



Medicine *and* Shariah

A DIALOGUE IN ISLAMIC BIOETHICS

Edited by Aasim I. Padela

Foreword by Ebrahim Moosa

MEDICINE
AND
SHARIAH

A DIALOGUE IN ISLAMIC BIOETHICS

EDITED BY
AASIM I. PADELA

FOREWORD BY
EBRAHIM MOOSA

University of Notre Dame Press
Notre Dame, Indiana

University of Notre Dame Press
Notre Dame, Indiana 46556
undpress.nd.edu

All Rights Reserved

Copyright © 2021 by University of Notre Dame

Published in the United States of America

Library of Congress Control Number: 2021931594

ISBN: 978-0-268-10837-3 (Hardback)

ISBN: 978-0-268-10840-3 (WebPDF)

ISBN: 978-0-268-10839-7 (Epub)

CONTENTS

	Foreword <i>Ebrahim Moosa</i>	vii
	Preface	xiii
	An Introduction to Islamic Bioethics: Its Producers and Consumers <i>Aasim I. Padela</i>	1
ONE	The Relationship between Religion and Medicine: Insights from the <i>Fatwā</i> Literature <i>Vardit Rispler-Chaim</i>	39
TWO	The Islamic Juridical Principle of Dire Necessity (<i>al-ḍarūra</i>) and Its Application to the Field of Biomedical Interventions <i>Abul Fadl Mohsin Ebrahim and Aasim I. Padela</i>	57
THREE	A Jurisprudential (<i>Uṣūlī</i>) Framework for Cooperation between Muslim Jurists and Physicians and Its Application to the Determination of Death <i>Muhammed Volkan Yildiran Stodolsky and Mohammed Amin Kholwadia</i>	71
FOUR	Considering Being and Knowing in an Age of Techno-Science <i>Ebrahim Moosa</i>	87

FIVE	Exploring the Role of Mental Status and Expert Testimony in the Islamic Judicial Process <i>Hooman Keshavarzi and Bilal Ali</i>	121
SIX	Muslim Perspectives on the American Healthcare System: The Discursive Framing of Islamic Bioethical Discourse <i>Aasim I. Padela</i>	149
SEVEN	Muslim Doctors and Islamic Bioethics: Insights from a National Survey of Muslim Physicians in the United States <i>Aasim I. Padela</i>	193
EIGHT	Jurists, Physicians, and Other Experts in Dialogue: A Multidisciplinary Vision for Islamic Bioethical Deliberation <i>Aasim I. Padela</i>	227
	List of Contributors	235
	Index	241

EIGHT

Jurists, Physicians, and Other Experts in Dialogue

A Multidisciplinary Vision for Islamic Bioethical Deliberation

AASIM I. PADELA

As I described in the previous chapter, data from my national survey of Muslim physicians in the United States supports the characterization of Islamic bioethics discourse as one in which various experts remain in their disciplinary circles and rarely interact with one another. As a result, those involved often “do not know what they do not know.” Notably, the American Muslim physicians we surveyed perceived themselves to be familiar with Islamic bioethics, but only slightly more than half read books on the subject and fewer than half attend workshops and courses on the topic. Tellingly, even when facing a bioethical challenge, Muslim clinicians do not avail themselves of the Islamic ethics expertise of jurists and *imāms* or of the bioethics-related analyses of *fiqh* academies. Thus one wonders what the sources of their “Islamic” bioethical knowledge are.

As illustrated by the discussions about *darūra* and brain death in this volume, when morally assessing biomedicine, Islamic jurists depend on others to describe the scientific data and the clinical practice context that shapes an ethical quandary. Thus, in several *fiqh* academies, physicians decode and interpret the medical data for jurists and also explain the technology or procedure in question. Controversially, some physician partners in these deliberations also advance their own Islamic ethico-legal arguments. Given these features of the dialogue, one could argue that physicians have the upper hand in Islamic bioethical deliberation. They pose and frame the Islamic bioethics questions, interpret and describe the biomedical contexts for jurists, and even fashion Islamic arguments.¹ Jurists could thus be marginalized—or, worse, instrumentalized—leading to rulings based on incomplete understandings or selectively chosen biomedical data. This risk is not unknown to jurists and might be the reason that juridical academies are particular about the Muslim clinicians they invite into their midst. Aside from these academies, however, my research finds that, at least in the American context, physicians and Islamic scholars rarely get together to discuss matters of Islamic bioethics.

Against this backdrop, it is the consumers of the discourse who suffer. Muslim patients and families do not know whom to trust and may be left with nonactionable guidance. Policy-makers are bewildered by the diverse and at times conflicting Islamic bioethics position statements offered by physicians and jurists, and researchers find the literature of poor quality and hard to navigate.

As a remedy to this disconnected discourse, I would like to offer a conceptual model to improve Islamic bioethics deliberation (figure 8.1). This multidisciplinary model would better account for the various disciplines required to derive “Islamic” ethical views and understand the “biomedical” contexts. While I admit that the model is provisional and not comprehensive, it offers a starting point for enhancing the discourse beyond doctors and jurists.²

Beginning with the right side of the figure, I see the foundations for Islamic bioethics to draw from at least three distinct genres of the Islamic intellectual tradition: (1) law, (2) theology, and (3) the sciences of virtue and practical ethics. Islamic law principally focuses on assessing the morality of an act but also provides an axiology via frameworks of the higher

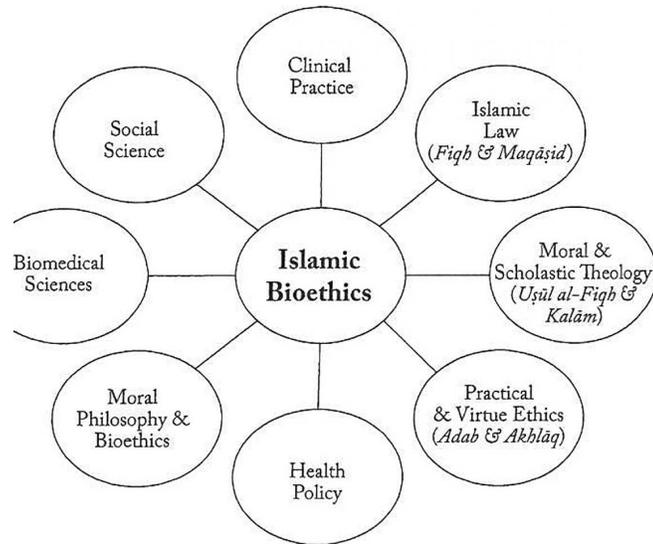


FIGURE 8.1 A Multidisciplinary Vision for Islamic Bioethics Deliberation

intents of Islamic law, *maqāṣid al-Shari'ah*. Islamic law thus carries forward the act-based moral vision for Islamic bioethics.

Islamic moral theology, *uṣūl al-fiqh*, provides a hermeneutical science for deriving law from scripture, and this is related to act-based morality, stated as above, but also furnishes tools for explicating theological understandings of illness, cures, health, and other critical concepts related to biomedicine. This latter aspect is complementary to the science of *kalām*, scholastic theology, where metaphysical and ontological frameworks are aids to explicating such concepts. The *maqāṣid*, together with *uṣūl* and *kalām*, attend to outcome-based morality and help build out a holistic Islamic bioethical vision.

The various Islamic sciences of moral formation and literary genres cultivating virtue and practical ethics, including *‘ilm al-abklāq* and *adab*,³ attend to the reformation of one's inner being, molding one to incline toward righteous action. These sciences therefore facilitate holism within Islamic bioethics by outlining agent-based morality. *Adab* manuals specific to various professions go further in connecting the inner and the outer by motivating one to live out virtues in one's vocational practice. While *adab* can be wedded to scriptural understanding of the virtues, the

genre also incorporates practice-based virtues that are not wholly scripturally based. These are gleaned from exemplars within the profession, since the internal goods of the profession are best known to, and demonstrated by, those in the practice.⁴

Together, then, broadly speaking, law, theology, and the sciences of virtue and practical ethics offer a more complete assessment of the moral dimensions of biomedicine, as they attend to the morality of the act, the goals to be achieved and actualized, and the agent. Indeed, the agent, act, and outcome are inter-related in complex ways so as to collectively contribute to morality: A comprehensive ethics framework must be constructed to assess and evaluate this confluence. Truisms such as “one can do the right thing for the wrong reason” and “the path to hell is paved with good intentions” illustrate the pitfalls of focusing on only one part of the whole—the act to the exclusion of the agent’s inner motivation in the former and the inner motivation to the exclusion of ultimate outcomes/consequences of the act in the latter. Indeed, anything other than a purely consequentialist moral theory demands that righteous outcomes be produced through righteous actions that are, in turn, informed by right intentions. In my view, a bioethics rooted in Islam must also evidence such holism.

Building on this view, the moral machinery of Islam would be represented by experts in Islamic law, theology, and moral formation deliberating at the proverbial table of Islamic bioethics. The convener may bring to the table a scholar who has mastery in many or all of these areas or might seek out multiple scholars who can provide perspectives from these fields. In any case, these different vantage points are needed to ground Islamic bioethical perspectives within the moral frameworks of the Islamic tradition.

At the six and twelve o’clock positions of the figure are the two areas from which ethical questions often emerge. In other words, a particular clinical practice or a health policy concern becomes the subject of ethical debate and leads individuals and institutions to seek out Islamic bioethics resources and rulings. For example, a Muslim patient might wonder whether xenotransplantation is permitted by Islam as she considers treatment options for liver failure; a Muslim surgeon may desire to know whether sex-change operations are Islamically sanctioned as he sets up his clinical practice; or a health insurer may want to know whether male circumcision is a religious obligation for Muslims as they delineate coverage

policies for patients. To fully understand the clinical and policy contexts informing such questions, experts from these domains need to be at the dialogue table. They can provide insight into the reasons that various clinical and policy questions are being debated, the data supporting various solutions, and the social, legal, and practice conventions that frame the debate. Given the conventions of *fatwā* giving, Islamic scholars are used to a single individual or institution presenting an ethical query and providing data on the clinical or policy context. But in light of the complexity of biomedicine today and the different ways in which clinicians can interpret the same data, I suggest that multiple clinical and policy experts offer interpretations of such data so that the various dimensions of the ethical problem-space are fully understood. Indeed, it may be that historians, social scientists, and ethicists can provide insight into contexts that lead to the particular clinical or policy question at hand. And they can describe how contemporary world-views prefigure ethical questions and answers. Importantly, clinical and policy experts can “check” one another by helping individuals understand the interplay between their fields, how policies shape clinical practices, and how certain clinical practices demand policy action.

Moving to the left side of the figure, the social and biomedical sciences offer scientific data that further frames the biomedical contexts and Islamic perspectives. For example, the health benefits of new biomedical technologies or the science behind a particular research breakthrough is better assessed when presented by the theoreticians, investigators, and technical experts involved in the research and development of such technologies and advancements. While applied scientists, such as clinicians, can detail the practice implications, the potentialities are better described by those at the forefront of the science and research. At the same time, social scientists can present a clearer picture of the meanings attached to technologies, therapeutics, and policies and how they are understood by various stakeholders. They can help explicate the interplay among medicine, technology, law, policy, and the broader society and can also provide a historical perspective on these issues. Such data is critically important for Islamic scholars making moral assessments because Islamic notions of harm (*ḍarar*) and benefit (*maṣlaḥa*) hinge on an accurate accounting of individual and societal harms and benefits. Truly, demarcating an Islamic perspective that adheres to the overarching maxim of Islamic ethics and law, *dar al-mafāsīd ‘awla min jalb al-maṣāliḥ* (the removing of harms/

wrongs is prioritized over bringing about benefits), requires an in-depth sociological understanding of the biomedical contexts at play. Accordingly, biomedical and social scientists must be present at the dialogue table alongside jurists and doctors.

Finally, I see contemporary moral philosophy and bioethics as discursive partners in an Islamic bioethics deliberation forum. In terms of philosophers, I mean both political and moral philosophers, and when I refer to bioethicists I refer to all types of bioethicists, be they clinicians, lawyers, theologians, or other disciplinary experts. Interacting with secular voices and religious ethicists can sharpen ethical analyses and also clarify points of convergence and divergence between these perspectives and Islamically grounded ones. Given that bioethics is a pluralistic and a global discourse, such experts may also aid those in the dialogue in finding policy solutions that meet the needs of both Muslims and non-Muslims. Moreover, the emergence of the need for an “Islamic bioethics” is tied to a particular arrangement between the modern state and civil society, and the extent to which Islamic bioethics is given space in the clinical and policy domain rests on specific political allowances given to religion in the public square. Islamic scholars and Muslim physicians are likely less versed in these matters and would thus benefit from the input of moral philosophers and professional bioethicists.

I began this volume by defining Islamic bioethics as a discourse that uses the Islamic tradition to address moral questions and ethical issues arising out of the biomedical sciences and allied health practice. This discourse has largely been shaped by the writings of Muslim physicians and Islamic jurists. At times, these two types of disciplinary experts derive their views of the “Islamic” and the “bioethical” by working in concert, but more often they do it alone. To develop the field, we must extend beyond these domain experts to incorporate a more holistic perspective of the “Islamic” and to furnish more comprehensive understandings of the biomedical/bioethical contexts. Consequently, in the model outlined in figure 8.1 I attempt to enhance the discourse and incorporate multiple perspectives into Islamic bioethical deliberation. Living out the maxim of Islamic law, *al-ḥukm ‘ala shay far’ an taṣawwurihi* (the ethico-legal assessment of a matter comes from its conceptualization), demands, at a minimum, that these different disciplines be brought together to achieve an accurate conceptualization of the problem-space and potential solutions.

While I have noted the various disciplinary experts needed for multidisciplinary deliberation, I recognize that a deliberative method that brings these groups into a fruitful and humble dialogue is also required. Some scholars may suggest that the collective *ijtihād* methods of *fiqh* academies could be used to bring about equitable dialogue, while others may assert that the classical method of *ijtihād* should be deployed so that jurists have the final say in order to prevent mistaken views of the “Islamic.”⁵ As one who avidly reads and seeks to inform his own clinical practices based on the Islamic bioethics-related rulings of *fiqh* academies and traditional jurists, I dare say that there are gaps in both *fiqh* academy verdicts and traditional *fatāwā*. These knowledge gaps render some of these outputs inapplicable to clinical practice and ineffective for policy generation. As an academic, I also desire discursive outputs that are more convincing in argument and comprehensive in scope. Perhaps as Islamic bioethics becomes more multidisciplinary, innovative approaches to ethico-legal deliberation and the penning of ethico-legal verdicts will be needed. I look forward to working with others to study and develop such process models.

NOTES

1. Anecdotally, my own experiences and research have disclosed that they may even pen the *fatāwā* jurists sign.

2. As I mention in the opening chapter of this book, some *fiqh* academies have begun to broaden the expertise brought to the deliberative table by including experts outside of the fields of medicine and Islamic law. However, in my view, most *fiqh* academies have yet to adopt a truly multidisciplinary perspective, and none bring together all of the experts I note in the figure. Illustratively, I discuss how the presence of health policy stakeholders impacted the uptake of *fiqh* council rulings on porcine vaccines in my “Islamic Verdicts in Health Policy Discourse: Porcine-Based Vaccines as a Case Study,” *Zygon* 48, no. 3 (September 2013): 655–70. In that paper I also suggest that jurists might have been more careful in their rulings had they fully appreciated the health policy implications of their judgements. Similarly, I point out missing biomedical and bioethical perspectives that problematize the ruling of the Organisation of the Islamic Conference’s Islamic *Fiqh* Academy on brain death in A. I. Padela, H. Shanawani, and A. Arozullah, “Medical Experts and Islamic Scholars Deliberating over Brain Death: Gaps in the Applied Islamic Bioethics Discourse,” *Muslim World Journal* 101, no. 1 (2011). I believe my model offers a sort of

checklist that *fiqh* academy conveners can use to ensure that the relevant experts are given a voice as ethico-legal assessments are proffered.

3. The sciences of *taṣawwuf* and some Sufi practices aim at similar goals and can also be included in this group. I recognize that such a proposal may be controversial in light of the excesses of some purportedly Sufi circles, public misconceptions of traditional *taṣawwuf* because of misguided polemic debates, and the like. My conceptualization here refers only to those practices that remain within the bounds of Islamic law.

4. Such virtues are complementary to, and must not conflict with, scriptural teachings.

5. Collective *ijtihād*, *ijtihād jamā'i*, brings together groups of scholars to issue *fiqh* rulings via joint deliberation. Such joint fora are increasingly being used in the Muslim world because of growing scientific and social complexities that are critical to the rendering of juridical verdicts. The methodology for such deliberation remains unsettled. For an overview of the history and methodology of collective *ijtihād*, see Aznan Hasan's "An Introduction to Collective Ijtihad (Ijtihad Jamai): Concept and Applications," *American Journal of Islamic Social Sciences* 20, no. 2 (2003): 26–49.

REFERENCES

- Hasan, Aznan. "An Introduction to Collective Ijtihad (Ijtihad Jamai): Concept and Applications." *American Journal of Islamic Social Sciences* 20, no. 2 (2003): 26–49.
- Padela, A. I. "Islamic Verdicts in Health Policy Discourse: Porcine-Based Vaccines as a Case Study." *Zygon* 48, no. 3 (September 2013): 655–70.
- Padela, A. I., H. Shanawani, and A. Arozullah. "Medical Experts and Islamic Scholars Deliberating over Brain Death: Gaps in the Applied Islamic Bioethics Discourse." *Muslim World* 101, no. 1 (2011): 53–72.