Weigl 2006).

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IFA is headed by a president, whose task is to supervise and to represent the academy, a general secretary, who has the main responsibility for the academy, and an administrative secretary. Different committees supervise and support the executive and academic work of the academy. IFA's *fuqaha* belong to the Sunni Hanafi school of law. The IFA has a constitution in printed form, which says that all members have to be elected every five years.

Its relations to other Islamic national organizations and scholars

IFA's central office is located in Jamia Nagar, a district of New Delhi with a majority Muslim population. Other prominent Indian Muslim organizations to which the IFA is closely connected are based in this area as well. An example to mention here is the All India Muslim Personal Law Board[2] (AIMPLB), which adopts strategies for the protection and continued applicability of Muslim Personal Law on the state level. For example, IFA's current general secretary, Khalid Saifullah Rahmani, was also a cofounder of the All India Muslim Personal Law Board. Thus, IFA's legal opinions play a role in the debate about Muslim Personal Law.[3]

The Academy has also a strong institutional relationship to the famous religious educational institution Madrasa Darul Uloom Deoband. This is the leading Muslim theological academy of India.[4] Given the large number of Deobandi madrasas all over the subcontinent its rather orthodox ideology is widespread among South Asian Muslims (see Metcalf 2006: 265-284). The majority of IFA's scholars are affiliates or alumni of Darul Uloom Deoband

[2] The AIMPLB was founded in 1972 and consists of three hundred members. The stated aims and objects of the board mentioned on its website (www.aimplboard.org) are "to adopt suitable strategies for protection and continued applicability of Muslim Personal Law or the sharia Application Act in India".

[3] In general, in Indian state courts Islamic law is legally enforceable in very few matters (for example maintenance, divorce, inheritance) (Weigl 2006).

[4] The madrasa (school of religious learning) or seminary, which was founded in 1867, is located at Deoband, a small, country town in Uttar Pradesh.

and play a dominant role in the organizational structure, which may explain the fact that Deoband and IFA agree on the same theological doctrine.

For example, IFA's former president, Muhammad Zafeerudin Miftahi (d.2011), worked as a *mufti* (scholar of Islamic *fiqh*, who is authorized to issue *fatawa*) at the Darul Uloom Deoband. After Miftahi's death, Maulana Nematullah Azmi, who is a senior professor of *hadith* at the Darul Uloom Deoband, has been elected president of the IFA in May 2011,. This close collaboration can be also seen by the fact that the IFA organizes regular lectures at the Darul Uloom Deoband to support the education of young *ulama.*[5]

Its relations to other Islamic international scholars and organizations

The IFA has strong relationships to juridical Muslim organizations in India; however, its links to other, international Islamic Fiqh Academies are rather weak. Examples to mention are the Islamic Fiqh Academy in Mecca, which was founded by the Muslim World League (MWL) in 1973, and the Islamic Fiqh Academy in Jedda, founded by the Organization of the Islamic conference (OIC) in 1981. Both academies, like the IFA India, work on questions and problems of these days in the context of Islamic law, which are caused by new medical and technical developments. The IFA India is nowadays neither affiliated to the IFA in Mecca, nor related to the IFA in Jedda. It works as a national, independent organization, which however refers within its publications to the resolutions of the MWL's and OIC's *fiqh* academies and uses their resolutions as guidelines for its own decisions. Furthermore, the *fuqaha* of the IFA India have translated resolutions of both these large *fiqh* academies into Urdu.

[5] General term for Islamic theological scholars: Islamic jurists (*fuqaha*) are part of the *ulama*.

Fiqhi seminars and resolutions

From 1989 to 2012 the IFA as an institution has primarily developed by organizing so called "*Fiqhi* seminars" (Islamic jurisprudential conferences). In addition to that the IFA has arranged workshops and training camps to teach mainly students on how to deal with contemporary issues in the context of Islamic law.

The *fiqhi*-seminars are conducted on the all-Indian level. To date, 21 of them have been held. The aim of these seminars is to work on the further development of Islamic law. At each of these seminars three to five different topics are discussed and assessed in the context of Islamic law; more than 150 different topics have been dealt with to date.

Up to 300 participants are attending a seminar. The language of discussion at these seminars is Urdu, the language of the North Indian Muslims and the official language of Pakistan. The participants at IFA's seminars are generally Indian *fuqaha*. They are predominantly alumni of or affiliated with other prominent Indian Muslim organizations, such as for example the All India Muslim Personal Law Board (AIMPL) as well as famous religious educational institutions like the Madrasa Darul Uloom Deoband or Aligarh Muslim University. Occasionally, *fuqaha* from Arab countries (e.g. Iraq, Kuwait, Saudi Arabia), other South Asian countries (e.g. Bangladesh and Pakistan) as well as from the UK, Canada or the US are also present. If *fuqaha* from other countries such as Saudi Arabia or Iran are participating in a seminar, the issue at hand will also be discussed in Persian or Arabic. The results of these seminars are resolutions on the discussed topics.

In the following, the procedure of a seminar will be described from the invitation to a resolution being drafted. Before a seminar takes place, the IFA sends out general questions on the topics of the seminar to a number of Muslim jurists. They answer these questions extensively. Regarding the

interpretation of bioethical or other topics in the Islamic context the jurists rely on the sharia (Islamic law) to develop arguments.[6] The summaries of the jurists' advice are sent to all participants and presented at the seminar. The IFA also invites experts, such as economists, medical scientists or sociologists. They deliver the academic background to different topics, which are discussed during the seminar. Because the IFA has longstanding good institutional relations to the Jamia Hamdard University, New Delhi, and Delhi University, New Delhi, scientists of these two universities are often invited to talk. After hearing the experts, the *fuqaha* discuss, consider and evaluate the relevant aspects of their presentations. They finally summarize the results in a resolution, which includes suggestions for Indian Muslims on how to deal with the topic in the context of Islamic law.

To communicate their opinion to Muslim society the IFA uses different channels such as printed and web-based publications. The printed publications of the IFA include the Islamic jurists' summaries as well as the resolutions of the seminar in the form of books and leaflets in Urdu, English and Arabic as well as in the Indian regional languages such as e.g. Malayalam. 126 books have been published to date; 9 books are in English, 111 books are in Urdu and other Indian languages, 2 books are in Hindi and 4 books are in Arabic. The IFA sells its publications at its seminars as well as at various book fairs. In addition to that, the IFA publishes their resolutions in different journals and newspapers.

On the IFA's website all resolutions are available in Urdu and in English language without the jurists' summaries.

It has to be mentioned that, at the national level, the IFA has no options to implement its resolutions because India is a secular republic and Muslims represent a minority. However, in 1991 the Supreme Federal Sharia Court of Pakistan referred in its judgment on the prohibition of interest to a resolution of the Islamic Fiqh Academy (Weigl 2006).

[6] The Sharia consists of the primary sources like the Quran, the holy book, and the Sunna, the traditions of the prophet Muhammad (Brockopp 2003: 3).

Resolution of the IFA on abortion and contraception

In the second part of this paper, the resolution of the Islamic Fiqh Academy on the topics of abortion and contraception will be illustrated. I will further show the opinion of other Indian *ulama* on the above mentioned issues.

In the IFA's first conference which was held from April 1st to April 3rd 1989 in New Delhi, the issue of birth control was discussed. The results of the conference were published in the book "Contemporary Medical Issues in Islamic Jurisprudence" (Qasmi 2001). It includes summaries on abortion and contraception by a number of Indian *fuqaha* such as Mujahidul Islam Qasmi (founding member of the IFA) and Khalid Saifullah Rahmani (the general secretary IFA). The book also includes the resolution on the topic of family planning.

Within this publication, Qazi Mujahidul Islam Qasmi,[7] the founder of IFA, asserted in his advice that temporary contraception under normal circumstances is not permissible. It should be practiced under stringent conditions, only. These circumstances include a mother's bad health, the spacing of children so they can be reared properly, and a woman's economic hardship forcing her to earn money so she can rear her children well. Sterilization is almost always forbidden, because it is seen as "damaging women's procreative ability" and a "change in the creation of Allah". In principle, abortion is prohibited. It may, however, as an exception, be allowed if the pregnancy is the consequence of rape or if the termination of pregnancy is advised by a medical doctor. The termination of a pregnancy, however, is only allowed before the soul enters the foetus, in other words until the hundred twentieth day of pregnancy (Qasmi 2001: 73-126).

[7] The foundation of the Islamic Fiqh Academy was initiated by Maulana Qazi Mujahidul Islam Qasmi, who played an important role in a number of prominent educational and juristic Muslim institutions in India. Qasmi was the first general secretary of the IFA until his death on April 4th, 2002. He was born in 1936 and studied at the Darul Uloom of Deoband. In 1962 Qasmi was appointed as *qazi/mufti* at the Imarat-e-Sharia in Patna, India. In 1972 Qasmi became founding member of the AIMPLB and was its president since 2000 (Weigl 2006).

According to the resolution on birth control passed by the IFA at its first *fiqhi* seminar permanent contraception is prohibited, except in one case - if a woman's life would be at peril in case of another pregnancy or childbirth, to be confirmed, however, by a medical doctor. The use of temporary methods is accepted only under the following conditions - to space children so they can be reared properly, or if a mother's health is affected severely (this also has to be confirmed by a doctor). But these conditions exclude a woman's professional or social concerns for her own sake. Abortion, even though discussed at the seminar and included in the publication, is not mentioned in the resolution. The resolution can be found at the end of the publication "Contemporary Medical Issues in Islamic Jurisprudence" (Qasmi 2001: 285-286) or on the website of the IFA.

Comparing Qasmi's summary and IFA's resolution on birth control and abortion, it becomes clear that the resolution is, regarding the permissibility of contraception, much stricter than the jurist's advice. Examining IFA's resolution on birth control, it becomes obvious that the academy's *ulama* share rather conservative views on the issue of family planning. However, their view corresponds to other contemporary Indian *fuqaha's* opinion on the issue of contraception and abortion. "Permanent" birth control methods (like sterilization)[8] as well as abortion were ruled out by all contemporary *ulama* in India. Sterilization is only permitted under particular medical circumstances such as if a mother's life would be in danger. While the more moderate *fuqaha* considered "temporary" methods as permissible, the conservative *ulama* objected to the use of any family planning method. In India conservative *ulama* still seemed to dominate the debate on the issue of birth control, and a majority of those religious scholars ignored the judgments of numerous other *ulama*, for example from other Muslim countries such as

[8] Sterilization was ruled out by contemporary Indian *ulama* because the finality of the method is seen as interfering with God's will and simply a negation of the basic reliance on God.

Bangladesh, who argued, using the same scriptural resources, for the legitimacy of certain temporary methods of family planning.[9]

India is a secular democracy and therefore the *ulama*'s interpretations of religious texts do not play any role on the state level. So the reason why Indian's *ulama* represent a rather strict interpretation in regard to family planning might be political - Muslims are the single largest minority community in India and many of them are rather marginalized from the formal urban economy as well as the political sphere. A strict interpretation of the religious tradition is favoured by those who have a reason to be dissatisfied with the central government and have little hope for improvement based on existing development policies (Obermeyer 1992: 52).[10]

Muslim women and their perception, interpretation and practices on contraception and abortion in the context of Islamic law

After illustrating Islamic legal tenets on abortion and contraception held by the IFA and contemporary Indian *fuqaha*, it will now be examined how Muslim women in India perceive these Islamic norms and how they deal with them in practice. This research is based on ethnographic fieldwork, which I conducted for my PhD in a low-income Muslim community in Delhi, North India from January until October 2007 and February until March 2008. The qualitative research methods employed were those of participant observation and the collection of life histories; I have further conducted semi-structured interviews with forty Muslim women of 20-40 years of age (Weigl 2010: 24).

[9] The *ulama* of Indonesia and Bangladesh even played a key role in their country's efforts to regulate their growing populations through their involvement in state-sponsored family planning efforts. By contrast, in Bangladesh Maulvis (Muslim religious leaders) supported contraceptives in radio talks and newspaper articles and family planning is even promoted as a tenet of Islam (Rozario 1998: 159,173).

[10] Thus the interpretation of Islamic texts is always dependent on and has to be related to the religious Muslim leaders' relationship, situation and position towards the state and the general political context.

When I asked women to explain the position of Islam on family planning or abortion their answers most of the time were very brief and almost always similar: "This is not allowed in Islam", or "Our religion prohibits it". One thing all women agreed upon was the prohibition of permanent methods of contraception like sterilization[11] based on religious grounds. Women considered sterilization to be a greater sin than the practice of any other form of contraception. Many Muslims in South Asia insist that God provides for all the children within a person's individual allocation. Other reasons mentioned were that sterilized people could not make the *hajj* pilgrimage to Mecca, and that such people's daily prayers would be invalidated or their fasts during *ramzan* would no longer be accepted by God. The main arguments women brought forward were that a sterilized woman's funeral procession could not be performed and her soul would forfeit its place in paradise (see also Jeffery, Jeffery and Jeffrey 2008: 519-548).

> Shanaz, 30 years old, married, three daughters: "The operation is not allowed in our religion, therefore it is a great sin. The operation is prohibited by God. Children are a gift of God. God will not forgive you an operation. When a sterilized woman dies, her funeral prayers will not be recited; her soul will stay in the graveyard and cannot go into heaven".

Women also considered abortion as a sin within Islamic law, expressed vehement religious objections to it, and emphasised that its use should not be considered at any time or under any circumstances. To sum up, women were against sterilization and abortion based on religious grounds (Weigl 2010: 212-215). The medical exceptions named in the IFA resolution were not known to them.[12]

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[11] Women never called the sterilization or tubectomy by name, but labeled it as *nasbandi* ("tube closing") or "operation".

[12] One reason could be the gap in communication between educated religious leaders such as IFA and the local religious leaders (*maulana*). This is especially obvious when examining the topic of sterilization - while the IFA generally takes a restrictive point of view on sterilization, they nevertheless allow for exceptions. The Muslim women of my research in general oppose sterilization up to this day. So topics mastered and taught by the *ulama* (as for example by the IFA) often are simplified and reduced by local religious leaders in my research area to the lowest common denominator. In other words, local religious leaders regard abortion and contraception as prohibited; thus public opinion declared them as *haram* and consequently the nuances of Islamic jurisprudence are obscured.

However, a high number of abortions and sterilizations were prevalent in the research area. When I talked to women about this apparent contradiction a much more complex picture emerged. Most women asserted that sterilization and abortion were contrary to Islam, but they also complained about poverty and their inability to rear and educate numerous children properly and therefore opted for sterilization and abortion. Besides an improved education for each child, women articulated other benefits of a small family like increased economic opportunities, a healthier family, and more food. For many women the hope of living a slightly better life was a sufficient reason to practice contraception.

However, making use of family planning, and having sterilizations and abortions even though knowing Islam or the IFA resolution did not allow it, did not necessarily pose a problem to these women, because they had their own explanatory models to legitimize their actions in the context of Islam which differed from the general view. For example, a number of these women explained it was also a sin according to Islam to have children and not be able to raise them properly. Here women referred to a verse in the Quran in which the quality of children rather than just having children is emphasized.[13]

> Anisa, 25 years old, married, four children: "We use something (condoms) because we do not want to have more children. A child needs food, clothes and an education. For two months I've been having stomach pain, but no money for treatment, how should we feed another child? It is a sin in Islam, if you have children and you cannot feed or educate them. If you can raise your children properly, it will be God's blessing."

So these women, by pointing to the fact that it goes against Islamic law to have children if one is unable to raise them, used their own interpretation of the textual sources. Another woman asked a religious leader for advice and confirmation whether her practice would conform to Islam. And other women believed their use of contraception (temporary as well as permanent) was religiously permitted because they had been diagnosed with health

[13] My Lord! Vouchsafe me of the righteous [offspring]" (Quran 37: 100).

problems and it therefore was regarded as a necessity. Women also explained that God would understand their behaviour because they were forced by external circumstances like their socio-economic situation to act accordingly.

> Nafisa, 30 years old, two children, married: "The one above us knows that we do not have any money, therefore the abortion was necessary (*majburi*). I believe and I know God will understand that I had no choice. Allah knows the limitation and situations that compel you to do so".

All these women were able to circumvent the prevalent public opinion in the research area - considering contraception or abortion as a sin - and in addition, they had their own differing view and interpretation of these reproductive issues in the context of Islamic law. Women understood and interpreted in private Islamic religious proscriptions in their own pragmatic ways (Weigl 2010: 215-220).

To conclude, a huge difference opened up between IFA's resolution prohibiting permanent contraception and abortion (only permitted under particular medical circumstances) on the one hand and women's individual attitudes towards them on the other. Muslim women mainly share the *ulama*'s opinion in public; in private, however, they manipulated, interpreted and adopted their understanding of Islam and Islamic legal tenets regarding sterilization and abortion according to their own needs and experiences. Islamic doctrine is central to Muslim women's everyday life, but not in regard to the issue of family planning. There is a mismatch between the theology of the *ulama* on the one side and women's every day social practices on the other. The IFA and Muslim women in India interpret and understand abortion and contraception in the context of Islamic law differently.

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The Birth of Embryo Donation and Surrogacy in Iran

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Introduction

Iran has adopted a very permissive approach to the use of assisted reproductive technologies in infertility treatment. Assisted reproductive technologies have been practiced in Iran for over twenty years during which they have become an ongoing issue in the public debate and the subject of many interdisciplinary conferences and workshops at Iranian universities, biomedical research institutes and religious seminaries. Currently, almost all forms of infertility treatment including gamete and embryo donation as well as surrogacy are being practiced at infertility treatment clinics in Iran. This has most recently been extended to the practice of preimplantation genetic diagnosis (PGD) and sex selection. There are more than 40 infertility treatment clinics[2] of which some belong entirely to the private sector while others are government-owned or semi-private. In general, in Shia jurisprudence (*fiqh*), considering the wide-ranging viewpoints dedicated to each subject taking place at a specific time (*zaman*) and place (*makan*) of its own, the use of aforementioned technologies in order to maintain the unity

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[2] *Infertiliy and Insurance*, Editorial Team of Avicenna Research Institute, in Persian (Tehran: Avicenna Research Centre, 2009), 19.

and foundation of families as well as offering a medical solution to infertile couples – albeit only for heterosexual married couples – has been authorised. In Iranian Law, embryo transfer has been examined in the law pertaining to the procedures of embryo donation to infertile couples and the transfer of an embryo from a third party has been accepted under certain circumstances.

This paper elaborates on the regulations pertaining to embryo donation and surrogacy in Iran. My paper's goal is to outline some aspects of a religious legal hermeneutic strategy that has shaped the Iranian approaches to reproductive technologies. I will argue that the Iranian approach towards reproductive technologies has stemmed from a unique collaboration between religious scholars, physicians, philosophers, legal scholars, experts in social sciences and policy makers - what I call an interconnection between religious-juridical deliberations and secular-ethical principles. I first describe some prevalent juridical moral values that are influential in the context of the Iranian regulation and legislation. I then explore briefly the Iranian legislative process leading to the "Law of Embryo Donation to Infertile Couples", approved by the Iranian Parliament in 2003, and operative since 2005.

My reflections on the social uses of assisted reproductive technologies in Iran and its regulatory framework are based on the analysis of contemporary Shia legal thought on assisted reproduction and my multi-sited-ethnographic fieldwork conducted since 2005 for my master's and doctoral dissertation on the use of assisted reproductive technologies in Iran, in the cities of Tehran, Yazd and Qom, from an anthropological perspective, including legal (*hoquqi*), ethical (*akhlaqi*) and jurisprudential (*fiqhi*) aspects and social dynamics. This study included more than 200 interviews and discussions with Iran's fertility and IVF specialists, geneticists, embryologists, biologists, gynaecologist, nurses, lab workers, medical consultants, religious authorities, legal experts, social workers, infertile couples undergoing infertility treatment using donor eggs, donor embryo, donor sperm and surrogacy as well as people who donated gametes, embryos or acted as surrogates.

Law of Embryo Donation to Infertile Couples

In 2000, a provisional act was presented to the Iranian Parliament (*majlis*) titled "Embryo Donation to Infertile Couples" which consequently resulted in the ratification of the bill on 20 July 2003. As for all regulations approved by the parliament in Iran, this was sent to the Guardian Council to decide whether such laws were based on Islamic principles. Shortly after its approval by the parliament on 30 July 2003, the Guardian Council endorsed a legislative Act governing embryo donation, and the law became fully operative in 2005. According to this law and its bylaw (approved in 2005), embryo donation is permitted in Iran under certain conditions. It must take place in specialised and authorised centres for infertility treatment. Donor couples must be legally married and be in a proper state of physical and mental health. The donation must be voluntary and free of charge. The recipients must be infertile married couples and Iranians who have previously submitted their mutual request to the Civil Court; last but not least, their religion must be the same as the religion of the donor couple.[3] In this law, embryo refers to the egg fertilised outside the uterus and should be obtained from legally married couples within five days from the fertilisation procedure. The donated embryo can be used either fresh or frozen.[4]

In all the infertility clinics I have visited, infertility treatments using embryo donation were offered to overcome mostly male infertility. Once embryo donation becomes the only remaining option for an infertile couple to have a child, there are two alternative ways offered by the clinics: either the couple can wait for an anonymous donation from another married couple which will take place through the clinic and may take six months to two years, or the infertile couple will be asked if they could find their own embryo donor, which leads to resorting to the recipient's own relatives for

[3] S. H. Safai and A. Emami, *A Concise Family Law*, in Persian (Tehran: Mizan Publication, 2007), pp. 332-333.

[4] Majlis Research Centre. <http://rc.majlis.ir/fa/law/show/125235> (August 2012).

embryo donation, especially among siblings.[5] The Law on Embryo Donation has restricted embryo donation and reception to married Iranian couples, without linking this to a prohibition of embryo donation among kin groups. For example, in an interview with the head of the Embryo Transfer Commission of one of the infertility clinics in Tehran, I asked about embryo donation among close relatives. He explained:

> In the law pertaining to embryo donation to infertile couples, it is not indicated whether an embryo donation is allowed or not given the existence of a degree of kinship. From the *fuqaha's* (religious authorities) point of view, there is no constraint on embryo donation to relatives. On this account, those who would like to donate embryos can be selected among close relatives of the recipient. Currently, those who come to us for embryo donation are the embryo recipient's sisters, brothers, cousins or other close relatives.[6]

Furthermore, according to Article 3 of this law,[7] the duties and responsibilities of the married couples receiving the embryo and the resulting child would be the same as those of real parents and children in custody, education, alimony, and respect. Regarding inheritance the article is silent. Here it should be noted that the majority of Shiite authorities allow embryo donation as legitimate from the viewpoint of Islamic law, although, according to most of them, the true parents of the child (*pedar va madar-e hokmi*) are the providers of the egg and sperm, and not the recipients of the embryo (infertile parents). In other words, in the case of embryo donation, normatively, the true parents of the child are the donors of the embryo and they inherit from each other as parents and children.[8] But the social

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[5] Shirin Garmaroudi, "Sibling Intimacy in the Age of Assisted Reproduction: An Ethnography of New Reproductive Technologies in Iran" (Master's thesis, Institute of Social Anthropology, University of Berne, 2008). In this study I have argued that the practice of assisted reproductive technologies in Iranian society seems to strengthen the already privileged sibling relationship or enhance the same-sex or opposite-sex forms of sibling intimacy, which I consider as the elementary structure of Iranian kinship. However, further analysis of this essential point is not possible in this short paper.

[6] Author's interview, October 2005, Tehran.

[7] Jahangir Mansur, *Qawanin wa moqararat-e marbut be khanewadeh* (Tehran: Doran, 2005), p. 172.

[8] In the case of surrogacy and embryo transfer, a few Shia authorities consider a reciprocal inheritance between the child and the woman who gives birth to the child as well (Garmaroudi Naef, „Gestational Surrogacy," pp. 168-69).

implication of this Shia conception of kinship appears to be different. My ethnography shows that neither embryo donors nor intended couples describe embryo donation in this way. In praxis, even Shia jurisprudence itself offers flexibility and solutions to support infertile couples seeking treatment. For example, in a symposium on confidentiality in infertility treatment, held in 2009 in Tehran, Merghati, an Islamic scholar and expert in *fiqh* (Islamic jurisprudence) states: "I am one of the supporters of confidentiality in infertility treatment. In our country, favouring non-confidentiality will face us with numerous problems that arise due to the culture and sharia (religious legal) regulations and we'll be unable to find a solution for them."[9] He elaborates further: "If we reveal the information, it is possible that the egg and sperm donor claims inheritance from the child. This will lead to setbacks in issues pertaining to inheritance."[10] Similarly, at the same symposium the majority of experts argued for confidentiality as a present-time principle in infertility treatment in Iran. For example, Ghorbani, a psychologist claims: "I was among those who were advocates of honesty and telling the truth to people involved. Even psychological books state that the child is entitled to know about the process of being born and raised. But we have to make a distinction here. My one-year experience of working at the Avicenna Centre [a well-known reproductive biotechnology research centre in Iran] made me incline toward the fact that our society values confidentiality more."[11] Milanifar, a lawyer, emphasizes the need of creating a culture (*farhang-sazi*) in this regard in order to make disclosure in infertility treatment fit into Iranian culture and believes that it will take a while to see this happening. "Currently, confidentiality is of outmost importance to both donors and recipients due to various reasons. It may change in the future. But considering the present conditions, they ask for confidentiality."[12] In the

[9] *Symposium: Confidentiality in Infertility Treatment, A Right to Know Biological Parents, Sex Selection*, in Persian (Tehran: Avicenna Research Centre, 2009), p. 18.

[10] *Ibid.*, p. 19.

[11] *Ibid.*, p. 28.

[12] *Ibid.*, p. 30.

meantime, some argue about "the right to know one's biological parents"[13] or as suggested by Rasekh, a leading Jurist (*hoquqdan*) in this field, "the right to know the genetic roots or history."[14] At the same time, Iranian legislation has shown considerable support for this approach. According to Article 10 of the bylaw of the Law of Embryo Donation, donor and recipient information must be kept confidential and only accessible by competent authorities under special legal conditions.[15]

I should add here that this regulation is very similar to regulations concerning adoption in Iran. Adoption is not recognized in Islamic law, and the Iranian Civil Code (ICC) in compliance with Islamic law does not acknowledge adoption. But, in 1974, a law concerning the protection of children without guardian was ratified in Iran, which is similar to adoption.[16] According to Article 11 of this Law, the responsibilities of the adopting couple and the adopted child are the same as real parents and their children in terms of custody, education, alimony and respect; the child shall bear the name of the adoptive parent (in Article 14); but this adoption does not include inheritance rights (in Article 2).[17]

But what factors influenced the passage of such a progressive, albeit not revolutionary legislation? Now, let me explore some cultural, juridical and traditional values that underlie the legislative process. I start with religious influences: *Fatwas* and opinions of Shia religious authorities were the most obvious basis and played a prominent role in the enactment of the Embryo Donation Law as has been addressed by scholars who have worked on

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[13] *Ibid.*, p. 20.

[14] *Ibid.*, p. 23.

[15] *Ibid.*, p. 4.

[16] S. H. Safai and A. Emami, *Family Law*, pp. 277-285.

[17] Almost all infertile couples I met during my research prefer embryo donation and IVF to adoption, and many of them have negative attitudes towards adoption; and some of them turn to their siblings of the same or opposite-sex, or close relatives to proceed with embryo donation. Informal adoption of one's sibling's child has been practised in Iran, and my ethnography shows the transformation of this kind of adoption into the formal practice of embryo transfer among close relatives: the foundational structure, however, remains the same.

assisted reproductive technologies in Iran.[18] Of course, I believe that the role of jurists (*hoquqdanan*) – whether from secular or religious backgrounds – and their juridical and philosophical interpretation of *fatwas* are too overt to neglect. However, there is no monolithic, centralised and authoritative Shia approach to new reproductive technologies. Rather, Shia scholars' responses to the appropriate uses of these technologies have been very complex and controversial. What is remarkable is the extreme conceptual and pragmatic flexibility of the majority of Shia *fuqaha* in issuing *fatwas* allowing the use of these technologies. However, one should know that most of these *fatwas* have been issued in response to questions posed by the in vitro fertilisation (IVF) physicians, infertile couples and donors, policy-makers or others who are dealing with bioethical issues. These *fatwas* are then often used as the basis for regulations in the IVF clinics and legislative actions by parliament.[19]

Adultery, Incest and the Moral Status of the Embryo

Shia flexibility regarding the use of these technologies rests on some basic principles: most Shia authorities do not regard assisted reproduction involving a third party as analogous to adultery and incest, since it does not involve the physical act of sexual intercourse. The essential principle that emerges is that in the Shia perspective, as I have argued elsewhere,[20] the definition of the act of adultery and incest does not depend on the contact and transfer of bodily sexual fluids. It depends (rather) on the illegitimate physical act that happens through illicit sexual intercourse and not on the act of conception itself, that is, on physical contact rather than mixing of

[18] See Marcia Inhorn and Soraya Tremayne, eds., *Islam and Assisted Reproductive Technologies: Sunni and Shia Perspectives*, (New York: Berghahn Books, 2012), pp. 100-217; and Soraya Tremayne "Law, Ethics, and Donor Technologies in Shia Iran" in *Assisting Reproduction, Testing Genes: Global Encounters with New Biotechnologies*, eds. Marcia C. Inhorn and Daphna Birenbaum-Carmeli, (Oxford: Berghahn Books, 2009), pp. 144-163.

[19] See, e.g., Kiarash Aramesh, "Iran's Experience on Religious Bioethics: an Overview," *Asian Bioethics Review* 1, no. 4 (2009): 318-328.

[20] Shirin Garmaroudi Naef, "Gestational Surrogacy in Iran: Uterine Kinship in Shia Thought and Practice," in *Islam and Assisted Reproductive Technologies: Sunni and Shia Perspectives*, eds. Marcia C. Inhorn and Soraya Tremayne, (New York: Berghahn Books, 2012), pp. 157-193.

reproductive substances. Here, stress is laid on the juridical meaning ascribed to bodily substances and not on the biogenetic principles of relatedness. This only serves to emphasise the social and legal constructions of relatedness rather than its biological definition through ties of substance in the Euro-American context. Furthermore, a clear Shia distinction can be made here between the act of placing sperm directly into the female's uterus, which according to the majority of religious scholars is not allowed, and the act of implanting an embryo into the womb of a woman – whether a surrogate or intended mother–, for which there is clearly religious moral permissibility. The in vitro embryo here is the result of a legal union, and not the result of an illicit or impure sexual act. Thus, the use of gestational surrogacy and embryo transfer for married couples unable to produce a child is, according to the majority of scholars, permissible.[21] The Iranian debate does not link the morality of embryo donation and research to the debate around abortion, rather to the matrimonial union and the legal meaning ascribed to the reproductive male and female substance, and kinship relations. However, the Iranian view regarding the moral status of the embryo is also grounded in Shia tradition on the idea of "gradual respect" that does not recognise a human embryo as a fully developed person. Iran's current Penal Code considers the six stages of development for the human embryo (in Article 487).[22] Although abortion taking place during any of these stages is considered a criminal act and calls for punishment, only after ensoulment killing the embryo is considered a murder; however, it does not call for equal retaliation (*qisas*); it requires blood money (*diya*) to be paid in full. In other words, the embryo has a sui generis nature from current legal

[21] Although a minority of Shia authorities authorise the insemination of the woman's egg with the donor's sperm in a lab dish, and then implantation of the fertilised egg into the woman's uterus. As a result of this permissibility, sperm donation is practiced in some clinics in Iran (Garmaroudi Naef, "Gestational Surrogacy", pp. 164-66). Also, all clinics I visited offered infertility treatment using donated eggs; only the regulation of each clinic was different.

[22] Which include: 1) *nutfa* (mixed semen) residing in uterus, 2) *'alagha* or clotted blood, 3) *mudgha* or blood clot that has turned into tissue, 4) a fetus during the stage of bone formation, 5) a fetus whose bones and flesh growth has been completed but still lacks soul, and 6) an ensouled fetus. Law Study. <http://lawstudy.ir/> (September 2012).

viewpoints in Iran and personhood comes into existence if born alive, and not at the time of conception.[23]

The Act of Sexual Intercourse and Conception

Another relevant subject is related to the relation between sexual intercourse and conception. In Persian cultural tradition and in Shia law, the separation of the act of sexual intercourse from the process of conception is of utmost importance. I quote here from an interview that I conducted with one of the respected and high-ranking seminary clerics in Qom:

> Sexual intercourse (*ham bastar shodan*, literally "sharing the same bed" in Persian) between husband and wife is one of the regular ways to make children. Artificial insemination is another new way, cloning (*shabih-sazi*) could be also another way. Thus, the act of fertilising the wife's ovum outside the body with the husband's sperm and then transferring the fertilised egg into the wife's or another woman's uterus or even into an artificial uterus in order to conceive a child has the same legal implication as sharing the same bed on which legal intercourse takes place between a woman and her husband.[24]

Almost all informants I have interviewed referred to this distinction between reproduction and sexual intercourse. Iranian understanding of conception and birth is thereby more than a sexual or biological process, but a cultural achievement, influenced mainly by juridical moral concerns, particularly with regard to the purity (*paki*) of the act of conception and birth, and the legitimacy (*mashru'iat*) of kinship relations (*nasab*). Let me also quote from an interview with a surrogate mother:

> It is a God-loving deed. I have been a surrogate mother once, you have no idea how happy they were [to have a child] especially the wife … God is pleased with both of us … we haven't done anything wrong. It is not like I have slept with her husband … I carried her baby just like my own in my belly … I will do it in a heartbeat … I enjoy child-bearing, I don't feel any pain … I love babies.[25]

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[23] *Medical, Legal, Islamic Jurisprudential, Ethical-Philosophical, Social and Psychological Aspects of Abortion* (Tehran: Avesina Research Center and Samt Publications, 2007).

[24] Author's interview with Ayatollah Mohammad Mo'men, 13 October 2006, Qom.

[25] Author's interview with a surrogate mother, 32 years old, housewife.

There are also other sociological factors such as the importance of the family in Iranian culture, or even political factors such as the passing of the law on embryo donation in the sixth parliament, also known as the reform parliament, or Iran's love affair with technological advances in general,[26] which cannot be discussed in such a short paper.

The Legislation: From the Question of *Nasab* (Filiation) to the Law of Embryo Donation

Let me now turn to the legislative aspect of the subject: how did the process of this legislation emerge, which institutions were involved, and how is this law working?

In 1947, a bachelor's thesis on the legal aspect of artificial insemination was written for the first time in Iran. In 1966, Mehdi Shahidi, one of the most distinguished Iranian jurists (*hoquqdan*) published an article about human artificial insemination. In his article, he addressed the legal determinations of filiation (*nasab*) in the context of sperm donor insemination. Aspects of illegitimate filiation and legitimate filiation in the case of artificial insemination were the main topics, which he discussed in his article. A few years later in 1970, the question of filiation resulting from artificial insemination was examined once again by Asadollah Emami through a comparison of the Civil Law of France and Iran.[27] Finally, in 1988 with the foundation of the first Research and Clinical Centre for Infertility at Shahid Sadoughi Medical Sciences and Health Services University in Yazd, as well as the establishment of the first IVF centre in Iran, under the supervision of Dr. Aflatounian – the father of IVF in Iran – and the gradual expansion of

[26] See, e.g., on debates on the regulation of the human embryonic stem cell research in Iran, Mansooreh Saniei, "Human Embryonic Stem Cell Research in Iran: The Significance of the Islamic Context," in *Islam and Assisted Reproductive Technologies: Sunni and Shia Perspectives*, eds. Marcia C. Inhorn and Soraya Tremayne, (New York: Berghahn Books, 2012), pp. 194-217.

[27] M. R. Rezaniya Mo'allem, Medical Reproduction from the View of Jurisprudence and Law, in Persian (Qom: Busatn-e ketab, 2005).

new methods of infertility treatments, the centre attracted an elite of scholars who undertook more research and publishing. In 1990, the first IVF baby in Iran was born at this centre. Three years after the successful delivery of the first intracytoplasmic sperm injection (ICSI) baby in the world, the first ICSI baby was born in this centre in 1995. In 1991, the Royan Research Centre was established in Tehran as a public clinic for infertility treatment (*royan* in Persian means "embryo"; it is derived from the Persian word *ruidan*, which means "to grow"). The Late Dr. Saeid Kazemi Ashtiani, who was the founder and director of the Institute, managed to collaborate closely with Islamic religious authorities since the establishment of the Institute. In 1998, the Ministry of Health, Treatment and Medical Education accredited the centre for developing reproductive medicine and stem cell research. Royan Research Centre has managed to record achievements such as the first IVF birth in Tehran (1993), the second ICSI birth in Iran (1995), the first frozen embryo birth (1996) and the first PGD childbirth in Iran (2004). According to the Royan Institute's clinical report, 60 couples out of 3384 new admissions in 2004 were from foreign countries including Australia, Azerbaijan, Saudi Arabia, Pakistan, Oman, United Arab Emirates, Canada, Iraq, Afghanistan, USA and Germany.[28] Today, the Royan Institute for Reproductive Biomedicine, Stem Cell Biology and Technology is known as one of the main stem cell research institutes in the Middle East.

Certainly, the rapidly growing number of research centres in Iran and new medical approaches addressing infertility as well as the increasing number of infertile couples seeking proper treatment created a ground for debates on the jurisprudential and legal aspects of the social uses of new reproductive technologies in order to pave the way for constituting a proper law. In 1999, the Avicenna Research Institute – another well-known reproductive biotechnology research centre in Iran – in cooperation with the Faculty of Law and Political Sciences of Tehran University presented the jurisprudential and legal aspects of embryo donation for the first time in a

[28] Bulletin of General Information of Royan Institute, 2005.

symposium called "Jurisprudential and Legal Issues Concerning Embryo Donation." According to Dr. Akhondi, director of the Avicenna Research Institute, the religious deliberations by Islamic legal scholars (*fuqaha*) at this symposium played an important role in presenting a provision on embryo donation to the parliament and in the parliament's decision to approve the bill for embryo donation.[29] As mentioned above, the law was finally ratified in 2003.

Along the same lines, the following symposiums on various fields of reproduction and infertility have been organised by the Avicenna Research Institute in association with several universities in Tehran: Gamete and Embryo Donation in Infertility Treatment in March 2006, the National Congress on AIDS in November 2006, the Interdisciplinary Seminar on Surrogacy in October 2007, and Fertility Preservation in January 2010. I attended the National Congress on AIDS in the course of my fieldwork in Tehran. One of the most interesting subjects discussed in this symposium was in regard to patients with HIV/AIDS who wanted to have a healthy child through IVF. In October 2007, I attended a two-day interdisciplinary seminar on surrogacy organised by the Avicenna Research Institute in association with several universities in Tehran. The conference focused on issues related to surrogacy from a multidisciplinary perspective. It also played a key role in presenting a legitimate solution for the practice of surrogacy in infertility clinics in Iran. In discussing the legal framework for gestational surrogacy, for instance, participating jurists in the conference offered a bill to issue a birth certificate for a child's legal parents and not for the woman who delivers the child. The need to establish social support systems, insurance coverage for infertility treatment, fertility preservation, confidentiality and disclosure in infertility treatment, ethical and legal aspects of sex selection and PGD were other subjects that have been put to

[29] Personal communication, November 2006, Tehran.

debate following further seminars and expert meetings where legislative proposals have surfaced along with theoretical discussions.[30]

As of the writing of this paper, no particular law concerning surrogacy has been passed by the Parliament and the proposed bill is under evaluation. In the absence of a codified law, it is possible to seek advice from authentic *fatwas* and legitimate Islamic resources (Article 167 of Constitution) as well as the law for embryo donation and other general laws to resolve disputes concerning surrogacy. Moreover, the clinics where such alternative treatments are offered have their own internal policies, which include mutual consent between the infertile couple and the surrogate women and her husband if she is married. These regulations, however, do not prohibit paying the surrogate; the intended mother is recognised as the child's mother, and the birth certificate is issued under the intended mother's name and her husband, and is not delivered to the surrogate women.

To conclude, this was just a brief account of the birth of the embryo donation law and surrogacy in Iran. But the last point I would like to stress here is that based on my long-standing research, I believe that the birth of this law was organic. It has been born out of practice and has been developed from the ground up and within the structure of society and not from the top down by authoritarian power. To support this argument let me quote from an interview with the director of an infertility and IVF clinic in Tehran in response to my question about surrogacy and its legislative process in Iran:

> When the baby is born (through surrogacy), the physician issues the birth certificate under the mother's name (intended mother). This way it (surrogacy birth) becomes legal … I mean this is how it's done right now. Just like the embryo donation [law] which was passed in 2003, but the procedure was being carried out since 1999. It was happening for four years and in the end the Sixth Parliament decided that what is being done and experts believe in is practically legitimate and they made it legal. At the moment, surrogacy is taking place in our clinic and many other clinics. Even sperm donation is done in other clinics. What I

[30] See, e.g., Seminar and Congress, Avicenna Research Institute. <http://www.avicenna.ac.ir/index.php/en/ari.> (September 2012).

> am trying to say is that these are the issues for which legalisation needs to be expedited.[31]

Acknowledgements

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Genetic Counselling in Tunisia: The Daily Practice

Habiba Bouhamed-Chaabouni, Tunis[1]

Introduction: Cultural and Social Environment

Tunisia is a Muslim Arab country situated on the North-African Mediterranean coast. The population of Tunisia is about 10.5 million with two million inhabiting the capital, Tunis. Modern Tunisians are the descendants of indigenous Berbers and of people from various civilizations that have invaded, occupied, migrated to, and been absorbed into the population over the centuries. Nearly all Tunisians, 98% of the population, are Muslim. Arabic is the official language; however, a mix of local Tunisian dialect and French is most commonly used (National Statistics Institute of Tunisia, 2004). The mean marriage age is about 25.9 years for females and 32.1 years for males. The population growth rate is about 0.99% with a birth rate of 15.5 births/1,000 population. Life expectancy at birth is 74.89 years.

The mean family size is 1.75 children and the consanguinity rate is 32%. In Tunisia, education is mandatory; thus, 98% of children go to school and literacy in the total population is estimated at 74.3%. Contraception is

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encouraged and pregnancy termination for medical reasons is allowed (Chaabouni et al., 2001; National Statistics Institute of Tunisia, 2004).

Establishment of medical genetic facilities

Medical genetic facilities were established in the early 1980s. When I started in 1980 to develop genetic counselling facilities, I had two main objectives:

To inform parents of patients affected by birth defects, disabled children, and those with different congenital disorders that, even though we are unable to recover their childrens' health, we could help them by preventing the recurrence of such situations. Establishing the right diagnosis will lead to better patient management and avoid suffering for patients and parents.
To convince colleagues, medical students, health professionals and policy makers that a new chapter be added to medical practice. This chapter is called medical genetics.

Medical genetics facilities started in Tunisia in 1980 as a regular activity with limited resources. These activities were dispersed over different departments. In 1993 the department of "congenital and hereditary disorders at Charles Nicolle hospital Tunis" was created, giving health professionals the opportunity to offer medical genetic services in good conditions.

Today medical genetic facilities are in place in different departments throughout the country: Tunis, Sousse, Sfax and Bizerte.

Genetic Medical Activities

Referring to the figure illustrating the department (fig.1), the facilities available include clinical and laboratory services. Physicians, mostly specialists or general practitioners, midwives and other health professionals refer the patients to the department. In a few cases it could be at a patient's request. The reasons for referral are multiple: clinical diagnosis, laboratory investigation, genetic counselling and risk evaluation and prenatal diagnosis.

In practice the main activities in the department are genetic counselling and genome investigations for diagnostic evaluation.

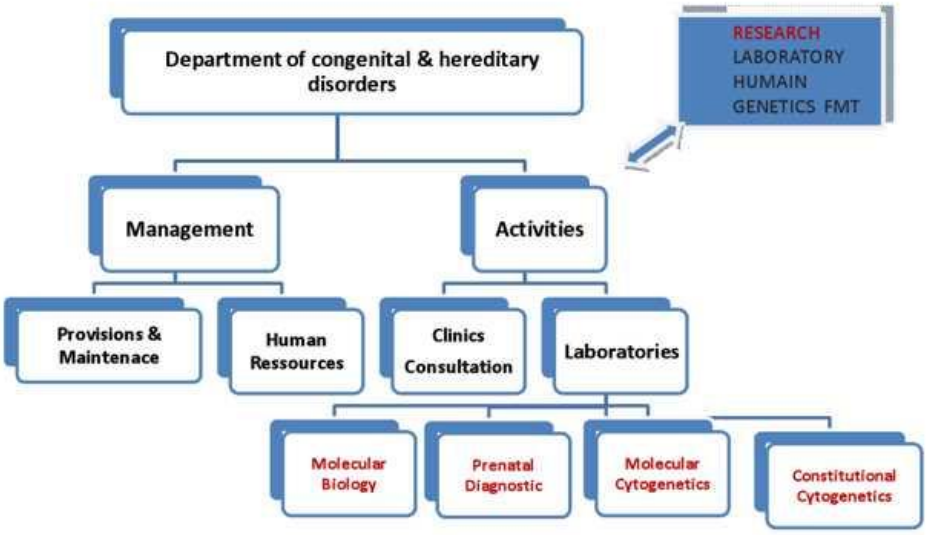

Fig.1: Infrastructure of the department

Overview of medical genetic facilities and daily practice in the department.

More than 8000 patients/families receive medical genetic services every year in the department of which 3200 are coming for the first time.

A medical file is created for every patient/family referred to the department for the first time; it includes the personal and family history, the family pedigree and medical and social data. All patients carrying birth defects or any morphological or developmental anomalies undergo a clinical examination and a description of their features.

Based on the reasons for referral, a genomic investigation is performed using cytogenetic, molecular cytogenetic and DNA analyses.

A large number of genetic tests are fully carried out inside the department's units. Here we assure more than 4000 tests annually, and the results are transmitted and presented to the patient or tutor by the geneticist.

There is a good relationship between all staff members and coordinated action between the different work units for all activities in the department as shown in figure 2.

Genetic counselling is provided respecting ethical rules and particularly confidentiality and autonomy. Our aim is to give the right and complete information about recurrence risks, the course of the disease, foetus status, adult carrier status, the genetic causative defect and whether or not the disease is leading to physical and/or mental disability.

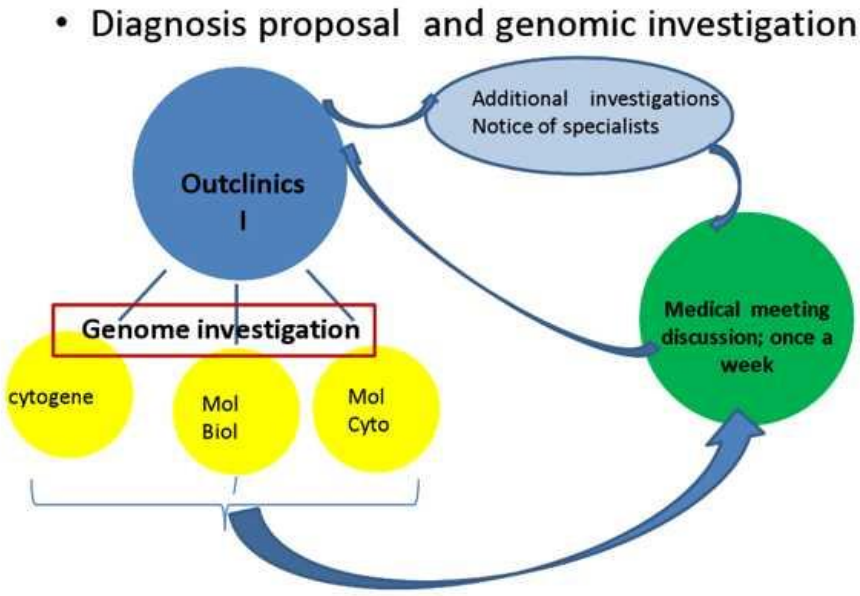

Fig.2: Coordinated action between different work units

Diagnosis proposal and genomic investigation

We usually take precautions before announcing the result to the patient or family. However, difficulties may arise in some cases because of the complexity of the medical problem or poor psychological preparation of the patient. We will give some examples for illustration purposes.

In CASE 1, there is a young adult lady referred for cytogenetic analysis to investigate primary amenorrhea. She has a normal female phenotype appearance, except tall height, and she has planned her wedding to take place in a couple of weeks. Karyotype (46,XY) interpretation revealed a male genotype. In that case the medical geneticist's mission was difficult. The information was given after a long conversation; her mother who was a good support for her accompanied the patient. The patient asked many questions related to medical, ethical, social and religious aspects, but the physician could not give answers for all questions.

CASE 2 is a classic situation: announcing to young parents that a newborn is presenting Down syndrome.

Parents are disappointed that the child they expected and imagined is different.

Cytogenetic confirmation of the diagnosis is the second piece of bad news, the parents still hope that the clinical diagnosis is reversed by a normal karyotype.

One parent has a balanced translocation, meaning that they carry the risk of having children with chromosome anomalies such as trisomy and/or stillbirth; it is the third piece of bad news

CASE 3 is the situation where the geneticist has to deliver a prenatal diagnosis result confirming the foetus to be affected. Even if a high risk was previously predicted for the foetus, the parents are still highly affected in almost all cases. Professional psychological support is mandatory in order to help parents to manage the crisis.

In all cases information must be given, but how, when and to whom is the daily challenge of a medical geneticist. Usually, before taking samples, the patient or guardian receives information related to the genetic test, which part of the genome the test explores, how long it will take and what the different possible results are. Therefore, the final announcement of the result will be less stressful even if it is an abnormal one.

In some cases we refer the patient to the psychologist, especially in case of reversed sexual chromosomes. For adults the test results are transmitted to the patient himself, for minors we give the information to parents and for foetuses we ask to meet both parents in case the foetus is affected. It happens that some patients prefer to be accompanied by a family member.

Do people ask for genetic counselling in Tunisia?

We studied the attitude of 742 couples from different socio-economic levels and who had a risk of affected children. We followed them over two years after providing them genetic counselling. The results showed that 11% never came back to the department because they did not need to; 14% did not come again and we have no valuable information about them; and 25% did not consider genetic counselling as a pertinent medical service. The remaining percentage of 50% has followed the advice that we had offered, thus proving their interest and their acceptance of this medical service (fig.3).

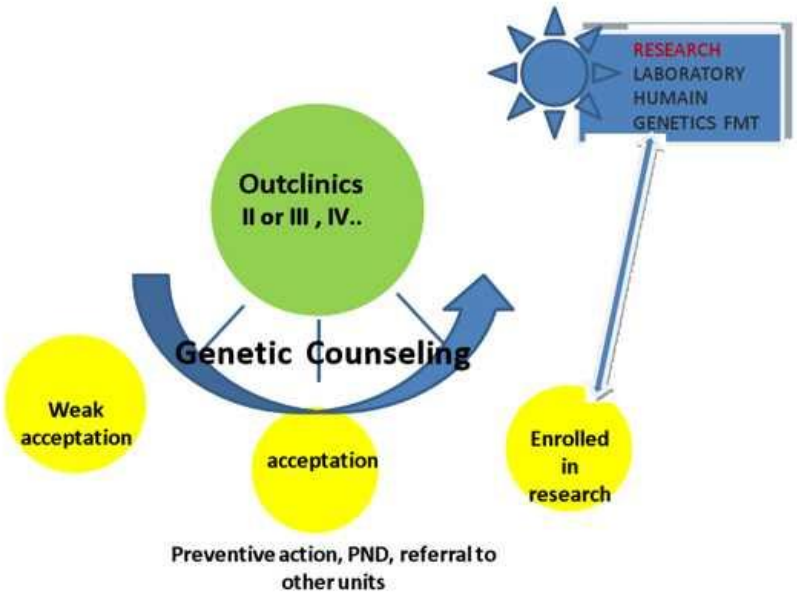

Fig.3: Preventive action, PND, referral to other units

Conclusion

In spite of communication difficulties with patients and families carrying genetic diseases genetic counselling remains an efficient medical service for the prevention of severe disorders that helps patients and parents to get the best care.

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Cosmetic Surgery in Arab Muslim Society: History and Representation

Sofiane Bouhdiba, Tunis[1]

Introduction

The 21st century poses many ethno-medical and ethical challenges in the world. In the Arab world, in particular, an intensive debate is addressing the global prospects offered by plastic surgery.

This sociological study examines the history of the representations of the body and ageing reversal in the Arab societies, focusing on the perceptions of cosmetic surgery in an Islamic environment.

What is the position of Islam concerning beautification and cosmetic surgery? Is there a consensus on it? Why is plastic surgery so successful in Lebanon and Tunisia? How can we explain the boom of cosmetic surgery in conservative Arab Muslim countries, such as Saudi Arabia? These are some of the questions to which I will try to find answers.

The research is organized into three sections. The first one exposes the traditional position of Islam regarding the body and ageing reversal, through the examination of the Quran and the *hadith* (see below). The second part

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examines the boom of cosmetic surgery in the modern Arab world. The last part discusses the determinants of the success of cosmetic surgery in the Arab Muslim world.

The traditional position of Islam regarding the body and ageing reversal

To examine the traditional position of Islam regarding cosmetic surgery, there are two main sources: the Quran and the *hadith*, which is a corpus of sayings of the Prophet Muhammad, some of them being apocryphal.

The Quran

Of course, in the seventh century, when Islam was born, cosmetic surgery did not exist, nor did surgery. But we can find in the Quran some elements that give us a picture of the traditional Islamic vision of beautifying procedures.

Islam encourages believers to be beautiful. In fact, the Quran states "*Who forbade the ornaments of Allah (Zinat Allah), which He has created for His servants, and also good nourishment? Say. they are destined to those who have faith and exclusively to them on the day of resurrection.*"[2]

Al Zamakhchari and Al Alousi, commenting on the word *zina* in this verse, came to the conclusion that it could refer to clothes, jewellery, but also to any means used to beautify.[3] Al Razi had the same comment on this verse, adding that any means used to beautify is licit, unless it is specifically forbidden.[4]

In addition to this position favourable to beautification, Islam considers that any Muslim has the obligation to care for his health. Many verses remind Muslims that they must protect themselves: "Allah does not want to

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[2] Surat *El Aaraf*, verse 32.

[3] Al Zamakhchari, *Al Kachaf*,volume 2, p. 101 and Al Alousi, *Rouh Al Maani*, volume 8, p. 111.

[4] Al Razi, *Tafsir Kabir*, volume 14, p. 63.

place you in difficulty,"[5] or "And Allah has not laid upon you in religion any hardship,"[6] for instance.

In this regard, any medical act, such as surgery performed to improve one's health or remove a defect, is allowed. Removing a painful bubo for example, is licit. So too, removing a scar from the face is licit when it causes psychological pain, such as through mockery or humiliation.

To the contrary, if the surgery act aims at attaining a higher degree of beauty and increasing one's attractiveness, it is considered as changing the creation of Allah. The Quran states in this regard: "Indeed I (Satan) will mislead them, and surely I will arouse in them false desires; and certainly I will order them to slit the ears of cattle,[7] and indeed I will order them to change the nature created by Allah..."[8]

Based on this verse, the same surgical act could be interpreted in two different ways. For example, if a woman wishes to remove fat from her legs in order to beautify herself, it is considered as an attempt to change the divine nature. But if the same act aims at reducing weight and relieving the skeleton, it aims at reducing harm, and therefore the same act could be accepted.

The advice of the physician is then important in the interpretation of the surgical act. In the same way, changing the nose just to make it more beautiful is not the same as changing a harmed nose disfiguring the whole face. The line between what is just ugly and what is monstrous is sometimes difficult to draw, but it is important, as it makes the difference between what is *halal* and what is *haram*.

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[5] Surat *Al Maida*, verse 6.

[6] Surat *Al Hajj*, verse 78.

[7] Ancient pagan tradition.

[8] Surat *Ennissa*, verse 119.

The *hadith*

A well known *hadith* reported by Muslim states that "Allah is beautiful and likes beauty". Based on this *hadith*, trying to improve one's appearance is appreciated, if it is done within the framework of glorifying the beauty generously granted by Allah. But if this attempt is made out of vanity, then it is illicit.[9]

Another *hadith* reported by Al Tirmidhi reports the first plastic surgery act in Islam. Malik Ibn Arfajah Ibn Asad had his nose chopped off during the battle of Al Kulaab. He asked the Prophet Muhammad if he could make a nose out of silver. The Prophet allowed him to do so. However, the silver nose started to rust and the nasal orbit became putrid. So he asked the permission to make a false nose out of gold. The Prophet allowed him to do so.[10] This *hadith* shows that it is licit to act in order to keep a minimum of beauty. It shows also that, for legitimate purposes, it is permissible to use silver and gold.

Imam Al Bukhari states that the Prophet Muhammad said: "Allah curses those ladies who practice tattooing (*wachimat*) and those who get themselves tattooed (*mostawchimet*), and those ladies who remove the hair from their faces (*namiset* and *moutanammiset*) and those who make artificial spaces between their teeth (*moutafallijet*) in order to look more beautiful whereby they change Allah's creation."

Imam Al Nawawi said: "The woman who tattoos is one who uses a needle or similar implement to prick the skin of the hand, wrist, lips or other part of a woman's body until she draws blood, then she puts dye into the wound. It is *haram* to do this or to have it done by choice. Similarly, plucking or removing hair from the face is also *haram*, whether one does it or asks someone else to do it for one, unless a woman has a beard or moustache, in

[9] Ibn Hajar, *Fath El Bari*, Volume 10, p. 260.

[10] Al Tirmidhi, 1770; Abu Dawood, 4232; Al Nasaai, 5161.

which case it is not *haram* to remove it. Widening the gap between the teeth is done by filing between the incisors.

This is done by old women to give the appearance of youth and make the teeth look beautiful, because this attractive gap between the teeth is characteristic of young girls. When a woman gets old, her teeth get big and look ugly, so she may file them to make them look more attractive and give the impression that she is younger.

"It is *haram* to do this or have it done by another, because of this *hadith*, and because it involves changing what Allah has created, and is a form of deception and falsehood. Widening the gap between the teeth is something that is done to make a person look beautiful, which indicates that something is *haram* when it is done in the pursuit of beauty, but if it were done as a form of treatment because of some problem or deformity of the teeth, then there is nothing wrong with it. And Allah knows best."[11]

Thus, medical and surgical acts made to remove defaults of the body caused by genetics, sickness or accident are considered as licit by Islam. But when the same act aims at making a person looking more attractive, then it is *haram*, as it is only ruled by human vanity, and changes the creation of Allah. There is another issue that may increase the negative vision of cosmetic surgery in the Islamic tradition: the fact that these medical acts involve sometimes the injection of materials extracted from alcohol, animals (and especially pigs) or aborted foetuses.

But despite this negative representation of any kind of acts changing the body except for legitimate purposes, we observe today a great success of cosmetic surgery in the Arab world, which is in majority Muslim.

[11] Al Nawawi, Commentary on Sahih Muslim, 13/107.

Cosmetic surgery in the modern Arab World

Modern Arab society is witnessing a boom in demand for cosmetic surgery. In fact, there is an incredible increase in the demand for plastic surgery services in most Arab countries. We know that cosmetic surgery became very popular in some countries, as in Lebanon[12] and more recently in Tunisia. In these countries, during the past decade a large number of private plastic-surgery clinics were built offering mainly laser treatments, liposuction and breast augmentations for women, and hair implants and nose changing for men.

But what is less known is that even in countries known to be conservative, such as Saudi Arabia, plastic surgery is booming among women who cover up from head to toe. Such behaviour caused clerics to contend with new questions about the intersection of beauty and faith. The main question is: does Islam allow for cosmetic surgery, such as nose jobs, breast implants or liposuction?

To find an answer to this delicate question, clergymen and plastic surgeons met many times in Riyadh and other cities in the Gulf region, to discuss whether cosmetic surgery acts do violate the Islamic tenet against tampering with Allah's creation or not.

To date, I have not found a clear, final verdict. In fact, the debate is still ongoing between plastic surgeons and clerics. Surgeons argue that they act *halal* (in a licit way) when they increase the size of unusually small breasts, fix features that are causing a person grief or reverse damage from an accident. On the other hand, clerics are not convinced that undergoing an unsafe procedure or changing the shape of a "perfect nose" just to resemble an artist could be considered licit.

[12] Lebanon is considered as the Brazil of the Middle East.

If we look at the statistics published by the International Society of Aesthetic Plastic Surgery (ISAPS),[13] we can see that Saudi Arabia ranks 23 in the world, with 225 resident plastic surgeons, which represents 0.7% of the total number of plastic surgeons in the world. With 141,012 plastic procedures, it ranks 25 in the world (2009) on this count.

If we compare the number of plastic surgery procedures to the number of inhabitants, we find four Arab countries in the top 25: Lebanon (85 procedures per 100,000 inhabitants, ranking 4 in the world), United Arab Emirates (30/100,000 inhabitants, ranking 20), Jordan (27/100,000 inhabitants, ranking 21) and Saudi Arabia (2/100,000 inhabitants, ranking 31).

If we look at the Saudi Arabian data in detail, we observe that the main cosmetic surgical procedures are the following: lipoplasty (23%), rhinoplasty (21%), blepharoplasty (eyelid surgery) (12%) and breast augmentation (9.5%).

It is interesting at this stage to examine the determinants that are behind this boom of cosmetic surgery in the modern Arab world. There are two main determinants behind such a success: pull factors and push factors.

Pull factors

The pull factors are those determining an increase in the demand for plastic surgery. Such factors express a high demand for cosmetic surgery.

Bodily competition: The desire of being better than the other is human. In the case of men, competition is a natural behaviour, consisting in possessing a better car, a larger house or a branded shirt. In the case of women, competition is more centred on one's appearance, and especially the face and the body. Looking younger than other women is sometimes essential, or

[13] International Society of Aesthetic Plastic Surgery (ISAPS), *International Survey on Aesthetic/Cosmetic Procedures*, Switzerland, 2010.

having a slimmer body. Such behaviour is quite natural, and has nothing to do with ethnicity, social rank, nationality or religion.[14]

Even in the most conservative societies, where women are publically veiled, such competition exists. When they are unveiled and meet with other women in private, Saudi Arabian women have the opportunity to show their transformed bodies to other women. As is the case with branded garments, surgical acts are an occasion for demonstrating superiority to others. Travels to the Occident are also occasions for exposing transformed bodies.

Globalisation: As in other parts of the world, the demand for plastic surgery in the Arab countries is increased by globalisation and in particular by Internet and television programs. Everybody can see the breasts of famous gorgeous actresses on TV and many girls may be influenced and want to have the same. If a procedure is done on a famous person, it becomes iconic everywhere, even if it does not respond to the local canons of beauty.[15]

Drop in prices: Due to international and local competition and the increasing number of plastic surgeons, there has been a drop in the prices of cosmetic surgery procedures. As a result, plastic surgery is no longer considered to be a matter exclusively reserved for stars. Breast augmentation, even if it is still not accessible to everyone, is no longer a dream reserved to richer people. But some acts have become very popular and cheap, like using lasers to remove hair for example. Removing hair from both legs will cost around 500 Tunisian Dinars (250€) in any Tunisian clinic.[16]

Push factors

In addition to these pull factors, there are some push determinants that reflect a better organization of plastic surgery institutions.

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[14] Kanaan Ahmed, La chirurgie esthétique, in *Acts of the conference on medical ethics* (Paris, 2002).

[15] Jerslen Anne, "The Mediated Body: Cosmetic Surgery in Television Drama, Reality Television and Fashion Photography," *Nordicom Review* 27, no. 2 (2006): 133-151.

[16] We have asked prices from a dozen clinics in Tunis, Sfax and Sousse.

Organisation of the industry: The number of Arab plastic surgeons is rising. Most of them have studied in France (for Maghrebian students) or in the United States or the United Kingdom (for Gulf region students). After having achieved their degrees and returned home, these young physicians spend a couple of years in training and then offer their services. In general, they have considerable financial means, and when grouping together they are able to set up small or medium sized clinics specialized in cosmetic surgery.

Medical tourism: Some Arab countries have developed a medical tourism industry. Tunisia for instance, has today become the second destination for medical tourism in Africa, right behind South Africa. Medical tourism is a major source of foreign currency income in Tunisia, and one of the largest employers after the state administration (government positions).

Plastic surgery is a major component of this industry. The price for most medical procedures is between 40% and 60% lower than in Western countries, and as most of the Arab plastic surgeons were trained in Europe or America, they meet Western standards and speak the requisite languages (English and French in particular).

A breast implantation performed in Tunis, for instance, is about half the price of what it costs in France. A nose job, that would cost between 5000$ and 7000$ in the United States or Europe, costs only 2000$ in Lebanon. But price is not the only reason. Undergoing plastic surgery in Tunis or Beirut is much more discrete than doing it in the United States or France.

In Tunisia, the number of foreign visitors having combined medical services and a convalescence stay in one of the numerous tourist institutions has more than tripled over the last years. It increased from 50,000 tourists in 2004 to more than 150,000 tourists[17] in 2010, just before collapsing after the Jasmine revolution.

In 2007, the total amount of exported medical services reached 320 Million Tunisian Dinars (around 170 Million €), while it was 134 Million

[17] Annual Report 2011, Tunisian Union for Industry, Commerce and Craft Industry.

Tunisian Dinars (around 70 Million €) in 2003. The ambition of the Tunisian government was to turn the country into a hub for medical tourism by 2016. These plans were changed by the Arab spring.

Around 40% of the turnover of Tunisian private clinics is generated by export, which is evidence of the high quality of their medical services, and has nothing to do with what is provided by the public health care system.

The average expense per patient is around 4000€ per week, while it is only 300€ per week for an ordinary tourist. This profitable business has attracted foreign investment to the health sector. Some tour operators and travel agencies have specialised in the organisation of plastic surgery trips to Tunisia. The best known are EstetiKa Tour, Cosmetica Travel and Tourism and Health in Tunisia.

It is therefore difficult for a country, even if it is conservative and keen on upholding the value of Islam, to close the door to such practices, which are foreign currency earners, especially in times of economic crisis.

Conclusion

This study shows that there is a negative perception of cosmetic surgery in the Islamic tradition, if we except some exceptional cases. But what is more interesting to note is that despite this negative vision, there has been a boom in plastic surgery in most Arab countries, even in the most conservative ones.

In order to continue developing plastic surgery in the Arab world, and to match the rising needs of men and women, there is a need to be in accordance with Islamic precepts. We would therefore recommend the setting up of a Pan-Arab ethical framework, where all Arab countries would be able to exchange views on the various aspects of the profession, including the religious ones.

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The Current Clinical Practice of Organ Transplantation in Malaysia

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Introduction

Over the past three decades, organ transplantation in Malaysia has made a slow but steady progress despite various constraints. Ever since the first kidney transplant was performed in 1975, which was followed by the first deceased organ donation the subsequent year, the number of deceased organ and tissue donations in Malaysia has been few and far between. This is despite the fact that the country is seeing an increasing trend in the prevalence of end-stage kidney failure.

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The relatively high costs of organ procurement, in addition to performing the actual transplant, have been cited as a frequent obstacle for increasing the transplantation rate. The Malaysian government has been supportive and has heavily subsidised the cost of performing transplants. It is still an important priority to the Ministry to focus more on primary, secondary and tertiary prevention of disease. However, it has been acknowledged that more resources are now needed to meet the sequelae of chronic diseases including end-stage organ failure.

Malaysia is a very diverse multi-cultural society. Islam being the most widely practiced religion in the country, Muslims account for approximately 61.4% of the population, or around 17 million people (Department of Statistic 2010). Article 3 of the Federal Constitution of Malaysia establishes Islam as the "religion of the Federation". However, sharia law is applicable only to Muslims, and is restricted to family law and religious observances. It has been a common practice that the formulation and implementation of policies in Malaysia ensures that Islamic opinions are taken into account, whilst recognising the importance of diversity.

In Malaysia, transplantation started as early as the 1970s with corneal transplants, whereas the first solid organ, i.e. kidney, transplant was performed at Kuala Lumpur Hospital in 1975. The nation's first liver transplant was performed in 1995. Subsequently, there have been major improvements in graft and patient survival rates, as well as the establishment of a well-equipped liver and kidney transplant centre in Selayang Hospital, to complement the heart and lung transplant centre at the National Heart Institute, which had performed the country's first heart transplant in 1997 and first lung transplant in 2005.

Current Status and Needs

Based on the figures of the annual Report of the National Transplant Registry, by the end of 2009, the total cumulative organ transplants that have

been performed in Malaysia were 1,336 kidney transplants, 107 liver transplants, 20 heart transplants, 3 lung transplants and 1 heart and lung transplant, as well as 237 heart valve transplants. However, there is still a vast amount of patients waiting for a transplant in the country. As of the end of May 2012, there were more than 15,300 patients awaiting a kidney transplant, 17 patients awaiting a liver transplant, 3 patients awaiting a heart transplant, 2 patients waiting for lung transplant and 2 patients awaiting a combined heart and lung transplant.

In the light of these desparate numbers, the Ministry of Health has formulated measures to address the disparity between the demand for transplants and the shortage of deceased organ donation. One of the most significant measures is to formulate policies and to strengthen strategic implementation as discussed in the next section.

National Policy and Legislation

Malaysia's National Organ, Tissue and Cell Transplantation Policy was formulated in 2007 to spearhead the development of transplantation services in the country. Apart from that, the aim of the policy is to provide guidance towards attaining the highest professional and ethical standards in the field of transplantation. Furthermore, it also addresses the needs for adequate resources and properly trained and credentialed personnel, as well as the organisational structure required to operate a national programme effectively and efficiently. As a main result of that policy, the Ministry has outlined five main thrusts that have become strategic focus areas in implementing the policy:

Strengthening the organisational structure;
Improving the organ and tissue donation rate;
Consolidating the existing transplantation services;
Consolidating the clinical support services;
Strengthening the legal and ethical framework.

The policy also addresses issues related to organ commercialisation and trafficking. The nation is also equipped with the Human Tissues Act (HTA) 1974 as part of the national regulation on transplantation activities. The HTA implies an "opt-in law", which means that consent for deceased organ donation can be obtained either from the deceased's expressed wish made through a donor pledger card and/or from the next of kin. Presently, the HTA is in the process of being amended to ensure it remains applicable to current situations.[3] Furthermore, the Ministry of Health, through the National Transplantation Council, is also studying the requirements for additional comprehensive legislation to complement the Human Tissues Act and address further issues regarding the practice of and activities related to transplantation.

Moreover, the Ministry of Health is fully committed to developing the National Transplantation Programme in line with the WHO Guiding Principles on Human Organ Transplantation, taking into consideration related issues and concerns, as well as identifying any resources required, as well as any shortfalls. In 2010, the World Health Assembly urged all Member Countries including Malaysia to enforce internal policies and legislation pertaining to transplantation activities in accordance with those Guiding Principles. This sustained commitment will ensure that the programme continues to develop comprehensively and efficiently, comparable to those established in developed countries.

Islamic Rulings

In general, Malaysia has one Islamic authority body in each of its 14 states, in addition to a National Fatwa Committee. Each state Islamic authority body, headed by the State *mufti*, is capable of producing its own *fatwas*. Each *mufti* also sits on the National Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia.

[3] For a detailed description of the new law see Zaki Morad's paper in this volume.

Legally these *fatwas* issued by the National Fatwa Committee do not have the force of law and only apply to Muslims in Malaysia. Technically, *fatwas* are not binding as long as they are not enacted by the state authorities, because the Federal Constitution stipulates that matters pertaining to Islamic duties are under the jurisdiction of the state. However, in terms of Islamic law, *fatwas* are already a law to be observed. All decisions issued by the National Fatwa Committee will be channelled to the State Fatwa Authority to be gazetted.

Consequently, the National Fatwa on organ donation and transplantation has been gazetted since June 1970. The *fatwa* states that eye and heart transplantation is permissible and it is representative for all organs. The *fatwa* also prohibits the commercialisation of organ donation. Subsequently, there have been National *fatwas* on the separation of brain dead from other patients (1989, although not discussed in connection with organ donation[4]), tissue transplant in 1995, and stem cell treatment in 2005.

Clinical Practice

The emphasis in Malaysia is still on organ donation from deceased donors, instead of living donors, considering the high number of deaths in circumstances that could lead to organ donations, in particular road traffic accidents. Clinically, deceased organ donation is obtained only from brain dead donors, which are also known as heart-beating organ donors. The country has yet to practice non-heart beating organ donation, also known as organ donation after cardiac death.

The Malaysian Society of Neurosciences with the formal support of the Ministry of Health produced the first Consensus Statement on Brain Death in 1993, which was consulted and discussed with the *Majlis Fatwa*. The

[4] The *fatwa* on separation at brain death stated that it is acceptable to separate brain dead patients from other patients at intensive care units. The *fatwa* does not define brain death nor is brain death associated with the practice of organ donation in this particular *fatwa*.

Consensus Statement on Brain Death from 2003 provides details on procedures for the diagnosis of brain death, including assessment, pre-conditions, exclusions and pitfalls, as well as special procedures for diagnosing brain death in children. This Consensus acts as a guideline for clinicians to perform brain death certification, which is a mandatory requirement for organ donation.

Another mandatory requirement is that in cases under the Criminal Procedure Code for post-mortem or coronal inquest, prior written consent from the magistrate has to be obtained before proceeding with the donation of organs or tissues.

Considering the urgency and critical situation of the deceased organ donation process, the role of the National Transplantation Procurement Management Unit, as well as the regional and local hospital units, is of utmost importance. Proper and precise coordination by these units will ensure that the donation process will be successful.

In the rare event that a donated organ or tissues are not used, the next of kin of the donor shall be duly informed. In fact, the next of kin are always consulted during the initial donation consent process on the method of disposal of any unused organs and/or tissues. It is also mandatory to obtain consent from the next of kin if the organs and/or tissues are to be used for purposes other than transplant, such as research or education purposes.

All organs and tissues donated for transplantation are regarded as national resources and are to be allocated in a fair, equitable and transparent manner based on agreed criteria.[5] There is no directed deceased organ donation, where a donor or next of kin can determine who shall receive the

[5] The clinical criteria to be put on the waiting list are set by the respective recipient teams, i.e. the Transplant Committee from the Institut Jantung Negara (National Heart Institute) and the Institut Perubatan Respiratori (Institute for Respiratory Medicine) for heart and lung transplants. The hepatopancreatobiliary committee of Selayang Hospital sets criteria for the liver waiting list and the e-MOSS committee for kidneys. The clinical criteria for kidneys have been formally published in the Renal Replacement Therapy Clinical Practice Guidelines, but for the other organs, although they have a protocol, it is within their local setting, as we have only a single recipient team for the heart, lung and liver tranplants. Hence, the selection of potential recipients is done by the respective committees.

organs and/or tissues. Allocation via the National Transplantation Waiting List, which is a list of patients eligible to receive organs and/or tissues, is based completely on an agreed set of clinical criteria, regardless of gender, race, religion or employment/financial status. There is a separate list for each organ and tissue transplantation service, and all potential transplantation recipients shall be listed in the National Transplantation Waiting List.

Centres that perform transplantations are predominantly public (government) hospitals, or government-linked or -funded centres. However, the surgeons and physicians involved are not full-time transplant-only surgeons or physicians. The transplantation cost and hospital fees are mostly fully subsidised by the Ministry of Health, including the subsequent treatment, such as follow up investigations and immunosuppressant medication. This is, of course, on condition that the transplantation or follow up management is carried out in a government hospital or centre.

Living Organ Donation

Organs from living donors provide an alternative source of transplantable organs. In Malaysia, 80% of kidneys for transplantation are sourced from living donors. Some patients even resort to seeking organs from living donors in other countries.

It is possible that the practice of unrelated living organ donation may result in lower socioeconomic groups having a higher risk of being manipulated to become living organ donors, which goes against the principles of human dignity and human rights. Therefore in Malaysia, living organ donation, involving part of the liver or a kidney, is primarily confined to those who are genetically, legally or emotionally related to their recipients.

The Ministry of Health has taken proactive measures to prevent any possible commercial transaction in exchange for an organ, especially in a transplantation involving an unrelated living donor. These measures include the establishment of the Unrelated Transplant Approval Committee (UTAC),

to serve as a focus group to preserve the ethical principles of living organ donations and to safeguard the interest of prospective living donors.

The National Transplantation Policy also mandates that no organ and/or tissue shall be removed from the body of a living minor for the purpose of transplantation, except in the case of regenerative tissues. Furthermore, prisoners awaiting execution and mentally disabled persons shall also be prohibited from undergoing a living organ donation.

All this is seen as part of the efforts undertaken that correspond to Malaysia being one of the signatories to the Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008).

Stem Cell Transplantation

The practice of haematopoietic stem cell transplantation in Malaysia is done in accordance with the National Standards for Stem Cell Transplantation. However, no embryonic stem cell therapy is permitted in the country.

Registries

There are several main clinical registries involved with organ donation and transplantation, which are mainly funded by professional or academic bodies, but which also receive considerable funding from the Ministry of Health. These include the Organ and Tissue Donor Pledgers Database, the National Transplant Registry (NTR) and the Malaysian Stem Cell Registry (MSCR).

Conclusions

In conclusion, Malaysia is moving towards providing comprehensive and efficient services that are comparable with those found in the best transplantation programmes in the world. The country is confident that by

doing so, it will be able to continue to meet the needs of patients while safeguarding the rights of donors, taking care not to contravene ethical practices, as well as both cultural and religious beliefs.

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Social Health Protection in the Arab World

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When the Arab countries became independent after World War II, they started from a very low level of socio-economic development. Health, education and income indicators were worse than in any other part of the world. Infant mortality, for example, was 186 per 1000 live births, and much of the region was affected by epidemics and malnutrition.

After some years, however, revolutionary regimes came to power in many Arab countries that legitimised their rule by committing themselves to implement social reforms and a comprehensive transformation of society. Their supporters, mainly the lower middle classes, expected the new regimes to intensify their efforts for poor and disadvantaged social groups in all social sectors, including health care policy. In the beginning, the scope for such action was rather limited because of budgetary constraints. However, this changed during the 1970s, when all Arab countries benefited considerably from the rise in global energy prices, because some of the income generated by the oil exporting countries was passed on to the rest of the Arab world through the remittances of migrant workers employed in the

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oil sectors of the Gulf States, as well as through budget transfers from the Gulf States to other Arab countries.

The regimes in power in the Arab world used these windfall profits as a foundation for an implicit social contract with their citizens: They provided increasingly generous social benefits to all population groups in return for the recognition of their authority and giving up political participation. Such benefits included the creation of an immense number of jobs for university graduates in public administration, significantly increased public spending on education and health, and the provision of public housing and social protection as well as food and energy subsidies.

The results were impressive: most Arab countries made considerable progress in human development. Average life expectancy rose from 45 to 64 years between 1960 and 1999, and the literacy rate increased from 31% to 69%. Globally, Tunisia, Jordan and Syria were among the top ten performers in human development. In Tunisia, for example, infant mortality fell from 20% to 4%.[2]

The situation worsened during the 1980s and 1990s, when global energy prices plummeted, oil exporting countries froze their budget transfers to other countries in the region, and some countries had to embark on fiscal stabilisation and adjustment programmes because they were almost bankrupt. Among others, these programmes included a significant reduction of funding for health care and education. As a result, the Arab world's progress in health and education achievements slowed down. Since the mid 1990s, it once again lags behind the progress made by most other world regions. Public health spending in Egypt, for example, halved from about 5% of GDP in the mid-1980s to 2.5% in 1998 (Loewe 2000a, 95). In 2007, the average public health expenditure of the Arab countries was 280 US-Dollar (USD) in purchasing power parities (PPP), which was only a third of the

[2] Own calculations based on UNDP (2012).

amount spent by other countries in the world with the same average per-capita income.[3]

The generous social health protection systems that the Arab governments had built up in the 1960s and 1970s still exist today. But they lack the necessary funds to function in the way they did twenty years ago.

Even more serious than the funding shortage is the fact that available funds are inefficiently distributed in the existing health care and insurance systems, and in a socially unjust manner among the population. This is partly due to (i) a decay of both the supply side and the funding side of the health care sector into multiple co-existing parallel structures that lack coherence and are available only to a certain segment of the population, which thus perpetuates and intensifies the existing stratification of society, and (ii) the priority given by the health care system, in terms of spending, to care for the urban middle classes, rather than to comprehensive primary health care for the poorer and rural population.

Systems of social protection against health risks

The Arab States apply very different strategies in order to protect their citizens from the financial consequences of health risks and pregnancy. An essential distinction must be made between countries with non-contributory (tax-funded) national health care systems (Beveridge model) and countries with contributory social health insurance systems (Bismarck model):

- Most Arab countries have a public health care system, funded primarily by the Treasury. In Oman, Sudan, Syria and Yemen, it is open free of charge to all residents; in Bahrain, Qatar, Kuwait, Saudi Arabia and the UAE, however, it is only to citizens. In Jordan and Iraq only civil servants and military personnel are treated for free, all

[3] Own calculations based on UNDP (2012).

others must pay user fees, although these are heavily subsidised and thus not very high.[4]

- Tunisia and the West Bank have social health insurance systems that operate their own health care systems, and do not just pay the bills of independent doctors and hospitals – as is the case for example in Germany. These health care systems are primarily financed from the premiums of health insurance systems, but also receive subsidies from the Treasury. They are freely available only to members of the health insurance system; the uninsured have to pay modest user fees.[5]
- Algeria and Libya have both: a public health care system and a health care system that is owned by the respective social health insurance organisation. The public health care system pays for its costs mainly through tax revenues, but it is co-financed by the social health insurance organisation from the premiums collected from their members, even though both the socially insured and the uninsured are entitled to free medical treatment. The difference between the two countries is that in Algeria the insured may go to private health care providers as well, and they are then reimbursed for 80% of the cost.[6]
- Egypt also has both a public health care system and a social health insurance scheme. The public scheme is run by the Ministry of Health and financed by the treasury from general taxes. It is open to all residents free of charge. Meanwhile, the health insurance scheme runs its own system of health care, which is intended for members[7] only – but not their relatives. It is financed from the social insurance

[4] For the Gulf States see Ash (1995) and Mansour and Al-Osimy (1993). For Jordan see Loewe et al. (2001). For Syria see Al-Khatib (2006). For Yemen see Fairbank (2006).

[5] For Tunisia see Chaabane (2002, Annex II) and Kechrid (2002, 2). For Gaza and the West Bank see Loewe (1999).

[6] For Algeria see El-Idrisse, Miloud and Belgacem (2008). For Libya see Loewe (1999).

[7] Members include contributors (employees in public and formal private sector companies) as well as pupils and students (who do not have to pay contributions).

contributions, but also gets funds from the Treasury and has a much higher standard than the public system.[8]

- Finally, Lebanon also has a social health insurance scheme in addition to the public health care system. Both the insured and the uninsured can refer to the public health care system, but also to private providers. However, in both cases, they have to pay significant user fees.[9]
- Morocco and Mauritania have public health care systems, which are only partly financed by the treasury from general tax income and therefore charge relatively high user fees. Morocco has started to build up a social health insurance, which takes over the fees paid for health care services. It also provides households in need with identification cards that entitle them to free use of the public health care system.[10]

In addition to these schemes, most Arab countries have a number of separate tax-funded health care systems that are only available to parts of the population. Often, they cover the members of the armed forces and intelligence services (e.g. in Jordan) or the employees of certain ministries (e.g. in Egypt). These health care systems have their own special, very well equipped hospitals. Thus, they represent the counterpart to the tax-funded pension systems for the army and state officials, which privilege a small group of influential people at the expense of all taxpayers (Loewe 2004).

The different strategies for financing health care services in the various Arab countries, of course, also reflect the fact that there are strong intra-regional differences in terms of efficiency, social justice and effectiveness of national health care policy. But there are some emerging trends that are characteristic of the entire Arab world.

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[8] For Egypt see Loewe (2000a, 95-99) and Maeda and El Saharty (2008).

[9] For Lebanon see Nasr (2001, 37) and Rieger (2003, 121-123).

[10] For Morocco see El-Idrisse, Miloud and Belgacem (2008) and Ruger and Kress (2007).

Effectiveness of the systems

The health care policy of the Arab countries only yields modest success. According to a number of health indicators, the individual countries come off even worse than countries in other regions of the world with a similar per-capita income. Between 1965 and 1985, the health status of the residents in the Arab world has improved steadily, but this progress has always lagged behind economic growth. Since 1985, it has even slowed down in many countries (World Bank 2002).

A good single indicator of the efficiency of health care systems is the disability-adjusted life expectancy at birth (DALE). It estimates the number of years that an average newborn is expected to live in good health (i.e. the total life expectancy minus a certain percentage of years during which the health is limited by that percentage). For several years now, the DALE is calculated by the World Health Organisation (WHO) in order to compare countries and to measure progress in achieving public health care goals (WHO 2000).

Also, in terms of DALE, the Arab countries are in the mid-range among developing countries. The residents of the UAE have the highest DALE (65 years), Mauritania has the lowest (41 years). Most Arab countries are between 59 and 62 years. The unweighted average is 58, which is only slightly above the average for all developing countries (56 years), but significantly below the values of countries in Eastern Europe and Central Asia (62 years), Latin America and the Caribbean (61 years) as well as East and Southeast Asia (59 years). Only South Asia (53 years) and sub-Saharan Africa (40 years) come off worse.

Between the total life expectancy and the DALE in the Arab world, there is a difference of almost 8 years, which means that average newborns are expected to be in poor health during eight years of their lives. Fewer years are lost in OECD member countries (6 years), in sub-Saharan Africa (7 years)

and in Eastern Europe/Central Asia (also 7 years) due to poor health. However, for Latin America and Asia the numbers are higher.

Social justice of the systems

To what extent a health care system is socially just depends among other things on:

- Whether it has similar positive effects on the health of all population groups, or if some groups clearly benefit more from it than others.
- Whether all income groups contribute equally to the funding, according to their financial capabilities.
- Whether all residents have access to health care in the same way, i.e. whether the medical services provided are available to all *(availability)*, are affordable for all *(affordability)* and are available to all close to their home and work place *(accessibility)*.

For the 2000 World Health Report, WHO has attempted to capture these three aspects in indicators and to assess the health care systems of 191 countries. This investigation is already slightly out of date, but no similarly detailed studies have been carried out since then that would allow one to compare the effects of health care systems of different countries.

Distribution of the effects: Different population groups benefit from the Arab health care systems to very different degrees. Thus, the WHO's 2000 World Health Report also includes an indicator of health equality, according to which the average of the Arab countries only ranked 88th among 174 countries in 1998. The indicator is based on the variance of DALE across different income groups within the population. In 1998, the Gulf States (Positions 51, 52, 56, 59, 66 and 68) and Jordan (Position 78) ranked relatively well for this indicator, while Egypt, Yemen, Sudan and Mauritania (Positions 128, 145, 149 and 151) did particularly badly.

Recent data confirm this trend. Accordingly, in important health indicators Arab countries show a significant divergence between urban and rural populations, between households with high and those of low education, and especially between rich and poor. For example, in 2005, the child mortality rate in Egyptian cities was 3.6%, in rural areas 5.6%. In children of mothers with secondary education it was 3.1%, in children of mothers without primary school education 6.8%. And in the bottom income quintile (7.5%), the child mortality rate was three times higher than in the top income quintile (2.5%). In Morocco for example, the percentage of births attended by trained medical staff in 2005 was 63%, but diverged greatly according to education (between 49 and 94%), between rural and urban areas (40 and 85%) and especially according to income (between 30 and 95%). In 2002, in the top income quintile 93% of all children below the age of two were fully vaccinated, but only 65% in the bottom income quintile (Galal 2003).

Distribution of the financial burden: In terms of how fairly the health care costs are distributed between different groups of the population, there is a large divergence within the Arab world. Poor households always spend a greater proportion of their income on health care than affluent ones (e.g. three times larger in Algeria). Furthermore, households in rural areas spend more than the average for health care (about twice as much as the urban population in both Algeria and Tunisia). In Egypt, the proportion of health care spending of poor households compared to their overall consumption increased from 1.8 to 4.7% in 1981-95, and in Lebanon poorer households even spend up to 20% of their income on health care (World Bank 2002, 60).

For measuring the fairness of financial contribution and financial risk protection, the WHO has also designed an indicator for its 2000 World Health Report. For this, WHO estimated for each country the total amount households in different income groups spend on health care (i.e. in the form of insurance premiums, taxes, fees etc.). The WHO then put these expenses in

relation to the income above the subsistence level and calculated the variance of this ratio over the total population (WHO 2000).

According to this indicator, the Arab world, on average, achieves better results than any other developing region except South Asia. However, there are strong intra-regional differences. Libya, for example is in front at position 12 and the UAE at position 18 in the international ranking. On the other hand, most other Arab countries rank between 40 and 100. Together with Mauritania (Position 138), Sudan (Position 144) and Yemen (Position 121), Morocco and Egypt (sharing Position 111) as well as Syria (Position 138) are doing very badly (WHO 2000, 148).

The reason for the good performance of most Arab countries, according to the fairness of financial contribution and financial risk protection, is that almost all of their residents have access to free or nearly free health care services. In some countries, this access is only limited as certain health care services are not available (availability), too expensive for parts of the population (affordability), not appropriate to their needs and their demand (adequacy) or cannot be utilised by specific population groups as a result of geographic or social barriers (accessibility).

Availability: Availability is only rarely a major problem. In most Arab countries there is both a public and a private system of health care. Combined they now offer almost all objectively necessary health care services. Only a few very specific operations such as certain eye and cancer surgery cannot be carried out in most Arab countries. Only Mauritania, Sudan and Yemen still have significantly underdeveloped health care systems and therefore cannot perform even some of the more common procedures.

Affordability: The affordability of health care services is a problem only for a minority of households in the Arab world. About 90% of the population in the region are entitled to free treatment or greatly reduced fees. This high

percentage can mainly be explained by the fact that in most Arab countries all citizens are at least eligible for tax-funded health care systems.

If one looks at individual countries, a different picture emerges: In Yemen, Morocco and Mauritania only 20%, 25% and about 40% respectively of residents have the opportunity to receive medical care without getting into too much debt. Even in Iraq, Lebanon and the Palestinian Territories relatively high fees are charged for some health care services, which more than half of the population cannot easily afford.

Still, on average, almost half of the total national health care spending of Arab countries is funded by private households. The state on average contributes 51% of the financial burden, and external donors 3%. The financial contribution of the state is especially high in the Gulf States (70-85% of total cost), but is very low in Lebanon (19%) and in Egypt, Yemen and Sudan (each 26-27%). Accordingly, private households fund up to 78% of total health care costs (Lebanon: 78%, Egypt 70%, Tunisia: 68%) (WHO 2008).

Further, the majority of the private contribution to the costs does not come from social health insurance or private insurance companies. On average across the region, they cover only 5.5%/3.6% of national health care expenditures (25%/1% in Algeria, 22%/12% in Lebanon, 0%/15% in Morocco, and 0%/0% in Mauritania and Syria) (WHO 2008).

On average, 35% of total national health care expenditure is financed by spontaneous *out-of-pocket spending*. This includes private medical fees, excess payments and user fees as well as additional payments (tips, bribes etc.). Such extra payments seem to be especially common in Lebanon, where patients not only have to assume between 10% and 25% of the social security charges for medical services in the form of excess payments, but also pay up to 50% of the fee directly to the physician without a receipt. Those who are unwilling to pay this actually illegal extra fee get treated 'by the book'. This can mean that patients wait a long time, that diagnoses are incomplete, that the most promising treatments are withheld or that nothing happens (Rieger

2003, 125). Overall, the out-of-pocket spending of households in Sudan is the highest (61% of all health care costs), followed by Egypt (59%), Yemen (55%), Syria (50%) and Morocco (48%). The lowest is in Saudi Arabia (4%) and Oman (10%) (WHO 2008).

The problem is that, in particular in the Arab middle-income countries, between 1980 and around 2002 the state has gradually withdrawn from funding health care systems. It kept raising fees and cutting back the free services of the public system. At the same time it neglected urgently needed reinvestments and also made cuts in running costs, especially for personnel. As a consequence, medical staff today are poorly trained, badly paid and therefore highly indifferent. Especially rural health clinics lack personnel, because trained doctors, nurses and medical staff are only willing to work in the private sector or at least in urban hospitals that are better funded. Hospitals also lack facilities and cleaning staff. In many hospitals there is a shortage of beds, which results in patients having to wait for a long time for very urgent operations, and the sanitary conditions are often disastrous. Only in recent years have several Arab countries increased their health care policy commitment (UNDP/AFESD 2002, 41; World Bank 2002, 58–60).

Adequacy: Even in countries with tax-funded health care systems, a large number of households sees the need to consult a private physician for treatment in case of illness and pay for it themselves. For poorer households, however, this is out of the question. In many countries private providers only exist in the cities. Rural areas, where the majority of the poor live, have none. In terms of medical care, a three-class society is emerging. The upper class is privately insured and can even travel abroad for treatment. The urban middle classes are insured or consult private doctors for which they pay directly, provided that they can afford it. Only the rural population and the urban poor must, for better or worse, rely on the sub-standard public sector (World Bank 2002, 58–60).

So the question is not only whether health care services are provided that are affordable to households. Rather, it is also important that the services

offered are of reasonable quality. In most Arab middle-income countries this is less and less the case. For example, a 2002 study in Egypt has shown that in state hospitals, even during regular consultation hours, in 14% of cases no staff was available, while it was only 4% in private hospitals. Accordingly, only 84% of patients were content with the level of services in government hospitals, while 98% expressed satisfaction with the private clinics (Galal 2003, Table 3).

Accessibility: Moreover, in some Arab countries the population is unable to take advantage of the health care services offered, because they do not have access to them at reasonable cost. In most Arab countries, the public health care systems are available in much of the rural areas. The criterion for this is that there is at least one health care facility within a radius of two kilometres of the home and workplace of every resident. The only countries where this is not the case for at least 90% of the population are Morocco, Mauritania, Sudan and Yemen. For approximately 80% of all Arab households, primary health care should at least be available, affordable and nearby (Loewe 2010, Table A18).

Efficiency of the systems

However, the Arab health care systems suffer from deficits with regards to their efficiency – both (i) cost efficiency and (ii) demand orientation.

The lack of achievements in public health care policies in Arab countries can be explained to some degree by the fact that their health care systems are underfunded. In 2005, the total national health care spending ranged from 2.2% of GDP (Kuwait) to 10.5% of GDP (Jordan). The unweighted average of total health care spending in all Arab countries was 4.7% of GDP, and thus lower than in all other regions except South Asia, whose average was 4.1% of GDP (WHO 2008).

Conversely, the health care costs per capita are relatively high by international standards. In 2005, the unweighted average was 426 USD per

person per year by purchasing power parities, whereas in sub-Saharan Africa it was only 148 USD and in East Asia/Pacific 338 USD. Only in Latin America and the Caribbean was the average slightly higher (519 USD). The health care costs per person per year by purchasing power parities are especially high in the Gulf States (Qatar at the top: 1283USD). In addition, Tunisia (477 USD), Lebanon (584 USD) and Jordan (649 USD) also spend a relatively large amount per person per year on health, while Yemen, Sudan, Mauritania and Syria (110 USD) spend very little (WHO 2008).

Cost efficiency: The main reason for insufficient health policy achievements, however, is that the available funds are used rather inefficiently. Priorities are not well set when it comes to the allocation of public funds in health policies, which is 'top-heavy' in many ways:

- The administrative machinery of health insurance and health care systems consumes large amounts of financial resources.
- All decisions, including those concerning the purchase of drugs for individual hospitals, are made centrally at the ministries of health, and there as well at the highest level. Even staff are hired by the Ministry.
- Prevention is neglected, in favour of treatment.
- Large amounts of money are available for the development and expansion of clinics and hospitals, while primary health care, particularly in rural areas, suffers from resource constraints. Health centres are often vacant and not used, because they lack even the simplest equipment and drugs. Even mild illnesses are often treated in hospital, because patients have a low opinion of the health centres and go to hospital for their first consultation.
- A large proportion of costs can be attributed to drugs, which are often imported from Europe or North America, even though they could just as well be produced domestically and less expensive generic drugs are available from other developing countries.

- Large sums are provided for new investments, i.e. the construction of health centres and clinics, and the acquisition of modern medical equipment for central hospitals and specialist clinics in the cities. On the other hand, funds are cut when it comes to training and the remuneration of staff, and the maintenance of existing facilities and equipment. The same applies to re-investments.
- Recruiting focuses on physicians, particularly specialists. Nursing and therapeutic or other medical staff are neglected. Moreover, the best physicians are hired by hospitals, while rural health care centres only have insufficiently qualified staff. But it is precisely here that doctors need to be well-educated, because they usually do not have colleagues nearby that they could consult or who could advise them if necessary (Rieger 2003, 134–139; UNDP/AFESD 2002, 42; World Bank 2002, 58–60).

Demand orientation: A health care system is still inefficient, even though its output is produced at low cost, if it is not or insufficiently oriented towards the needs of the population. For example, the reason for this can be that those responsible for the design of the health care system are oriented less towards the requirements, problems and preferences of their own populations than towards the design of health care systems in other, usually more developed countries that, however, function within a completely different framework,.

The 2000 World Health Report also goes into the demand orientation of the 191 health care systems surveyed. To assess whether these systems meet the expectations of their users, the WHO conducted a survey of about 2000 people in each country, who were asked to classify the health care system of their respective country according to seven criteria on a ten point scale. On the one hand, these criteria examined the level of respect that the patient received from the representatives of the systems (respect of dignity, respect of self-determination, discretion concerning personal data); on the other hand, their service orientation (short waits, quality of ancillary services,

social support during the treatment, freedom to choose the provider) was also looked at.

Based on the calculated averages, the WHO presented another ranking of the countries surveyed. This ranking shows that the health care systems of Arab countries vary considerably in their demand orientation. According to this criterion, Qatar (Position 26), Kuwait (Position 29) and UAE (Position 30) rank highly. They are followed by Bahrain, Lebanon, Libya, Saudi Arabia and Syria (between Positions 43 and 69). Oman, Jordan, Algeria, Tunisia, Egypt and Iraq are crowded together in the middle between Positions 83 and 103. And again, Sudan, Mauritania and Yemen are left far behind between Positions 164 and 180 (WHO 2000, 148).

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The Contemporary Press in Iran and Health Related Issues

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In this article I will give a brief overview of the contemporary press in Iran and then explain how delicate issues like health related problems are discussed in Iranian media, concentrating on the example of abortion. I will cover the press inside Iran and abroad and look at different kinds of media like television and radio stations, the print media including newspapers and magazines, the internet and the book market.

Contemporary Press inside Iran

Censorship

The first thing that comes to mind when talking about the press in Iran is censorship. Every article in a newspaper, every book or every TV broadcast must be approved by the Ministry of Culture and Islamic Guidance (*vezarat-e farhang va ershad-e eslami*) before being published or broadcast. There is a long unofficial list of topics you cannot write about. This includes matters which are considered to be against Islamic rules and morality, like alcohol consumption or sexual topics, as well as matters which are considered to compromise the political system. As mentioned, this censorship and its

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categories are unofficial but known, and there is a high percentage of arbitrariness when it comes to judging which texts or programmes will be censored.

The Ministry of Culture and Islamic Guidance is not the only organisation censoring. Within the Iranian society there are different groups and organisations, the so called "pressure groups" (*gorouh-haye feshar*) like Hezbollah, which exercise censorship, often through threats. Sometimes a book, approved by the ministry, is banned from the market after publication because of these pressure groups, whose censorship categories are even more vague than those of the ministry.

There is also an indirect mode of censorship in the Iranian press: for example, no private person or organisation can receive a licence for a TV channel, so all TV channels are state-owned. In the print media indirect censorship is exercised through paper subsidies: print media can buy subsidized and cheaper paper from the state. These subsidies can be cut if the content of the media does not meet the ministry's standards.

It should also be mentioned that there are not only "don'ts" but also "dos" for the media. All media must for example support the state's political line. These dos are also extremely vague and can be interpreted in almost any way.

Television

There are around 10 TV channels broadcasting from Iran. All of them are state-owned. They offer a wide range of programmes, mostly entertainment, news, movies, sports, religious education and some political discussions.

Newspapers

There are a number of daily newspapers in Iran. One reason for this variety is the fact that every political faction or group (there are no typical political parties in Iran) has its own newspaper or a newspaper which represents their

political opinions. For example Keyhan, the most important Iranian newspaper, represents the political line of the religious leader Ayatollah Khamenei and Shargh is the unofficial organ of the reform movement. The same phenomenon can be observed in news agencies: IRNA, the official Iranian state news agency, represents the political views of president Ahmadinejad; ILNA, a semi-governmental news agency, belongs to the group around ex-president Rafsanjani and the news agency FARS represents the revolutionary guards (*sepah-e pasdaran*).

There is no exact and official information about the print run of Iranian newspapers. Keyhan is said to have a daily print run of 200,000, which would make Keyhan the newspaper with the highest print run in Iran. Other newspapers have a far smaller print run.

Political magazines

In the 1980s, 1990s and 2000s there were numerous influential social-political magazines with a strong print run, but all of them were shut down so that currently there are no important and well known political magazines in Iran. Adineh in the 1980s and 1990s and Jamee in the 2000s were the magazines with the highest print runs and with noticeable social influence. Jammee had a print run of 200,000; other magazines had print runs about 20,000 and less.

Book market

The book market is struggling with extremely low print runs, which are declining every year. The average print run of a novel in Iran is 2000-3000. Even best sellers reach only low numbers in the ten thousands.

Internet

The Web is very popular in Iran; there exist a disproportionate number of blogs, giving Iran the name "Blogestan". Almost all state organizations, newspapers and news agencies have their own lively website. Every important religious authority, Mullah or Mujtahed has their own website,

where they provide their believers with religious guidance and information. There is only little information about the exact scope of internet use in Iran. For example a survey from The Broadcasting Board of Governors (BBG) and Gallup among Iranians living in Iran in 2012 showed that 40% of Iranian adults use the Internet on a weekly basis, but does not say which percentage uses the internet only for entertainment purposes.[2]

Press outside Iran

There are over 100 Persian speaking Radio stations and 50 Persian speaking TV channels broadcasting from outside Iran for an Iranian audience. A countless number of Persian Websites – some of them related to TV channels – are based in Europe or the US, also offering information and news for users inside Iran.

Like the media inside Iran, these TV or radio channels and websites do not provide objective independent news. Most of the TV channels are owned or financed by European governments and have their own policy and political message. The most important and influential ones are: BBC Persian, VOA (Voice of America), Radio Israel, Deutsche Welle Persian and Radio Farda. There is no information available about the number of viewers/internet users of these channels/websites. The website BBC Persian is said to have two million clicks a day.

Over the last four years, some entertainment TV channels have appeared which broadcast from Dubai or Los Angeles. It seems that these channels have gained a lot of viewers inside Iran and have meanwhile acquired more viewers than channels that are predominantly focused on information and news like BBC Persian or VOA.

[2] http://www.bbg.gov/wp-content/media/2012/06/BBG-Iran-ppt.pdf.

Where does political discourse take place?

Political discourse and discussions mostly take place in big newspapers, since influential political magazines no longer exist. Although television is the most used media as a source of daily news and political information, it does not play an important role in the political discourse, since TV channels normally only provide the users with political information but not discussions. Election times are an exception. During the presidential campaign in 2009, for example, there were, for the first time, live TV debates between the candidates. This broadcasting was very popular among the population.

One very important aspect of the political discourse is that special and delicate issues are discussed in special circles and ways. But what does that exactly mean?

In Iran there is an unofficial differentiation between the *khavas* (the specials) and the *avam* (the mass, the general). The *khavas* are persons or groups who belong to the political system, who have shown their loyalty to it and believe truly in its political and religious values. These "special ones" can articulate critique, of course within the boundaries and frameworks of the system. Their critique must also be expressed for a special audience; the discussion and discourse must be hold in closed circles, not in the public and not for the *avam*.[3] That does not mean that there are secret meetings in dark rooms in Tehran, where high ranking officials discuss delicate political matters! The discourse about delicate, critical matters still takes place in the public realm, in specialized magazines or conferences that, in theory, offer public access. But although both these specialized magazines and daily newspapers with a strong print run are controlled and censored, a

[3] See also Volker Perthes, *Iran - Eine politische Herausforderung - Die prekäre Balance von Vertrauen und Sicherheit*. 1. Aufl. Frankfurt a.M.: Suhrkamp, 2008, pp. 48-49.

specialized magazine can discuss issues in a far more critical way than an influential daily newspaper.

Health related issues and Islam

Health related issues, as far as they concern Islamic regulations, are a very good example of these special and delicate issues. Topics like abortion, sex change operations, euthanasia, surrogacy or ISCI are not discussed in the media at all. There are no newspaper discussions about the relationship between these issues and Islamic normativity, no TV programme giving information about new religious rulings concerning these topics. But if you look closer and know where to look you can see that these issues are discussed in-depth and in detail. There are specialized magazines and book publications addressing health related issues and Islam, different conferences are held on these matters and there are numerous publications and papers in the *howzeh* (religious colleges) of Qom exploring the religious aspects of health related issues.

Here I should mention some examples. There are two journals about medical ethics: the "Journal of Medical Ethics and History of Medicine" with a small print run of 1000 and the "Journal of Ethics in Science and Technology" with an even smaller print run of 500. The "Ibn-Sina faculty" publishes numerous books with a print run between 500 and 1000 addressing medical ethics and Islam: for example, "Essays on Gamete and Embryo Donation in Infertility Treatment from Medical, Theological, Legal, Ethical, Psychological and Sociological Approaches", "Medical, Legal, Islamic Jurisprudential, Ethical- Philosophical, Social and Psychological Aspects of Abortion" or "Medical, Legal, Islamic Jurisprudential, Ethical-Philosophical,

Social and Psychological Aspects of Surrogacy"[4]. In 2011 alone, there were two main conferences on medical ethics in Iran: "Medical Ethics in the Health System" in Isfahan and "Ethics and New Ways of Curing Infertility" in Jahrom.

Most explored issues are abortion, sex change operations, stem cell research, euthanasia, surrogacy, ART (Assisted Reproductive Technology) and ISCI (Intra-cytoplasmic sperm injection).

In the following I will focus on one of these topics, abortion, and explain how it is being discussed in the journals and publications.

Abortion in Shia *fiqh* (Islamic Jurisprudence)

Similar to Sunni *fiqh*, the main question on abortion and Islam is whether the foetus has a soul or not, meaning whether abortion is murder or not. The majority of Shia scholars agree on the thesis that the soul is "blown" into the foetus after four months and one week. Here they refer to some verses of the Quran and some *hadith*. After the foetus has received its soul, abortion is prohibited under any circumstances, even if the life of the mother should be in danger. Before the soul is transferred into the foetus, abortion can be allowed from an Islamic point of view if one or more of the following conditions are in place: the life of the mother is in danger if the pregnancy continues; the mother will suffer heavily from childbirth and/or will suffer serious and permanent medical damage from childbirth; the child has certain untreatable conditions like Down syndrome. The decision whether or not an abortion can be performed before the soul has been acquired is made not by a religious authority but rather by the responsible medical doctor.

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[4] Various authors. *Essays on Gamete and Embryo Donation in Infertility Treatment: From Medical, Theological, Legal, Ethical, Psychological and Sociological Approaches*. Tehran: 2010; Various authors. *Surrogacy: Medical, Legal, Islamic Jurisprudential, Ethical-Philosophical, Social and Psychological Aspects*. Tehran: 2008; Various authors. *Abortion: Medical, Legal, Islamic Jurisprudential, Ethical-Philosophical, Social and Psychological Aspects*. Tehran: 2009.

In the publications mentioned above different aspects of the abortion procedure and their relation with Islamic theology are discussed. When exactly does the foetus gain a soul? Which theological arguments can be given to find out when the soul is acquired? Which diseases count as a reason for allowing abortion before the soul is acquired and why? Which obligations does the doctor have in these situations?

It is once again important to mention that unlike in western countries there is no great social controversy on abortion in Iranian society. There are no Pro-Choice and Pro-Life movements like in the USA. Iranian society has accepted the conditions related to abortion set by religious authorities or medical doctors. But there is and was no open, controversial or critical discourse on this issue in society. The discourse takes place between the *khavas*, the elite and for a special audience. The public only consumes the results of this discourse but is not an active part of it.

The Role of Diverse Stakeholders in Malaysian Bioethical Discourse

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Introduction

The Agricultural Revolution which resulted in the diffusion of crops from and to different parts of the world took about 500 years to result in a change that was felt at the global level (Watson 1974). The subsequent Industrial Revolution which saw many industrial innovations being introduced and invented took about two centuries to effect changes in the world (Brown 2001). By contrast, the Information Revolution which brought about the Information Age and the Digital Age took only 30 years to effect changes by revolutionising the ways in which information is stored and communication is taking place (Hilbert and López 2011). We are now in the 21st century, and we are seeing rapid advancements made in the field of biotechnology, so much so that this century has been dubbed the Biotechnology Century (Law 2002).

Interestingly, we note that with the aid of the Information Revolution, advancements in biotechnology have become increasingly rapid. The

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convergence of biotechnology and information technology has resulted in a scientific, technological and commercial phalanx which affects many sectors including the agricultural, industrial, food production, pharmaceutical, health, military and other sectors. The speed at which change is effected on all these sectors is tremendous as it can be felt within a few decades instead of many centuries as was previously the case.

Because biotechnology affects many sectors, there are many stakeholders of biotechnology. Since any discussion on biotechnology also entails bioethical discussions, by extension the stakeholders of bioethical discourse are equally varied. In today's reality, bioethics should not be viewed as being exclusively under the domain of science and technology as this important field involves multidisciplinary and transdisciplinary stakeholders. These stakeholders include the government and policy-makers, universities and research institutions, biotechnology companies, and non-governmental organisations and consumer groups. In the case of Malaysia where religion is part and parcel of everyday life, religious scholars and religious organisations must also be included as one of the important stakeholders.

The Stakeholder Concept

One important concept that requires clarification at this stage is the concept of "stakeholder". The "stakeholder" concept originated in the theory of management but has been seized upon by scholars in business ethics. This concept is regarded as one of the most attractive devices in business ethics (Goodpaster 1991). This ingenious concept made it possible for businesses to have obligations to a wide range of parties, moving away from the stockholders to whom corporations were traditionally beholden. (Goodpaster 1991). Therefore, we can define stakeholders as "groups aside from stockholders who also have a stake in a particular endeavour."

The stakeholder theory can actually serve as the meeting point or the middle ground which reconciles on the one hand the forward-thinking

business leaders, and on the other hand public interest groups (for example, consumer groups and environmentalists). This is essentially a shift from the widely held perception that the wealth of stakeholders must be increased, towards the perspective that there are many other parties who are impacted by business decisions, and that these parties must never be ignored.

When it comes to medicine and biotechnology, the concept of "stakeholder" is applied in order to provide policymakers and companies with a lens that allows them to give due attention to the interests of any group or individual affected by a decision or a policy. Ideally in any bioethical discourse, stakeholders are engaged in a process of identifying and understanding multiple and diverse (and often competing and contradictory) political, social, legal, economic, and moral claims of the various parties.

Global Bioethical Discourse

Bioethics began to be discussed with much interest in the 1970's, and was initially directed primarily at discussions relating to medical ethics (Hardwig 2010). The term was first used in a publication in 1970 by Van Rensselaer Potter from Wisconsin University, while André Hellegers of Georgetown University first used the term for an organization, namely the The Joseph and Rose Kennedy Institute for the Study of Human Reproduction and Bioethics (Reich 1994 and 1995).

However, today discussions on bioethics have become wide-ranging because of the many sectors that are involved. These sectors include food production, agriculture, the environment, and cosmetics. It is because of these various sectors that bioethics has many stakeholders, which include (but certainly are not limited to) the government and policymakers, universities and research institutions, biotechnology companies, non-governmental organisations and consumer groups as well as religious bodies. This interdisciplinary and multidisciplinary nature of bioethics stakeholders has been highlighted by various authors such as Cahill (1990),

Campbell (1990), Wind (1990), Callahan (1999), Messikomer et al. (2001), Iltis (2006), and Baker (2007).

Without a doubt, each stakeholder in the bioethical discourse represents the interest of a particular group or viewpoint, even though the degrees of obligation vary. Some stakeholders may have written contractual obligations while others may have fiduciary or trust-based obligations. In other cases, the stakeholder obligation may be in the form of the good neighbour: i.e. non-interference and non-intervention in internal matters, but engaged in reciprocal exchanges.

Bioethical Discourse in Malaysia

With the recent launch of the National Bioethical Council of Malaysia, it is expected that bioethical discourse could be organised in a more coordinated manner spearheaded by this council. The formation of this council was approved by the Government on 9 July 2010.

When it comes to policies, the main players of the bioethical discourse are the relevant ministries and agencies. For example, if the matter falls under the purview of health and medicine, with issues such as organ transplantation, brain death or usage of porcine-based vaccines, then the initiative is spearheaded by the Ministry of Health and its agencies.

Taking the example of the Ministry of Health, when there are bioethical issues to be looked at, the relevant stakeholders are engaged. The issue of organ transplantation is a very good example. Not only medical experts are involved: the other "stakeholders" such as religious bodies are also engaged, either directly or indirectly.

Other ministries have also played similar roles, i.e. engaging the relevant stakeholders before coming out with policies and guidelines. Ministries which are active in the bioethical discourse include the Ministry of Natural

Resources and the Environment, the Ministry of Science, Technology and Innovation, and the Ministry of Agriculture and Agro-Based Industries.

Equally interesting to note is that even research projects at universities involving humans and animals engage various stakeholders. All universities with medical faculties have at least two committees which discuss and deliberate such research projects, namely the scientific/technical committee and the ethics committee.

One public university in Malaysia, namely Universiti Teknologi MARA (UiTM), has even gone one step further. All research projects involving humans and animals (from all faculties) must be approved by the ethics committee on top of having the scientific/technical committee's approval. This is because research involving humans and animals may also involve other faculties outside medicine.

There are two ethics committees established at Universiti Teknologi MARA. The first one is the Research Ethics Committee (REC) which looks at research involving human subjects. The second committee is known as the Committee for Animal Research Ethics (CARE) which looks at research involving animal subjects. What is interesting about these committees is that they also involve members who are non-medical as well as individuals from outside the university to represent the interest of the general public.

Religious bodies also play an active role in bioethical discourse. The Islamic bodies such as the Department of Islamic Development Malaysia (JAKIM), the respective state Islamic departments, the respective state *Mufti* departments, the National Fatwa Committee, and the Institute of Islamic Understanding Malaysia (IKIM) are also actively involved, either as the parties being engaged as stakeholders or initiating discourse on bioethics by getting the relevant stakeholders together.

Since Malaysia is also a multireligious and multicultural country, representatives of other religions are also engaged as stakeholders in bioethical discourse. Again, this can be seen in discussions on matters such as

organ donation, genetic modification of organisms, artificial reproductive techniques, and other pertinent bioethical issues.

Conclusion

The concept of "stakeholder" in bioethical discourse is important in order to ensure that all relevant parties are engaged and have a role to play in discussions related to bioethics. Engagement with various stakeholders will ensure that the interests of all parties are looked after in view of the rapid advancements being made in many fields of biotechnology. At the end of the day, what we want is to derive benefits from the technologies that are available without causing damage or harm.

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The Department of Islamic Development Malaysia (JAKIM) and its Relation to Bioethical Issues

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Introduction

Bioethics derives from a combination of principles, duties and rights, and, to a certain extent, a call to virtue. In Islam, bioethical decision-making is carried out within a framework of values derived from revelation and tradition. It is intimately linked to the broad ethical teachings of the Qur'an and the tradition of the Prophet Muhammad, and thus to the interpretation of Islamic law.

In this way, Islam has the flexibility to respond to new biomedical technologies. Islamic bioethics emphasises prevention and teaches that the patient must be treated with respect and compassion and that the physical, mental and spiritual dimensions of the illness experienced be taken into account.

At the international level, laws have been enacted to govern the progress and development of biotechnology so as to ensure such activity does not transgress ethical and moral codes. Accordingly, under the auspices of UNESCO, the International Bioethics Committee (IBC) was set up in 1993. It is a body of 36 independent experts that follows progress in the life sciences

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and its applications in order to ensure respect for human dignity and freedom. The IBC has been given the mandate to discuss issues pertaining to bioethics and their impact on human life.

This has resulted in the proclamation of the Universal Declaration on the Human Genome and Human Rights, which was adopted unanimously and by acclamation at UNESCO's 29th General Conference on 11 November 1997. The following year, the United Nations General Assembly endorsed the Declaration. Articles 10 and 11 of the Declaration explicitly proscribe any research that is contrary to human rights, fundamental freedom and that which violates human dignity.

UNESCO also objected to the efforts towards human cloning. It is agreed that no research or research applications concerning the human genome, in particular in the fields of biology, genetics and medicine, should prevail over the respect for the human rights, fundamental freedoms and human dignity of individuals or, where applicable, of groups of people. Furthermore, practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted. States and competent international organisations are invited to co-operate in identifying such practices and in taking, at national or international level, the measures necessary to ensure that the principles set out in this Declaration are respected.

In 1990, the Human Fertilisation and Embryology Act 1990 was passed in the United Kingdom. It is an Act to make provision in connection with human embryos and any subsequent development of such embryos, and to prohibit certain practices in connection with embryos and gametes. It created the Human Fertilisation and Embryology Authority, which is in charge of human embryo research, along with monitoring and licensing fertility clinics, in the United Kingdom. It also addresses licensing conditions, a code of practice, and a procedure of approval for issues involving human embryos.

JAKIM: The background

The Malaysian Department of Islamic Development (JAKIM) is the secretariat for the Fatwa Committee of the National Council for Islamic Affairs. In collaboration with the Ministry of Health (MOH) and local universities JAKIM has played an active role in the biotechnological field. JAKIM has drawn conclusions from the Islamic perspective as a guideline to all Muslims in Malaysia.

JAKIM has played a significant role as the governing body of Islamic affairs since the year 1968, when the Council of Malay Rulers decided that there was an imperative need for a regulatory body that could mobilise the development and progress of Muslims in Malaysia, in line with the country's growing status as an Islamic country: Islam was enshrined as the official religion in the Constitution, which accords the Islamic faith primacy over other faiths, which may, however, be freely practised by their adherents. In line with this Islamic development, JAKIM was established by the Malaysian Government to act as the regulatory body governing Islamic affairs.

In terms of development and advancement of Islamic affairs in Malaysia, JAKIM generally plays an important role in three significant areas:

1) Secretariat of the policy planning and regulatory bodies.
2) Secretariat of the administrative bodies.
3) Operational coordination of Islamic affairs.

As an agency responsible for the development of Islamic affairs in Malaysia, one of the central roles carried out by JAKIM is the management of *fatwas*. As all Islamic related matters including that of *fatwa*-making policies fall under the jurisdiction of the Malay Rulers, JAKIM has been vested by the Council of the Malay Rulers with the authority to preside over the National Fatwa Council. The said Council acts as the central authority in formulating religious canons and edicts at the national scale. Up until May 2012, a total of 593 topics has been reviewed by the Fatwa Committee for the determination

of religious rulings on the said topics. They covered various disciplines including religious dogma, doctrinal issues, Sharia Law and Islamic jurisprudence, as well as finance, medicine and pharmaceutical, and biotechnological issues.

JAKIM's research on bioethics

Muslim health care consumers and providers, both those in Muslim majority countries as well as Muslim minority communities, are not immune to the global forces that continuously reshape modern bioethical dilemmas. While many Muslims seek to live according to standards set by the Quran and Sunna (Prophetic Tradition), medically related advice and rulings provided by Islamic scholars, jurists, health care providers, policy makers, and ethicists can at times be overwhelming and even contradictory. This may include issues such as surrogacy, in vitro fertilisation (IVF) and human cloning. This motivation based on ideas of right and wrong is what we call "ethics"; it is a system of principles governing morality and acceptable conduct, while bioethics is the branch of ethics that studies moral values in the biomedical sciences.

Bioethicists are concerned with the ethical questions that arise in the relationships among life sciences, biotechnology, medicine, politics, law, and philosophy. Bioethics also includes the study of the more commonplace questions of values ("the ethics of the ordinary") which arise in primary care and other branches of medicine.

Today's bioethical issues mostly concentrate on human cloning, organ donation, abortion, and stem cell research. The issues of bioethics have always been taken seriously by JAKIM as they involve the lives of especially the Muslim community in Malaysia. They have a great impact on human life and in certain circumstances may even challenge both moral and religious values. JAKIM is aware that any decision made on bioethical issues will also affect the culture and law of the country. For example, permissive rulings on

human cloning will definitely have an adverse effect on human dignity and one's lineage – at least according to the Islamic perspective. It will also contribute to the collapse of the family, the amendments of laws and the entire legal system.

JAKIM's approach to the issues of bioethics is that of detailed critical inspection and analytical research. This was accomplished by setting up the Fatwa Think Tank Committee whose members consist of experts with their own competencies from various disciplines such as theology and divinity, religious dogma, canon law, Islamic jurisprudence and finance, medicine and pharmacy, as well as biotechnology.

The Committee is responsible for identifying contemporary issues faced by Muslims that require religious elucidation and the ruling thereof if any. Moreover, JAKIM also created the forum for intellectual dialogue with scholars, theologians and notable figures from within and outside the country, via a program called Fatwa Intellectual Dialogue, to discuss a particular issue such as bioethical issues before and after a religious edict is made.

In assessing the issues related to biotechnology, the effects and risks of related biotechnology applications will be evaluated and examined from the standpoint of Islamic bioethics by the aforementioned experts so as to ensure that they benefit humanity.

Acknowledgement or recommendation made by the said specialists will then be submitted to the Fatwa Committee of the National Council for Islamic Affairs Malaysia for the formulation of a religious edict. At this stage, a second opinion from experts in related fields will be acquired to obviate any possibility of ambiguity before the final decree is promulgated.

Since the establishment of the Fatwa Committee of the National Council for Islamic Affairs Malaysia in 1970, the bioethical issues that have been assessed by JAKIM and later promulgated by the same Committee include the following:

- Organ transplantation (1970)
- Family planning (1973 and 1977)
- Sperm banks (1981)
- Test tube babies (1983)
- The Norplant implant system in family planning programmes (1990)
- Graft tissues in medical practice (1995)
- Biotechnology in food and drinks (1999)
- Human reproduction and cloning for medical reasons according to the Islamic canon law (2002)
- In vitro fertilisation as an effort to have a baby (2003)
- Therapeutic cloning and stem cell research (2005)
- Stem cell xenotransplantation (2007)
- The Islamic viewpoint on surrogate motherhood (2008)
- Euthanasia/mercy killing (2011)
- Separation of brain death treatment (1989)

The Conference of Malay Rulers, whose regal authority extends to the "deposit" of Islamic faith, has been duly advised by the Fatwa Committee of the National Council for Islamic Affairs Malaysia on the decisions or edicts made pertaining to the issues of bioethics that shall be adopted and implemented accordingly.

Examples of issues and *fatwas* concerning bioethics:

Organ donation

Decision: The 1st *Muzakarah* (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia held on 23-24 June 1970 has discussed heart and eye transplantation. The Committee has decided that eye and heart transplants from a dead person to a living person are permissible in Islam. However, these circumstances must be taken into consideration: The situation is extremely urgent and the life of the recipient depends on the transplant surgery and the surgery is predicted to succeed. In

the case of a heart transplant, the donor should be confirmed dead before the transplant takes place. Precautions must be taken to ensure there is no human killing or human organ trade involved. Permission must be granted by the donors before any transplant in natural death situations, or from the families or next-of-kin of the deceased in the case of accidental death.

Family planning

Decision: The 8th *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 22 November 1973 has discussed the issue of family planning. The Committee has decided that promoting family planning to the public is prohibited. However, in individual cases such a programme is permitted on the basis of accepted excuses.

Decision: The 12th *Muzakarah* (conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 20 February 1977 has discussed the issue of family planning. The Committee has decided that there are three kinds of Family Planning viz: a. Permanent contraception for men and women is forbidden. b. Preventing pregnancy or limiting the number of children is prohibited unless under certain individual circumstances that are permitted by sharia. Family planning for the purpose of health, education and family well being by using any other method than (a) and (b) is permissible.

Sperm banks

Decision: The 1st *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 28-29 January 1981 has discussed the issue of sperm banks. The Committee has decided that: Establishing a sperm bank is *haram* in Islam. If the sperm bank is already in existence, the government should abolish it. In vitro fertilisation of humans is prohibited, but if the sperm was taken from the legal husband

by respected means, it is permitted. The involvement of any specialist doctors or any parties in sperm banks is forbidden.

Test tube babies

Decision: The 5th *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 16-17 November 1982 has discussed the issue of test tube babies. The Committee has decided that: Obtaining a test tube baby from the ovum of a wife and the sperm of her husband that have been brought together using respectable means is valid in Islam. On the other hand, if the gametes were not those of married couples, creating that test tube baby is not permissible. A baby born by the test tube method can be a ward and is entitled to receive inheritance from its rightful family. The respectful method of creating a test tube baby is when the gametes are taken from husband and wife, using methods that are not contradictory to Islam.

Norplant implant system in the national family planning programme

Decision: The 28th *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 29 February 1991 has discussed the Norplant implant system in the national family planning programme. The Committee has decided that the Norplant implant system can be used. The use, however, is subjected to the decision of the 12th Conference held on 20 January 1977, which stipulates that: Permanent sterilisation for both men and women is prohibited. Preventing birth or limiting the number of children is prohibited unless the reason for it is permitted by sharia in individual cases. Family planning because of health, education and family happiness using methods other than (a) and (b) above is permitted.

Use of tissue grafts in medical practice

Decision: The 38th *Muzakarah* (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs in Malaysia held on 21 June 1995 has discussed the use of tissue grafts in medical practice. The Committee has decided that: The use of tissue grafts in medical practice is permissible. The use of tissue grafts is only allowed for medical purposes. Tissue grafts cannot be misused for trading or other purposes.

Food and beverage biotechnology

Decision: The Special *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 12 July 1999 has discussed food and beverage biotechnology. The Committee has decided that: Products, food and beverages produced by using pig DNA biotechnology are contradictory to Islamic law and are forbidden. Using pig DNA biotechnology in products, food and beverage production does not reach the level of *darura* (necessity) as there are still other alternatives available. This *ijtihad* is based on the *usul fiqh* maxim stating that preventing harm is prioritised over gaining benefit.

Human reproduction and cloning for medical purposes from the sharia's point of view

Decision: The 51st *Muzakarah* (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs in Malaysia held on 11 March 2002 has discussed human reproduction and cloning from the sharia's point of view. The Committee has decided that human cloning for whatever reasons is prohibited because it is against the nature of human creation that is decided by God.

In vitro fertilisation as an effort to have a baby

Decision: The 55th *Muzakarah* (Conference) of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 8 April 2003 has discussed in vitro fertilisation as an effort to have a baby. The Committee has decided that transferring a fertilised egg (zygote) into the wife's uterus after the death of the husband or after divorce is forbidden.

Ruling on therapeutic cloning and stem cell research

Decision: The 67th *Muzakarah* (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia held on 22 February 2005 has discussed the ruling on therapeutic cloning and stem cell research. The Committee has decided that: Therapeutic cloning for medical treatment, for instance to create certain cells or to replace a damaged organ, is permissible. The act is permitted provided that the sharia precautions are considered. Using frozen embryos or another embryo obtained during in vitro fertilisation is permissible for research purposes. However, permission must be granted by the married couple undergoing the treatment. The research on the embryo must be done before the embryo reaches the *ʿalaqa* stage (blastocyst).

The ruling on the use of a surrogate mother to have a child

Decision: The 80th *Muzakarah* (Conference) of the Fatwa Committee of the National Council of Islamic Religious Affairs in Malaysia held on 1-3 February 2008 has discussed the ruling on obtaining the service of a surrogate mother in order to have a child. The Committee has decided that surrogacy is forbidden in Islam even if the sperm and ovum were taken from a married couple as this will bring genetic confusion to the unborn baby.

Euthanasia/mercy killing

Decision: The 97th *Muzakarah* (Conference) of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 15-17 December 2011 has discussed the issue of euthanasia or mercy killings. The Committee has decided as follows: After lisening to the briefing and the explanation by experts and after reviewing the evidence, arguments and views, the Committee has stated that to terminate a life before a person is pronounced dead by any means is illegal and prohibited in Islam. Accelerated death due to the practice of euthanasia (whether euthanasia is voluntary, non-voluntary or involuntary), or mercy killing is forbidden in Islam because it is equal to killing and it is also against medical ethics in Malaysia.

This result is in line with Allah's saying in Surah An-Nisa', verse 92: "Never should a believer kill a believer except by mistake ..." and the Prophet's *hadith* narrated by an-Nasa'ie that says: "The Messenger of Allah said, 'Do not expect death: if one is good, he may have added blessings; and if a person is guilty he could be converted (may God be pleased).'" The Committee also stressed that the duty of a doctor is to help patients to improve their condition. To help accelerate death is not included in the doctor's duty, but belongs to the forbidden and sinful.

However, in cases in which medical experts have confirmed that the heart and/or the patient's brain has stopped functioning and there is no hope for life and that life only depends on respiratory support, the Committee decided that stopping the breathing support device is allowed in Islam, because the patient is pronounced dead by physicians and treatment of any kind is no longer required. Similarly, in cases where medical experts have confirmed that patients have no hope of recovery and those patients were allowed to go home, the treatment may be stopped, and offering merely supportive treatment (conventional treatment) is approved by Muslims, because this cannot be considered as euthanasia or a mercy killing and is therefore not illegal. However, if the treatment/support tool is used for other

purposes such as aids that are used to produce fluid to facilitate breathing, then it is not allowed to take action/stop the treatment.

In cases where the physician is faced with a situation where patients have to deal with two choices, either to continue the treatment despite possible side effects that can result in death or to continue to be in continuous pain, the *Muzakarah* agreed to decide that it is permissible for the physician to provide medical treatment/medications to patients (such as painkillers) even though these are likely to affect the patient's life.

In this regard, in accordance with the jurisprudence, there is *darura* stipulating that "in a state of emergency, everything that is forbidden is allowed", and therefore the practice of indirect euthanasia or a "double effect" medication can be made use of in accordance with Islamic views to ensure that the sufferings of the patients can be controlled. This approach is not directly intending to hasten death.

The *Muzakarah* also decided that brain death is treated as death and, when confirmed by an expert, all death related laws prescribed by Islamic law will apply to it. Therefore, treatment support (e.g. the use of the ventilator) should be stopped with the consent of the nearest heirs after being confirmed by two physicians who are not involved in the business of organ donation.

Separation of brain death patients

Decision: The 25th *Muzakarah* (Conference) of the Fatwa Committee of the National Council for Islamic Religious Affairs in Malaysia held on 13 December 1989 has discussed separation of brain death patients. The Committee has decided that the separation of brain death patients from other patients with chances to recover in the Intensive Care Unit is not contradictory to Islam.

The promulgation of research findings and the *fatwa* on bioethics

There is no denying that the word bioethics is quite foreign to the general public. Most likely the majority of people believe bioethics to be a distinctive discipline involving medical professionals or scientists to the exclusion of all others.

The importance of the matter has driven JAKIM to take various initiatives in order to expose the general public to the research conducted and the *fatwas* related to bioethics. This is attained by carrying out annual programs on a periodic basis. The approach used by JAKIM to ensure bioethical issues are adequately disseminated and clearly understood by the general public is through *fatwa* educational programmes that include *fatwa* intellectual dialogue, *fatwa* seminars and educational discourse and talk shows on TV stations.

The educational programmes are carried out to draw in people from all walks of life, be they civil servants, the youth, community leaders, politicians, NGOs and religious elites throughout Malaysia. Among the issues of bioethics that have been disseminated to the general public there are organ donation, human cloning, therapeutic cloning and food biotechnology.

To further disseminate *fatwas* pertaining to bioethics, JAKIM has utilised cyberspace via its e-*fatwa* portal, which up until May 2012 has received a total of 63,839 visitors from 81 countries, with the largest visitor group coming from the USA, United Kingdom, Australia, Egypt and Japan. JAKIM has also made the effort to circulate its research findings and all religious edicts issued to Malaysians through its publication of the *fatwa* monograph *Monograf Al-Ifta'* and the *Fatwa Compendium on Science and Medicine*. Other approaches include the use of the pulpit to deliver the Friday Sermon on bioethical issues throughout Malaysia. Among the contemporary issues that have been addressed on the pulpit was the topic of organ donation.

As the central institution in charge of Islamic affairs in Malaysia, JAKIM also engages in a strategic approach by creating a network of communication and cooperation with religious institutions within and outside the country especially the Annual Meeting of the Informal Religious Ministries of Brunei Darussalam, the Republic of Indonesia, Malaysia and Singapore, in short MABIMS. Thanks to this approach discussions and an exchange of information on bioethics issues have been successfully implemented.

Conclusion

As health care and science have progressed over time and the Muslim population has also increased to over one billion adherents throughout every continent on the globe, there has been an increasing number of circumstances that call for the evaluation of technological applications and bioethical issues to determine how they fit into the Islamic sphere.

As a result, larger bodies of Islamic committees have been formed to address the issues at hand. National Committees of Medical Ethics and Bioethics have been formed in many Islamic countries in order to work together with theologians in their effort to formulate *fatwas* neither hindering the progress of medical science nor jeopardising the Islamic code of bioethics. The importance of the sharia is such that each issue is looked at independently and subsequently deemed permissible or impermissible. Specific issues addressed in the modern scientific era include abortion, fertility treatments, family planning, euthanasia, genetic research, cloning and stem-cell research among many other issues.

To respond to these medical exigencies and the demands of globalisation, JAKIM has taken measures to cater to the needs of Muslim communities by holding regular conferences at which emerging issues are explored and consensus is sought. However, a worldwide and multinational effort to produce a comprehensive collection of Islamic bioethics resources is imperative. Therefore, JAKIM welcomes the expertise of relevant parties

both locally and worldwide to respond to these challenges in its efforts to preserve the sanctity of faith and the dignity of humankind.

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The Role of the Institute of Islamic Understanding (IKIM) in the Malaysian Bioethical Discourse

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Introduction

These days, development in the field of biotechnology is very fast and of far reaching consequences. Genetic manipulation allows for changes to be made at the level of species as well as of life as a whole. This means that the ability of mankind to design and alter the original genetic makeup of organisms and even life itself has increased.

In Malaysia biotechnology is seen to be a major source of income through its applications in various industries which have been identified as major components of the engine of growth, which is almost inevitably measured in terms of gross domestic product (GDP) and gross national product (GNP). Of late, however, efforts at implementing more holistic development models and policies have become more visible[2] such as the use of the Inclusive Wealth Index (IWI) recently suggested by the United Nations Environment Program (UNEP) at the Rio+20 Summit in Rio De Janeiro. As far as the

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[2] www.vie.unu.edu/article/read/inclusive-wealth-report 2012-measuring-progress-toward.

ethico-legal instruments for bioethical guidelines in research, product manufacture and use by wider society is concerned, however, a lot still remains to be improved and implemented. Across the board all sectors involved with biotechnology in the country agree that ethics and values are necessary and that they are heavily influenced by worldviews rooted in culture and religion. In terms of percentages, 63.1% of Malaysians are Muslims (mainly of Malay ethnic origin), 19.8% are Buddhists, 9.2% are Christians, 6.3% are Hindus, and less than 2% belong to Confucianism and/or Taoism or other, tribal religions.[3] As such, religion is an important determinant in Malaysian bioethical discourse, especially for the Muslim majority. This is where the Institute for Islamic Understanding (IKIM) comes into the picture.

As Islam is an all-inclusive way of life (*ad-deen*), bioethics as a whole is relevant to IKIM, especially due to its multidisciplinary character (involving the life sciences, medicine, law, politics and philosophy). If properly looked at, the guiding principles of the sharia are in harmony with the natural state of affairs (*fitrah*), including human beings in their physical, psycho-emotional and intellectual/rational states. Muslim jurists are united in asserting that the objectives of the sharia (*maqasid-shariah*) are the protection and preservation of religion/faith (*iman*), life, progeny, reason (*aql*) and wealth/assets justly procured.[4] To show the significance of "this-worldly" life can therefore be seen to be a strong underlying motive of the *maqasid*, as it is the beginning of the journey to the enduring "afterlife". Muslims primarily consider human existence to be for the performance of *ibadah*, that is, good works or service to God, which, if broken down in its meaning, covers the doing of good to

[3] Department of Statistics, Malaysia: *Population and Housing Census 2010.*

[4] Mohamad Hashim Kamali, *Maqasid al Shariah Made Simple*. Kuala Lumpur: The International Institute of Islamic Thought, 2009.

oneself, to other humans and to the rest of nature in His name and for His sake[5] (*hablun minallah, hablun minnas, hablun minalalamin*).

Biotechnology is the application of a branch of scientific knowledge (biology), and science basically studies the "whats" and "hows" of nature, that is, the causal relations between its parts. Such knowledge as genetic engineering can therefore be seen as an opportunity to do good. However, as for other faith communities,[6] bioethical issues among Muslim practitioners and consumers (of biotechnology) abound. They include:

- The issue of man playing God
- The relationship between man and nature. If man is the *khalifah* (guardian) of nature can he change the features of species? And if so when and how?
- Ethical guidelines (ethical, legal, religious) being sought.

Debating, researching, and negotiating the above issues and needs can be considered to be IKIM's role in the bioethical discourse in Malaysia, which began in the 1980s and 1990s.[7]

IKIM and its Mandate

Institut Kefahaman Islam Malaysia (IKIM), or the Institute of Islamic Understanding Malaysia, is a research institute established on the 18th of February 1992 under the Companies Act of 1965. Its aim is to promote a clear understanding of Islam through various programmes and activities such as seminars, workshops, consultations, trainings and publications. It was launched on the 3rd of July 1992 by The Honourable Tun Dr Mahathir Mohamad, the then Prime Minister of Malaysia, with the mission of striving

[5] Ismail R. Faruqi, *Atlas Budaya Islam (Cultural Atlas of Islam)* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), chap. 18. See also Azizan Baharuddin "The Experiential Learning Curve", *The STAR*, 18 September 2012, p. 26.

[6] See Charles W. Colson, *Human Dignity in the Biotech Century: A Christian Vision for Public Policy* (Downers Grove, Illinois: Intervarsity Press, 2004).

[7] Yusman b. Awang, "Selected Issues in Bioethics in Malaysia" (MSc. Thesis, Faculty of Science, University of Malaya, Kuala Lumpur 1997).

to enhance the understanding of Islam amongst Muslims and non-Muslims by highlighting Islam's universal values and all-encompassing principles deemed empirically verifiable and relevant to people's daily lives.

IKIM's core function is to carry out intensive and integrated research activities aimed at the explication of current issues facing the *ummah* and humans in general and to seek Islamic solutions, or at least a framework for action, by looking at the available facts of the situation or issue in question coupled with analyses and the application of "Islamic resources", which might provide guidance and serve as a basis for these analyses. It has three research centres focusing on: Science and The Environment; Sharia Law and Politics; and Economics and Social issues. These centres are manned by 25 researchers, whose expertise fits the issues that the respective centres focus on.

Research topics include globalisation, economics, legal systems, interfaith dialogue, science, technology and ethics, environmental issues, and human rights and politics. Research results are discussed with other experts in the field during expert meetings and workshops, as well as conferences with the cooperation of relevant government and non-government organisations. In the 20 years since its establishment, IKIM has carried out hundreds of intellectual meetings and published hundreds of books, monographs, journals, bulletins and newspaper articles.[8]

IKIM's Approach

In its quest for promoting information and interest in bioethics, IKIM supports the imperatives of sustainable development, which is balancing human needs with the protection of the natural and human environment and resources for present and future generations. As far as IKIM is concerned, sustainable development should cover three general dimensions – social,

[8] Siti Fatimah Abdul Rahman, *Penubuhan IKIM dan Pencapaiannya* (The Establishment of IKIM and Its Achievements) (Kuala Lumpur: IKIM Press, 2012).

economic and environmental. Each of them requires key institutional, policy and capacity issues to be addressed. What IKIM tries to do by fulfilling its role as far as the environmental and bioethical issues are concerned is to respond to the needs that exist in the policy and capacity contexts. For example, what are the concerns of Muslims and Malaysians in general regarding genetically modified organisms (GMOs) or stem cell research? Besides the *fatwa* committee's[9] edicts and/or guidelines, other instruments such as Acts and Regulations are there to enable the plural society of Malaysia to be bioethics-aware when it comes to facing the challenges posed by difficult issues.

IKIM also understands the backdrop of controversies or debates in bioethical discourse as being generally connected to the factors that underlie the unsustainable elements within the framework of the development and applications of biotechnology today. It holds that the mechanical outlook that became dominant after the Enlightenment period in the West and the subsequent separation of science and religion resulted in the compartmentalisation of knowledge (values and science are not studied or applied together/simultaneously). The separation of science and religion also gave rise to two types of worldview – the man-centred and the life-centred. Basic beliefs of the human-centred worldview which is the most dominant in the industrialised as well as in the industrialising world, include: man is the most important species on the planet, all other species having instrumental value only; there will always be more of any resource that we need and which we are now using up very rapidly; our success depends on how well we can understand, control and manage the planet for our benefit; and that all forms of economic growth are good.

One can imagine that, if the kind of bioethics being adhered to is based on a human-centred worldview, then that kind of bioethics might be some

[9] Jabatan Kemajuan Islam Malaysia (Department of Islamic Affairs, Malaysia), *Himpunan Keputusan Muzakarah Jawatankuasa Fatwa Kebangsaan Mengenai Isu-Isu Sains dan Perubatan* (Fatwas on Scientific and Medical Issues) (2010).

distance from what the nature of life may in reality be, with its principles of cause and effect set within a natural (*sunatullah*) framework of limits (*hudud*) that gives rise to homeostasis, balance (*mizan*)[10] and harmony (*salam*). To ensure that these conditions are maintained is one of the greatest motivations of a *maqasid*-based bioethics, as part of an Islamic worldview which incidentally seems to fit nicely with the worldview expressed by environmentalists and proponents of sustainability and a life-centred approach. Amongst others, some of the basic beliefs of this worldview include the realisation and understanding that: nature exists for all of earth's species; in the face of diminishing natural resources, there is not always more; a healthy economy actually depends on a healthy environment; and our success depends on learning to cooperate with one another and with the rest of nature.[11]

Again one can see how bioethics and worldviews are closely linked together. A worldview is about how we think the world works, what we think our role should be, and what we believe is right or wrong behaviour towards our fellow humans and the environment (plants, animals, bacteria, viruses, genetic material and even inanimate elements). Islam merely adds another dimension of relationship, the one between man and God. So critical is this relationship that the quality of all the other relationships will not be good, unless this man-God relationship is taken care of. Unfortunately, this dimension is sometimes given insufficient attention, if not forgotten, amidst the enthusiasm of ensuring the success of the other types of relationship. For us, the core concern of this dimension is the education of the heart, which ultimately leads to the education of the mind and fulfilment of the soul of the human being.[12]

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[10] Ismail R. Faruqi, *Atlas Budaya Islam* (Cultural Atlas of Islam) (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), Chap. 18.

[11] G.Tyler Miller Jr. *Environmental Science* (Belmont California: Wadsworth Publication, 1993), pp o-i.

[12] See Al-Ghazali Al-Kiniya-e and Saadat, *The Alchemy of Happiness*, trans. Claude Field (Kuala Lumpur: Islamic Book Trust, 2007).

In trying to assist the evolution of indigenous bioethics for Malaysians, IKIM is aware of the epistemological conflict and disagreement between the two worldviews just described. It tries to garner support from conventional bioethical positions, such as that of Margaret Somerville, Professor of Law at the Faculty of Medicine and Founding Director of the Centre For Medicine, Ethics and law at McGill University,[13] who, in the context of bioethics, said that the power of science must be used wisely, courageously and humbly. A similar thought is also shared by Daniel Bell,[14] who, in his book *The Future of Technology*, expressed the insight that the question is not how fast we can run (to catch up with technology), but whether we want to, to begin with. For Muslims this is echoed in many Quranic verses, such as in Surat Al-Insaan: "Verily we created man from a drop of mingled sperm, in order to try him; so We gave him (the gifts) of Hearing and Sight. We showed him the Way; whether he be grateful or not rests on his will."[15]

IKIM and the Global Mandate of UNESCO

Bioethics first became prominent in Malaysia through the National Commission of UNESCO Malaysia. Especially in the 1990s, UNESCO grants for bioethics helped interested academics and professionals to conduct awareness raising and capacity building workshops to begin with. IKIM was very much a part of these early efforts.

Besides this, a strong call for ethics in science and technology in general is the driving force for IKIM's involvement in discussing bioethics or bioethical issues in Malaysia. To this effect it contributes to the ESTI[16] project

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[13] Margaret Somerville, *The Ethical Imagination* (Melbourne: Melbourne University Press, 2007).

[14] Daniel Bell, *The Future of Technology* (Kuala Lumpur: Pelanduk Publication, 2001).

[15] Quran: Al-Insaan 76: 2-3. "Gift" here can also mean knowledge regarding biotechnology obtained empirically through the senses, and the test lies in whether man uses the knowledge according to the Way (*syariah*) shown or not.

[16] Ethics for Science, Technology and Innovation. IKIM also has an on-going collaboration with global environmental NGOs such as WWF in the area of the protection of wild species.

under UNESCO, which aims to promote a global ethical framework for science and technology. The ESTI project acknowledges that ethics need:

- To be rooted in philosophical reflection;
- To be based on the framework of human rights (there is a tendency for the non-religious to point the finger at the religious here; but the reverse is also possible);
- To be embedded in science whilst ensuring "freedom" (in research).

The programme aims to introduce ethics in education (science education) and to strengthen the ethical link between scientific advancement and the cultural, legal, philosophical, and religious contexts in which it occurs.

As mentioned earlier, in the context of biotechnology, IKIM very much supports the above ideal and this is why it assists the efforts of the National Bioethics Committee (NBC) of Malaysia. Beginning in 2005, the idea of establishing the Malaysian NBC was mooted by a group of medical professionals, bureaucrats and scientists led by academics at the University of Malaya, where bioethics has been taught for the last 25 years. IKIM too began its research and public awareness exercises at about the same time.[17] After a long period of attempts and efforts to convince the government, the NBC was finally launched in June of 2012, with researchers from IKIM being elected as members together with representatives from several other NGOs, agencies and experts in the field.[18] As it had been doing in the past, IKIM continued its "bioethical discourse" by assisting the NBC in carrying out its first public forum on the issue of "rights of animals used during

[17] This effort has had the constant support of the UNESCO Regional Unit for Social and Human Sciences in Asia and the Pacific, whose focus is also on bioethics.

[18] Malaysian National Bioethics Committee – a chronology of events (ministries involved: the Ministry of Common and Social Affairs, through which the proposal for the formation of NBC was put forward at the UNESCO Conference on Ethics in Science and Technology, Kuala Lumpur, July 2009):

NBC proposal taken up by Ministry of Science, Technology and Innovation in 2009.

NBC passed by Cabinet of Malaysia in March 2011 and launched in June 2012.

NBC consists of two types of membership experts (10) and institutional representatives (10); IKIM represented in both categories.

experimentation", which is a national priority taken up by the NBC right after its establishment as its priority and immediate focus.[19]

Perhaps the significance of IKIM for the NBC can also be seen by looking at Malaysia's demography. A high percentage of the country's scientific manpower (including biotechnological personnel) is Muslim. According to one study, non-Muslims in Malaysia generally tend to follow Islamic methods, *fatwas* and guidelines in the decision-making process regarding bioethical issues.[20] The Islamic *Halal* certification policy and "Islamic Banking" products are another two such examples. Of course, the underlying motives for such concurrence need further study. In both cases, Islamic ethico-legal guidelines may be accepted by Malaysians more generally in so far as their objectives (*maqasid*) can be seen as universally applicable and useful, even though for the Chinese community, for example, the *halal* label is not the only choice made. In this context as well, IKIM plays a role by carrying out interfaith and intercultural dialogue that aims at ensuring consensus among the different communities, in line with Article 12 of the UNESCO (2007) Declaration of Bioethical Principles, which states that the importance of cultural diversity and pluralism must be given due regard.[21]

Examples of IKIM's Activities

In order to understand in greater detail how IKIM has played its role in bioethical discourse in Malaysia a few examples are given below:

Workshops: As mentioned, since 1992 IKIM has carried out scores of seminars and workshops, at the international and national level. The latest of such meetings was, as mentioned, An Experts' Meeting on The Rights of

[19] It is a national priority as Malaysia does not have guidelines for assessing the permissibility of foreign companies carrying out their animal testing in the country for example.

[20] See Yusman Awang, *Selected Issues in Bioethics in Malaysia* (MSc. Thesis, Faculty of Science, University of Malaya, Kuala Lumpur, 1997).

[21] UNESCO Declaration of Bioethical Principles (www.unesco.org/new/cn/.../bioethics and human rights).

Animals in Experimentation.[22] Perspectives from conventional and Islamic discussions were given and discussed with important stakeholders, whilst applications of the Islamic principles were highlighted in the context of challenges faced by "practitioners" in their work with animals for example. This topic was chosen because one of the most urgent tasks of the recently established NBC was to help the Ministry of Agriculture as well as the Ministry of Science, Technology and Innovation in the formulation of the "Animals in Experimentation Act". Such an Act is required to regulate the increasing use of animals in experiments by local and foreign companies, and to ensure that abuses are eliminated. Stakeholders involved in this workshop were the scientists handling animals, those rearing them, JAKIM (Department of Islamic Affairs), policy makers and the religious experts.

The papers discussed included:

- "Current Issues and Debates Regarding The Use of Animals in Experimentation", by Prof. Zahurin Mohamed, Head of the Pharmacology Department, University of Malaya, member of NBC;
- "The Use of Animals in Experiments: Procedures and Policies in Malaysia", by Assoc. Prof. Dr. Abdul Rahim Mutalib, Department of Pathology and Veterinary Microbiology, University Putra Malaysia; and
- "Use of Animals in Islam in Relation to Ethical, Legal and Scientific Issues", by Assoc. Prof. Dr. Raihanah Abdullah, Department of Shariah and Law, Academy of Islamic Studies, University of Malaya, Director, Centre for Civilisation Dialogue, University of Malaya.

[22] Muzakarah Pakar (Meeting of Experts on the Ethics of Animal Use in Experimentation), IKIM, 7 June 2012. No guidelines in Malaysia currently.

During the workshop session questions asked by the professionals included: Can chips be implanted into animals? Can hormones be injected? Can limbs be taken off? As expected, many wanted to know what the Islamic perspectives were on these practices and procedures. Answers and responses were given according to precedents in the Prophet's time (*hadith* and *seerah*) and the Quranic verses which are the bases of the code of ethics from the Islamic view. As a rule of thumb Dr. Raihanah suggested harmonising principles of beneficence, non-malfeasance, autonomy and justice with *maqasid* sharia based on the principles of Iman, Islam and Ihsan. She linked these concepts together by describing how *iman* (belief in God) is the root, Islam (*fiqh*, sharia) is the tree, and *ihsan* is the love/fruit of ethics, e.g. bioethics.[23]

Another source of guidance for Muslim practitioners is Ziauddin Sardar's nine point precepts of *Tauhid* (Unity), *Khilafah* (Trust), *Ibadah* (Service), *Ilm* (Knowledge), *Halal* vs *Haram*, *Adil* vs *Zalim*, *Istislah* (public interest) and *Wastage*.[24] Various existing *fatwas* on related issues were also given by Raihanah about, for example, the eating of different animals. In general this workshop served as a forum for discussing Islamic guidelines for the use of animals in experimentation and IKIM is currently tasked to assist in the publication of a guideline.

Taking other examples of IKIM's efforts, we can look at several publications, which have actually been the only ones in Malaysia on bioethics until one or two years ago. One book is *Ethics in the Biotechnology Century*,[25] which was the first book on the topic published in Malaysia. This

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[23] Hamka, *Tasauf Modern* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2009).

[24] For elaborations see Ziauddin Sardar, *The Touch of Midas* (Manchester: Manchester University Press, 1997).

[25] Abu Bakar Majeed, ed., *Ethics in the Biotechnology Century* (Kuala Lumpur: IKIM Press, 2002). The book consists of several chapters. To name a few of special interest: The Human Genome and The Human Control of Natural Evolution: Genetics – Past, Present and Future; 'Genetics' – Integrating Ethical Reasoning and Scientific Findings; Ethical Issues of The Human Genome Project; Religio-Ethics and Assisted Reproductive Technologies; Human Cloning – Ethical and Legal Perspectives; Ethics in The Biotechnology Century: The South and Southeast Asian Response – Malaysia.

book offers ideas on how to approach bioethical issues in the 21st century. It also describes steps taken by some South and South-East Asian countries in dealing with the ethical conundrums of biotechnology. Contributors include philosophers, ethicists, scientists, medical practitioners, religious scholars, administrators and policy-makers. Another work is *Human Cloning: A Comparative Study of The Legal and Ethical Aspects of Reproductive Human Cloning*.[26] Among other points this book dwells upon an analysis of Western and Islamic concepts of morality (with a comparison to the views of St. Thomas Aquinas), the sharia's stance with regard to the issue of cloning, and the challenge from advocates of individual freedom, coupled with J.S. Mill's idea of "not harming others". A final example is *Genealogy and Preservation of the Progeny – An Islamic Perspective*.[27] This book explores various dimensions of biotechnology in relation to the preservation of progeny. This is perhaps the first book of its kind to link one of the objectives of Islamic law (*maqasid al-shariah*), namely the preservation and safeguarding of the progeny, to advancements in biotechnology. By looking at such issues as the ethics of artificial reproductive techniques, assisted human reproduction, and the use of biopharmaceuticals in preserving progeny, this book serves as a useful guide to upholding the tenets of the Islamic religion against the challenges of the age of biotechnology.

Mechanism for discussing bioethical issues

Finally, IKIM recognises the inevitable fact that when it comes to discussing Islam and ethical issues in the context of biotechnology in general, the gap between religion and science must be bridged. This is where we see the role of a theology of nature which aims to show the many significant similarities and correlations between scientific facts and revelational (religious)

[26] Majdah Zawawi, ed., *Human Cloning: A Comparative Study of The Legal and Ethical Aspects of Reproductive Human Cloning* (Kuala Lumpur: IKIM Press, 2001).

[27] Shaikh Mohd. Saifuddeen, *Genealogy and Preservation of the Progeny – An Islamic Perspective* (Kuala Lumpur: IKIM Press, 2006).

statements, ideals and perceptions and how the act of harmonisation can serve to increase faith. Such a theology is explained by scholars such as J.H. Brooke, for example.[28] There is an established precedence for this "theology of nature" in Islamic and Christian theology.[29]

For Muslims, natural theology is today accepted as a legitimate area of study, as it is regarded as a model or method of discussing science (biotechnology) and religion (ethics) academically, philosophically, formally, informally and in daily life (i.e. understanding sharia rulings in the light of everyday life: for example, how fasting is good for the health, or the importance of prayer (*solat*) for calming the emotions and the mind). Conventionally, or in the non-Islamic context, the legitimacy of the exercise is shown perhaps by the examples of Fritjof Capra (American physicist and author of *The Tao of Physics*), Sir Frederick Hoyle (British astronomer), William James (psychologist and author of *On the Varieties of Religious Experience*) James Fowler (psychologist: *Stages of Faith*) and Dean Hamer (geneticist: *The God Gene*).[30]

"Understanding how Islam builds civilisation"

Currently IKIM's motto is "Understanding how Islam builds civilisation." In universal terms, through this ideal it hopes to share the message that religion is the oldest form of human institution and its sources, arguments vis-à-vis nature and reality need to be clearly known. To this end it needs to articulate itself as well as possible in the context of plurality of opinion and see beyond what divides to what is shared. Religion (Islam) needs to commit itself to solving worldly problems such as those posed by biotechnology.

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[28] John Hedley Brooke, *Science and Religion: Some Historical Perspectives* (Cambridge: Cambridge University Press, 1991).

[29] See Azizan Baharuddin, "Science and Belief: A Discourse on New Perceptions" (Ph.D. Thesis, University of Lancaster, 1989 [1995]).

[30] Fritjof Capra, *The Tao of Physics* (Berkeley: Shambhala Publications, 1975); William James, *On the Varieties of Religious Experience* (London: Longmans, 1902); James Fowler, *Stages of Faith: The Psychology of Human Development and The Quest for Meaning* (San Francisco: Harper, 1995); Dean Hamer, *The God Gene* (New York: Anchor Books, 2004).

The general Islamic response to bioethics

Generally, the field of biotechnology is not new to Muslims, especially in food and agriculture; new developments are welcome as long as limitations are observed; and Islam encourages the search for knowledge and innovation for the enhancement of quality of life.

To clarify issues, facts (actual scientific knowledge) are needed as a lack of information in the field would cause worries about such concerns as artificially inserting foreign genes into the original genetic code which has been in existence for millions of years, technology exploitation being dangerous to health due to so far unknown risks, and the possibility of genetic engineering giving rise to materials that can, for example, destroy the environment (irreversible changes). In such a context The Islamic Academy of Sciences has advised in 2001 that if a genetic engineering technology is known to be dangerous, even in its processes alone, it should be rejected, even if the promised product is commercially viable, and the genetically modified food (GMF) produced must not be distributed until it is known to be safe. In the same vein the International Conference on Bioethics Values and Culture (2004)[31] has also highlighted the need for: national bioethics committees to be established in all countries; universal formulae for bringing bioethics in line with local conditions; priority use of genetically modified food (GMF) for overcoming poverty; legal instruments to oversee "greed" and "run-away technology"; increased awareness regarding bioethics through education; understanding the differences and similarities between ethics based on religion and ethics based on rationalism.

IKIM's role seems to touch on many of these recommendations, as well as looking at other controversial issues such as natural and artificial human procreation, commodification of human organs and tissues, and unrestrained

[31] Islamic Academy of Sciences is part of Organization of the Islamic Conference (OIC) [secretariat@ias-worldwide.org].

scientific freedom leading to innovations that may harm future generations and other species for example.

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The Role of the National Transplant Resource Centre in Bioethical Discussion in Malaysia

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Introduction

Since the first kidney transplant in 1975, liver transplant in 1995, heart transplant in 1997, and lung transplant in 2005, the lack of organ donors remains one of the most important obstacles to the expansion of the transplantation programme in Malaysia. While the widening disparity between the need and the availability of organs for transplants is a global phenomenon, this is much more acutely felt in Malaysia where the deceased donation rate at best stands at 1.67 per million population for organs and tissues and 0.8 per million population for organs as of last year (National Transplant Resource Centre 2011 data). The number of living related kidney transplants has also been declining steadily over the recent years. As a result, less than 200 organs are transplanted yearly while the lists of patients waiting for kidneys, livers, hearts, and lungs have ballooned to more than 15,300 patients and many die before they receive the transplant while the

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government is burdened with the spiralling cost of maintaining patients on long term dialysis.

Cultural and religious perspectives of organ donation in a multiracial society

Malaysia is a multiracial country composed of 63.1% Malays who are by constitution Muslims, 24.6% Chinese, 7.3% Indians and 5% a mixture of other ethnicities, with the religious distribution of 61.3% Muslim, 19.8% Buddhists, 9.2% Christians and 6.3% Hindus, and less than 2% belonging to Confucianism and/or Taoism or other, tribal beliefs, which make up the 28.3 million population (Department of Statistics 2010). The multi-ethnicity and diverse religious beliefs and cultural practices of Malaysian society add to the difficulty in persuading Malaysians to pledge their organs or to sanction donations from their deceased relatives (Wong 2010). As a result, only a total of slightly above 200,000 Malaysians or 0.7% of the population to date have signed up to pledge their organs and a total of 378 donors have actually donated organs or tissues after death (National Transplant Resource Centre data up to July 2012). The reluctance is particularly obvious among the Muslim Malays, who form the largest percentage of the population but have the lowest number of pledgers (19%) and actual donors (5%) among the three main ethnic groups. Chinese, who are largely Buddhists, top the number of pledgers at 54% and 60% of actual donors, followed by Indians at 24% for pledgers and 25% for actual donors. This is despite the fact that all religions practised in Malaysia, with the exception of Taoism, support organ donation, including Islam. The *fatwa* that allows for organ donation and transplantation in Malaysia, albeit with conditions, including donating and receiving organs between Muslims and non-Muslims, has been in existence since 1970. However, at the grass roots level the misconception that religion forbids donation is still lingering.

In a 2005 survey of 291 Muslims in the urban as well as rural setting by Shaikh Mohd Saifuddeen Bin Shaikh Mohd Salleh et. al. (2005) from the

Malaysian Institute of Islamic Understanding (IKIM) looking at the perception and attitude of Muslims towards organ donation, 53.6% expressed their willingness to donate, although this number dropped to 49.3% when it is donation after death. 66.9% would allow their family members to sign up as pledgers; and upon death, 72% said that they would allow the donation to take place from family members who are pledgers. Fear was identified as the strong deterrent factor for the Malays (56.3%), while religion alone only accounted for 5.2 % of the study population who were against donation; another 12.6% of those cases are a combination of fear, a lack of exposure and religious objection, 17.8% are due to a lack of exposure and 8.1% are due to fear and a lack of exposure.

While the cause of this fear for the Muslim population was not explored in the said study, the perception that the deceased can feel pain, abhorrence at the idea of the body being cut up and possibly mutilated and worries about causing delay of the funeral rites are common cultural taboos that transcend all ethnic groups regardless of religious creed. Furthermore the Muslim Malays have added concerns that need to be addressed. Donating organs to and receiving organs from non-Muslims, being incomplete in the hereafter, and the possibility of being made responsible for the vices of the recipients who received the organs are some of the concerns that make the Malaysian Muslims less receptive to the idea of donation. For some there is also the difficulty in understanding and accepting brain death as death. That, however, is seen in all ethnic groups.

Ethical Issues

The huge disparity between the demand and supply of organs has given rise to many ethical issues, in particular related to the push by the public for the use of unrelated living donors and even possibly commercial ones. As yet there is no evidence to verify commercially transacted transplants taking place in the country. But many Malaysian patients do go abroad to get their

commercially acquired transplants, either from living or deceased sources, often with the financial support of the public and political parties following appeals in the newspapers. This goes against the spirit of the Istanbul Declaration, and WHO guidelines, which Malaysia is a signatory to. With legislation in destination countries like India and China now banning such commercial transplants, the numbers of Malaysians going for overseas transplants are on a downward trend but not completely brought down to zero.

National Transplant Resource Centre

The National Transplant Resource Centre (NTRC) is the agency which has been given the responsibility for the promotion and management of deceased organ and tissue donation in Malaysia.

Based at the Hospital Kuala Lumpur, the main and largest Ministry of Health (MOH) tertiary referral hospital, the NTRC first started in 1997 as an initiative between the Rotary club, a non-government organisation, and the hospital to function as a resource centre for the public and hospital staff to get information about organ transplantation and donation, as well as for the promotion and central registration for organ donation pledges after death. There were already efforts prior to this to have donor pledge cards, but this was done in an ad hoc manner by various non-government organisations and it was only with the setting up of the NTRC that the registry became centralised. Transplant resource centres were also set up in other major state hospitals in the country to network with the NTRC in order to widen its reach to the Malaysian public. Setting up the NTRC followed closely on the heels of the first heart transplant in the country, and the accompanying media hype saw a marked rise in the number of pledgers as well as actual deceased donors, although that translated to a donation rate of 0.3 per million population.

In 1999, hospital based Transplant Procurement Management Units (referred to as TOP Teams) were set up in 16 major MOH hospitals in the whole country. Based loosely on the Spanish model, the teams are comprised of doctors and staff, usually from the Intensive Care Unit, emergency and forensic departments, who manage the whole process of donation whenever a brain dead potential donor is identified, from evaluating and maintaining the donor, talking to the family members to get consent for the donation, attending to the legal requirements, and arranging the logistics to bring the various retrieval teams from the transplant hospitals (which are mostly based in Kuala Lumpur and the surrounding Klang Valley) to the donor hospital for the procurement of the organs and tissues. The formation of a dedicated team looking after the management of the donor, albeit on a part time basis, led to a doubling in the donation rate to 0.6 per million population by the year 2000.

In 2001, the National Transplant Procurement Management Unit (NTPMU) was established and merged with the National Transplant Resource Centre, which came fully under the Ministry of Health. Comprising of full time transplant nurse coordinators and medical clinical managers, and working together with the donor hospital TOP Teams, the NTPMU is responsible for the coordination and management of all deceased organ and tissue donations in the country. Further strengthening of the organisation and infrastructure of the TPMUs, which saw the expansion of the numbers of TOP teams to more than 50 donor hospitals nationwide and the formation of 6 regional TPMUs to facilitate donor coordination, as well as the development of protocols and standard operating procedures, has resulted in a tripling of the donation rate to 1.67 organ and tissue donors per million population, or 0.8 organ donors per million population, which translated into 47 donors in 2011.

With further support from the government, particularly the Ministry of Health, the NTRC currently has 15 full time staff including three clinical managers (doctors), seven nurse donor coordinators, three resource officers,

a media and promotion officer and two data entry personnel, who carry out the functions of the NTRC in partnership with NGOs, hospitals (both MOH and private hospitals) and other members of society. NTRC now receives a dedicated annual operating budget from the Ministry and has been equipped with better infrastructure to support its function.

Role of the National Transplant Resource Centre in bioethical discussions

The function of the NTRC is to disseminate information, engage in dialogue to educate, explain policies, and inspire the Malaysian public and hospital personnel about deceased organ and tissue donation and transplantation as well as to promote and maintain a central deceased donor pledge registry. It gets very much involved in the discussion of many ethical issues, not only with society at large, but also with specific targeted groups such as religious leaders, especially Islamic religious leaders (*ulama* and *muftis*), the media, parliamentarians, and educational establishments. It does this through direct public engagements, one-to-one encounters, forums, talks, use of mainstream and alternative media and social media network. In public forums held in mosques and other religious centres, the NTRC usually works together with the *mufti's* office, the Department of Islamic Development Malaysia (JAKIM) or the *fatwa* councils to reach the Muslim audience, and often participates in religious TV and radio programmes alongside these respected religious leaders.

In dealing with potential donor families, NTRC transplant coordinators are involved in discussions about brain death, whether religion allows the donation, and allocation of the donated organs. For Muslim families, the use of the *fatwa*, with the relevant Quranic verses and *hadiths* reproduced in an easily readable booklet to answer some of the frequently expressed concerns, and the involvement of religious officers in the discussion, helps in some cases to lead to a successful donation but not necessarily in others. Many Muslim families already know about the *fatwa*, yet it is other factors, such as

not wanting the deceased to suffer anymore, or not knowing his or her wishes regarding donation that makes the family withhold consent. And while the official *fatwa* allows for deceased organ donation, there are one or two religious personalities who belong to a different school of thought that proscribe deceased donation, and who, because of their charisma, exert great influence on some segments of the Muslim population.

The NTRC also organises training programmes to provide skills to the relevant hospital staff about brain death diagnosis, deceased donor management, and communication techniques on how to break bad news and talk about organ donation with the bereaved family. The Centre also maintains a registry of all the actual donations and transplants that are carried out in the country. NTRC personnel sit in several of the committees at Ministry and inter-Ministry level and give input to the formulation of policies and protocols and development plans related to organ donation and transplantation, based on the feedback that was obtained from the public and donor family encounters.

Conclusion

While the organ donation situation looks desperate in Malaysia, particularly among the Malays, there has been some improvement, albeit slow. Although the donation rate is low compared to many other countries, it has more than trebled over the last decade. Even among the Malay Muslims, awareness is increasing and more and more Malays are willing to pledge their organs as well as to allow and even initiate discussion on organ donation when their family members die. From a mere 4% in the year 2000, Malays now account for more than 19% of the total organ donor pledgers, an almost five fold rise, with a continuous upward trend year by year.

There is also a change among the religious institutions such as JAKIM, the Fatwa Council, and the *mufti's* offices, seen both at national and state level. There are even individual mosques and Islamic preachers on the

internet who are now more proactive in promoting and educating the Muslim masses about the need for organ donation and the notion that it is a good thing to do and permissible even between Muslims and non Muslims. While before it would be a religious leader being invited to give his talk at a Ministry of Health or NTRC organised event, now the event is being organised by JAKIM or the *mufti's* office itself and personnel from the NTRC are invited as speakers. It is because of the active participation of the *mufti* "going to the field" that for the last few years, the Malays have become the highest number of donor pledgers in Johor, one of the southern states of Peninsular Malaysia.

The National Transplant Resource Centre will continue in its role to educate the Malaysian public and hospital staff as well as manage donation after death ethically and to work closely with the religious authorities in trying to overcome the fears and change the mindset of the Malays towards organ donation in the context of a multicultural society.

However, with the advent of YouTube and blogs, we also see now the phenomenon of "religious celebrities", some of whom are, so to speak, "born again Islamist", who were previously well known personalities in the entertainment world but who now hold great influence over the Malay public, particularly young professionals, with opinions and statements which sometimes run contrary to the accepted official *fatwas*. Whether this will have a negative impact on the donation programme as a whole is yet to be studied, but at the NTRC we are already seeing individual cases of a cancellation of the donor card, some even from people who have been pledgers for many years. This will be our challenge.

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