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Muslim Perspectives on the American Healthcare System: The Discursive Framing of "Islamic" Bioethical Discourse

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Abstract

This paper compares the discursive frames utilised by several national American Muslim organisations to craft an "Islamic" argument for healthcare reform via an expansion of health insurance coverage in the United States with Islamic ethico-legal opinions (fatwas) of U.S.-based jurists regarding the permissibility of purchasing health insurance. I analyse the differing ways in which these producers of "Islamic bioethics" material ground their arguments and draw on vocabulary from other discourses. The paper closes by reflecting upon the socio-political undercurrents that may contribute to the differences and disconnections between the ways in which these bioethics stakeholders produce their outputs and by arguing that further developing the field of Islamic bioethics will require concerted multidisciplinary engagements that clarify the distinctive nature of Islamic norms.

Keywords

fiqh – theology – critical discourse analysis (CDA) – ethics – health insurance

Islamic bioethics, both as a cohesive field of inquiry and as an academic discipline, is still under construction. Its content, scope and research methods are the subject of scholarly debate. Ambiguities regarding the contours of an Is-

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lamic bioethics do not stem from the lack of a moral theology[1] outlined by scripture, nor from a dearth of ethico-legal judgments pertaining to medicine and healthcare formulated by Islamic jurists. Rather the challenge is to devise a comprehensive bioethical theory, rooted in Islamic moral theology and attentive to those juridical assessments, that can serve healthcare stakeholders (patients, health professionals, religious leaders, and others) in pluralistic Muslim-minority contexts as well as those living in Muslim-majority contexts where Islamic law may be a source of state legislation.

There is ample research evidence that Islamic ethical notions impact the decisions made by patients, medical professionals, policymakers, and other healthcare actors across the world.[2] While the influence of Islamic ethics and law upon decision-making varies, and the sources of Islamic ethical guidance are multiple, the extant Islamic bioethics literature often lacks conceptual rigor and leaves critical questions unaddressed such that it provides insufficient actionable guidance for physicians, patients, and health policy makers.[3] From

1 I adopt Prof. Mohamed Fadel's usage of the English term moral theology to refer to the Islamic science of *uṣūl al-fiqh*: M. Fadel, "The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law", *Canadian Journal of Law and Jurisprudence* 21/1 (2008). I use the terms "Islamic ethico-legal tradition" and "Islamic law" to refer to the notions of *fiqh* and *aḥkām taklīfiyya* interchangeably.

2 E.g. A.I. Padela, H. Shanawani, J. Greenlaw, H. Hamid, M. Aktas and N. Chin, "The Perceived Role of Islam in Immigrant Muslim Medical Practice Within the USA: An Exploratory Qualitative Study", *Journal of Medical Ethics* 34/5 (2008), pp. 365–9; M.C. Inhorn, "Globalization and Gametes: Reproductive 'Tourism', Islamic Bioethics, and Middle Eastern Modernity", *Anthropology & Medicine* 18/1 (2011), pp. 87–103; K. Aramesh, "The Influences of Bioethics and Islamic Jurisprudence on Policy-Making in Iran", *American Journal of Bioethics* 7/10 (2007), pp. 42ff.; M. ur Rahman, S. Abuhasna and M. Abu-Zidan, "Care of Terminally-Ill Patients: An Opinion Survey among Critical Care Healthcare Providers in the Middle East", *African Health Sciences*, vol. 13/4 (2013), pp. 893–8; A.I. Padela, K. Gunter, A. Killawi and M. Heisler, "Religious Values and Healthcare Accommodations: Voices from the American Muslim Community", *Journal of General Internal Medicine* 27/6 (2012), pp. 708–15; A.I. Padela and F.A. Curlin, "Religion and Disparities: Considering the Influences of Islam on the Health of American Muslims", *Journal of Religion and Health* 52/4 (2012), pp. 1333–45; A.I. Padela, "Islamic Bioethics: Between Sacred Law, Lived Experiences, and State Authority", *Theoretical Medicine and Bioethics* 34/2 (2013), pp. 65–80; A.I. Padela, "Islamic Verdicts in Health Policy Discourse: Porcine-Based Vaccines as a Case Study", *Zygon* 48/3 (2013), pp. 655–70; J.T. Gitsels-van der Wal, J. Mannien, M.M. Ghaly, P.S. Verhoeven, E.K. Hutton and H.S. Reinders, "The Role of Religion in Decision-Making on Antenatal Screening of Congenital Anomalies: A Qualitative Study amongst Muslim Turkish Origin Immigrants", *Midwifery* 30/3 (2014), pp. 297–303.

3 See A.I. Padela, A. Arozullah and E. Moosa, "Brain Death in Islamic Ethico-Legal Deliberation: Challenges for Applied Islamic Bioethics", *Bioethics* 27/3 (2013), pp. 132–9; A.I. Padela, H. Shanawani and A. Arozullah, "Medical Experts & Islamic Scholars Deliberating Over Brain

my own perspective as simultaneously a clinician who views his practice of medicine as part of a religious vocation, a clinical ethicist serving the ethics consultation needs of healthcare providers and patients in the United States (both Muslim and non-Muslim), and an Islamic bioethics researcher, this troublesome state of the Islamic bioethics literature is evident on a daily basis.

To be sure, an Islamic bioethics that accounts for the theological and ethico-legal frameworks of Islam could, for instance, enable the composing of Islamic bioethics manuals similar to the *Encyclopedia of Jewish Medical Ethics*, for instance.[4] Just like the *Encyclopedia of Jewish Medical Ethics*, an Islamic encyclopaedia could provide a comprehensive review of classical ethico-legal deliberations over, as well as modern perspectives upon, pressing bioethical dilemmas. Such a resource would, from my perspective, meet the needs of patients and healthcare providers seeking actionable guidance. More than that, however, such a manual would arguably also provide an invaluable starting point for academic research into the field and enable the generation of a comprehensive bioethical theory that provides an "Islamic" set of goals for modern biomedicine. Moreover, a comprehensive, consistent and cogent theoretical framework for an Islamic bioethics would empower both the producers and consumers of this field to address the multilayered ethical questions resulting from technological advancements that provide humans with increasing mastery over the body and to consider the proper organisation and prioritisation of our increasingly complex array of different healthcare services and treatment modalities.[5]

Yet, prior to developing such resources and deriving such a theory, clarifying the nature of what makes Islamic bioethics "Islamic" would be required. Indeed the choice of methods applied to and the selection of sources for the study of Islamic bioethics arguably depend upon an *a priori* definition of what Islamic bioethics is. The present study works towards this end by examining the divergent constructions of the "Islamic" in the bioethics-related discourse produced by two Islamic bioethics producers in the American context. As we

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Death: Gaps in the Applied Islamic Bioethics Discourse", *MW* 101/1 (2011), pp. 53–72; A.I. Padela, "Public Health Measures & Individualized Decision-Making: The Confluence of the H1N1 Vaccine and Islamic Bioethics", *Human Vaccines* 6/9 (2010), pp. 754ff.; H. Shanawani and M.H. Khalil, "Reporting on 'Islamic Bioethics' in the Medical Literature: Where Are the Experts?" in J.E. Brockopp and T. Eich (eds.), *Muslim Medical Ethics: From Theory to Practice* (Columbia 2008), pp. 213–28.

4 A. Steinberg, *Encyclopedia of Jewish Medical Ethics: A Compilation of Jewish Medical Law on All Topics of Medical Interest* (Jerusalem and New York 2003).

5 A.I. Padela, H. Shanawani and A. Arozullah, "Medical Experts & Islamic Scholars".

will see, identifying what makes "Islamic bioethics" distinctively Islamic is not as straight-forward as might at first appear.

This project of constructing the field and discipline of Islamic bioethics faces a variety of challenges emerging from the respective disciplines invoked by each of the two terms "Islamic" and "bioethics". Beginning with the latter, Islamic bioethics as a subfield of bioethics faces the same challenge of interdisciplinarity that modern bioethics faces. While bioethical discussions were originally the domain of religious experts and clinicians, the field has grown to involve secular philosophers, sociologists, anthropologists, policy experts, lawyers and others.[6] As the expertise brought to bear upon bioethics has multiplied, so too have the research methods employed to study the field and the modes of reasoning employed to discover the "ethical".

This multidisciplinary nature of bioethical inquiry leads to a crisis of epistemology and legitimacy. It is not clear how much weight should be accorded to the reality on the ground (what is) when considering the moral ordering of society (what should be). Hence an overstated, but nevertheless pertinent, tension exists between religious authorities and philosophers on the one hand, who consider moral reasoning to have normative value independent of social reality, and social scientists on the other, who describe contextually-driven human ethical decision-making. Additionally, even when attempts at bridging the divide through cross-disciplinary dialogue are made, the lack of a common conceptual vocabulary regarding the "stuff" of bioethics frustrates them. Indeed the epistemological and lexical challenges for an "Islamic" bioethics are arguably still more profound, because notions about moral norms, the good, and the ethical are scattered across different Islamic sciences including moral theology (*uṣūl al-fiqh*), scholastic theology (*ʿilm al-kalām*), jurisprudence and law (*fiqh*), as well as within various genres and practices related to moral formation and spiritual development (*taṣawwuf* and *adab*).

The "Islamic" character of Islamic bioethics is thus also debated. As the academic study of religion has come to deploy social science-based methods for examining the lived experiences and meaning-making activities of religious communities, the primacy of the analysis of religious texts for understanding religion has become contested.[7] This methodological divide has at its root an

6 A.R. Jonsen, "A History of Religion and Bioethics" in D.R. Guinn (ed.), *Handbook of Bioethics and Religion* (Oxford 2006), pp. 22–36; H. Brody and A. Macdonald, "Religion and Bioethics: Toward an Expanded Understanding", *Theoretical Medicine and Bioethics* 34/2 (2013), pp. 133–45.

7 Brody and Macdonald, "Religion and Bioethics", pp. 133–45.

epistemic quandary similar to the "is" and "ought" divide mentioned above. Some scholars contest the notion of an "Islamic" bioethics that motivates Muslims in the same way across the globe, while others distinguish "Islamic bioethics" from "Muslim bioethics", based on their differing analytic methods and research sources.[8] As I understand it, research into "Islamic bioethics" focuses on deriving or describing normative values and moral frameworks related to biomedicine through an analysis of the scriptural source-texts of Islam, whereas "Muslim bioethics" studies the decision-making of Muslim patients, physicians and actors engaging with contemporary biomedicine. In other words, Islamic bioethics primarily encompasses the theological and legal analyses of scriptural source-texts and their accompanying interpretative discourse, while Muslim bioethics represents the sociological and anthropological study of human actors making decisions with moral dimensions in the context of biomedicine. One might further distinguish an "applied Islamic bioethics" that examines the ways in which Islamic authorities approach ethical questions raised by Muslim health-care providers, religious leaders, and patients in their dealings with medicine and biotechnology, and then studies the application of religious verdicts by health-care providers, patients, and other healthcare stakeholders, using a variety of empirical, theological, and sociological and other research methods.[9] Finally, the contestations over what comprises the "Islamic" component of Islamic bioethics run deeper still to include debates surrounding the applicability and authority of the inherited Islamic legal canon and its juridical devices in addressing modern day concerns.[10]

Suffice it to say, a demarcation of the posited content of Islamic bioethics and a delineation of its "Islamic" aspects is necessary for generating methodological guides and practical resources that facilitate both scholarly engagement and healthcare stakeholder input into the emerging field. The present study works towards this end by examining the divergent constructions of the "Islamic" in Islamic bioethics discourse in a certain context, that of the United

8 S. Hamdy, *Our Bodies Belong to God: Organ Transplants, Islam, and the Struggle for Human Dignity in Egypt* (Berkeley 2012); J. Brockopp and T. Eich (eds.), *Muslim Medical Ethics: From Theory to Practice* (Columbia 2008).

9 A.I. Padela, "Islamic Verdicts in Health Policy Discourse"; A.I. Padela, "Islamic Bioethics".

10 A.A. Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford and New York 2009); E. Moosa, "Translating Neuroethics: Reflections from Muslim Ethics. Commentary on 'Ethical Concepts and Future Challenges of Neuroimaging: An Islamic Perspective'", *Science and Engineering Ethics* 18/3 (2012), pp. 519–28; E. Moosa, "Muslim Ethics and Biotechnology" in J.W. Haag, G.R. Peterson and M.L. Spezio (eds.), *The Routledge Companion to Religion and Science* (New York 2012), pp. 455–65; T. Ramadan, *Islamic Ethics and Liberation* (Oxford 2008).

States, and by commenting on the social considerations that may influence such conceptions.

Using critical discourse analysis (CDA) approaches as an inspiration,[11] I apply both sociological and Islamic ethico-legal lenses to examine select writings of two kinds of producers of Islamic bioethics literature in the U.S.: national Muslim organisations and Islamic jurists. My focus is on health insurance, a somewhat neglected topic within the academic literature on Islamic bioethics, despite its obvious importance.[12] I will compare the discursive frames utilised by several national American Muslim organisations to craft an "Islamic" argument for healthcare reform in the United States (reform termed "Obamacare" in the popular press but formally known as the Patient Protection and Affordable Care Act [PPACA]) with the Islamic legal opinions (fatwas) of Islamic jurists regarding the permissibility of purchasing health insurance in the United States. Press releases and reports in support of healthcare reform and fatwas providing religious guidance about health insurance may appear to be sufficiently dissimilar as discursive genres to render a comparative examination of their "Islamic" nature and bioethical framing methodologically contestable. However, I will argue that they in fact display conceptual connections directly relevant to the question of the nature of a putative Islamic bioethics.

In addition to examining the discursive framing present in these textual sources, I will also call attention to the discursive "gaps" between them: that is, considerations that appear in the Muslim organisations' material but not in the jurists' fatwas, and vice versa. This is to highlight the compartmentalised nature of Islamic bioethics discourse, wherein different producers of Islamic bioethics material fail to address key considerations that emerge when the problem is analysed using a different analytic vantage-point. Further, through doing so, I hope to stimulate a (re)construction of the field of Islamic bioethics: once the gaps and discontinuities in the extant discourse have been underscored, scholars should be motivated to undertake multidisciplinary efforts that can accomplish a more wide-reaching theorisation of the nature and scope of Islamic bioethics, craft outputs that clarify the "Islamic" aspects of their bioethics writings, and be attentive to the needs of the multiple different stakeholders that seek out Islamic bioethics guidance.

11 R. Wodack and M. Meyer, "Critical Discourse Analysis: History, Agenda, Theory and Methodology" in R. Wodack and M. Meyer (eds.), *Methods for Critical Discourse Analysis* (London 2009), pp. 1–33; N. Fairclough, "A Dialectical Relational Approach to Critical Discourse Analysis in Social Research" in R. Wodack and M. Meyer (eds.), *Methods for Critical Discourse Analysis* (London 2009), pp. 162–86.

12 As discussed in the introduction to this special edition.

The Sources

The sources for this study include press releases and other communiqués concerning American healthcare reform produced, or contributed to, by the American Muslim Health Professionals (AMHP) and the Islamic Society of North America (ISNA).[13] I also analyse online fatwas, proffered by scholars at the Fatwa Center of America (FCA), the Assembly of Muslim Jurists of America (AJMA) and by Dr Monzer Kahf, a widely-cited scholar of Islamic economics residing in California.[14] These materials are supplemented by selected e-fatwas from outside the U.S., but only when these juridical opinions respond to a questioner from America. Although the sampling frame is somewhat artificially bounded, since internet fatwas are available globally and some research suggests that juridical decrees from one part of the world influence fatwas and Muslim behaviour in other more distant parts, restricting the sampling frame to American fatwas in the first instance seems sensible, if only because research has not yet been carried out on which juridical bodies or jurists are most often sought out by American Muslims for bioethical guidance.[15] Furthermore my own recent national survey of American Muslim physicians found that international juridical bodies are only looked to for ethical guidance by a small minority.[16]

Again, with Muslim organisations authoring press releases and reports in support of healthcare reform on the one hand, and jurists providing religious guidance about health insurance on the other, these writings may appear to be of different genres, each addressing different situations and divergent

13 While ISNA is not a health-related organisation per se, I include its statements in this study because ISNA is both the premier unifying civic organisation for Muslims in North America, and because the Islamic Medical Association of North America (IMANA), which is a medical organisation, is a founding partner of ISNA and some of its members play key roles within it.

14 Fatwa Center of America, *http://askamufti.com* (accessed on 16 April 2014); Assembly of Muslim Jurists of America, *http://amjaonline.com* (accessed on 16 April 2014).

15 A.I. Padela, "Islamic Verdicts in Health Policy Discourse"; A.I. Padela, "Public Health"; M. Ghaly, "Organ Donation and Muslims in the Netherlands: A Transnational Fatwa in Focus", *Recht Van De Islam* 26 (2012), pp. 39–52; M. Ghaly, "Religio-Ethical Discussions on Organ Donation Among Muslims in Europe: An Example of Transnational Islamic Bioethics", *Medicine, Health Care and Philosophy* 15 (2012), pp. 207–20; M. Ghaly, "Milk Banks Through the Lens of Muslim Scholars: One Text in Two Contexts", *Bioethics* 26/3 (2012), pp. 117–27.

16 This will be a part of forthcoming research. For more information, see: *https://pmr.uchicago.edu/page/initiative-islam-medicine-scholarship* (accessed on 16 April 2014).

audiences. Yet, the materials are conceptually linked in at least four ways that are directly relevant to the present study.

For one, both types of producers make "Islamic" moral assessments of the prevailing American healthcare system. Accordingly, the particular religious values that are highlighted in these public communiqués provide insight into what each of these actors consider to be sources of Islamic ethics and their Islamic moral reasoning processes. In other words, the choice of religious values to construct the arguments and the language used to communicate these values evidence a particular reading of the Islamic tradition. These readings, in turn, represent different ways of making meaning from sacred source texts and different views on the nature of what constitutes an "Islamic" ethical value. As such the writings are a vantage point from which to describe and to critique what an "Islamic" bioethics represents to each of these producers.

Second, both types of producers seek to motivate Muslim behaviour. The fashioning of an "Islamic" argument by Muslim organisations results from the aim of spurring American Muslims to support healthcare reform. Likewise the jurist's reasoning is written into the fatwa, at least in part, to persuade the Muslim questioner to act in accordance with the jurist's "Islamic" opinion. We can therefore examine what each group considers as aspects of "Islam" that hold motive force and persuasive power to compel Muslim action. Thirdly, both sets of Islamic bioethics producers engaged a public audience with their materials. While the writings of the national Muslim organisations and those of the jurists address multiple audiences, some of which do not overlap (the policy makers addressed by the national Muslim organisations, for example, and the specific individuals who asked for the fatwas on the part of the jurists), the publishing of each of these producer's texts on the internet suggests that they also intended to speak to a public audience (Muslim and non-Muslim). As such one can compare the ways in which the outputs describe Islamic ethics to a common non-specialist audience, and such a comparison may provide insight into the social considerations that influence their discursive framing.

Finally, the writings of these diverse producers are linked by the fact that they are all responding to the problematic American healthcare context. In calling Muslims to support of healthcare reform, the national Muslim organisations believed aspects of the American healthcare system to require remedy, and, as will be described, the jurists also took into consideration the non-ideal nature of the American healthcare system whilst undertaking their ethico-legal deliberations.

American Muslim Organisations and U.S. Healthcare Reform

A brief description of the American healthcare context is warranted before proceeding to a discussion of the discursive frames utilised by national American Muslim organisations to craft an "Islamic" argument for supporting its reform. The U.S. remains one of the few developed nations without universal healthcare access for all its citizens. Instead, most Americans receive health insurance through their employers. Typically full-time workers receive health insurance packages that provide healthcare access for themselves and their nuclear families. The elderly and the extremely poor obtain healthcare access (insurance) subsidised, and in some cases provided free of charge, by the government. Finally, military service personnel and veterans, and some of their family members, are provided low-cost healthcare through a federally administered system of hospitals and clinics known as the Veterans' Administration.

Those not belonging to one of those aforementioned categories must purchase health insurance through the marketplace. It is important to note that American healthcare is extremely expensive, with healthcare costs representing one of the leading causes of personal bankruptcy.[17] According to recent estimates, nearly 79 million Americans, almost 30% of the American population, are either under- or uninsured, leading to reduced access to routine medical care and delayed healthcare-seeking behaviours.[18]

The historical and cultural reasons behind these peculiarities of American healthcare are numerous and include the provision of healthcare insurance as part of employment benefits during World War II wage increase freezes, the creation of government-run subsidised medical care programmes in 1965 for the elderly and indigent that consume an ever-increasing portion of the gross domestic product, and a dominant libertarian undercurrent within American society that resists governmental control of essential services, instead believing that individuals should have control over their own healthcare choices.[19] While there have been multiple attempts to overhaul the healthcare system and move towards a single-payer universal coverage healthcare system, and

17 D. Mangan, "Medical Bills are the Biggest Cause of US Bankruptcies: Study", *http://www.cnbc.com/id/100840148* (accessed on 16 April 2014).

18 C. Schoen, S.L. Hayes, S.R. Collins, J.A. Lippa and D.C. Radley, "America's Underinsured: A State-by-State Look at Health Insurance Affordability Prior to the New Coverage Expansions", The Commonwealth Fund (March 2014), *http://www.commonwealthfund.org/Publications/Fund-Reports/2014/Mar/Americas-Underinsured.aspx* (accessed on 16 April 2014).

19 Paul Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry* (New York 1984).

indeed most popular surveys favour such a system, healthcare reform in the United States has been piecemeal.[20]

Prior to the 2008 presidential election, momentum had been building towards another round of healthcare reform. The escalating costs of healthcare (accounting for nearly 18% of the gross domestic product in 2012), the increasing numbers of Americans without access to routine healthcare (over 47 million persons or 15% of the population), and the relatively poor healthcare outcomes for Americans (ranked 37th in the world by the World Health Organization's world health report 2000) evidenced the need for drastic change.[21]

President Obama's election to the office of president was in part fueled by his promises to enact comprehensive healthcare reform. In March 2010, after much debate, a landmark bill, officially named the Patient Protection and Affordable Care Act (PPACA) but nicknamed "Obamacare", was passed into law that extended financial incentives to purchase health insurance packages in semi-regulated, private healthcare insurance marketplaces. The law also enacted several mandates upon employers of a certain size to provide healthcare insurance to employees, set minimums on the types of items that all health insurance policies must cover, and incentivised states to expand government covered healthcare insurance for the indigent.[22] The major provisions of this law came into effect in 2014.

Leading up to the PPACA, several national American Muslim organisations, including American Muslim Health Professionals (AMHP) and the Islamic Society of North America (ISNA), were all engrossed in the public policy conversations and promoted healthcare reform.[23] Of these groups AMHP was the most visible in the legislative arena and mobilised allied healthcare pro-

20 See Western PA Coalition for Single-Payer Healthcare, *http://www.wpasinglepayer.org/PollResults.html* (accessed on 16 April 2014).

21 The Kaiser Commission on Medicaid and the Uninsured, "Key Facts about the Uninsured Population", *http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/* (accessed on 3 January 2014); World Health organization, "Health Expenditure, Total (% of GDP)", *http://data.worldbank.org/indicator/SH.XPD.TOTL.ZS* (accessed on 3 January 2014); C.J. Murray and J. Frenk, "Ranking 37th – Measuring the Performance of the U.S. Health Care System", *The New England Journal of Medicine* 362/2 (2010), pp. 98f.

22 Supreme Court of the United States, "National Federation of Independent Business v. Sebelius", *http://www.supremecourt.gov/opinions/11pdf/11–393c3a2.pdf* (accessed on 16 April 2014); U.S. Department of Health and Human Services, "About the Law", *http://www.hhs.gov/healthcare/rights/index.html* (accessed on 16 April 2014).

23 A.F. Rosen and S. Clement, "Religious Groups Weigh in on Healthcare Reform", Pew Research Center, Washington DC. (October 2009), *http://www.pewforum.org/2009/10/08/religious-groups-weigh-in-on-health-care-reform/* (accessed on 4 January 2014).

fessionals, while ISNA tended to work at the community level with mosque leaders. Each group fashioned "Islamic" arguments for healthcare reform by drawing attention to the harms associated with the lack of healthcare insurance and by calling for social justice in healthcare access.

AMHP's Healthcare Reform Messaging

AMHP is a professional community of healthcare workers committed to improving "the health of Americans" by "improving public health through efforts inspired by Islamic tradition", and it has long been involved in promoting healthcare reform.[24] From 2008 through 2009, AMHP created a Task Force on Health Affordability and drafted a health policy brief comparing the various healthcare platforms of the presidential candidates; it met with congressional staffers and partner organisations in Washington, D.C. to advocate for reform; it penned a congressional brief; and it also conducted health reform seminars across the country. In their policy brief entitled *Principles of Health Care Reform*, AMHP notes that Islam motivates their belief in "comprehensive health care reform that will increase access to high-quality, affordable care for all Americans".[25]

While highlighting the social problem represented by the "120 million [Americans] being either uninsured or underinsured", the press release marking AMHP's lobbying visit to Congress simultaneously delineates the Islamic ethos of its efforts. The release highlights both Muslim religious identity and practice in quoting the meeting's lead coordinator statement that "it was a tremendous opportunity to represent the Muslim voice on this very challenging issue of health reform, we pray that much good" comes from the visit. The AMHP president further affirmed that from "an Islamic and American background it is our duty to support these grassroots efforts".[26] One notes the simultaneous appeal to religious and patriotic values. Following the meeting in Washington DC, AMHP sent a letter to Muslim staff in Congress noting that supporting healthcare reform was part of an Islamic mandate to serve "the poor and destitute of our society".[27] Soon after the passage of the PPACA, AMHP crafted a press release that again highlighted their Islamic motivations in

24 American Muslim Health Professionals, "About Us", *http://amhp.us/aboutus/#OurHistory* (accessed on 30 March 2014).

25 American Muslim Health Professionals, *Principles of Health Care Reform* (Palatine, IL n.d.).

26 American Muslim Health Professionals Press Release, "Muslim Health Professionals from Across the Nation Meet with the Senate and Congress" (Palatine, IL 2009).

27 F. Qazi, "Muslim Free Clinics and Health Reform", American Muslim Health Professionals Press Release (Palatine, IL 2009).

supporting Obamacare. The release states that "the Islamic faith encourages Muslims to strive towards equity in all things" and cites a Quranic verse (3:92) to support this claim.[28] In addition to these outputs, AMHP put their signature to materials of a more interfaith nature crafted by Faithful Reform in Health Care.

Faithful Reform in Health Care

Faithful Reform in Health Care (FRH) is a national interfaith coalition of more than fifty organisations that aims to utilise faith-based messaging to advance healthcare reform.[29] The group's initiatives have included mass media campaigns, prayer vigils, town hall meetings, and conference calls with legislators, including President Obama.[30] The organisation's core ideals are captured by their publication, *A Faith-Inspired Vision of Health Care*, which was developed by constituent members and signed by over 400 organisations including AMHP and ISNA.

A Faith-Inspired Vision of Health Care uses religious values as well as human rights discourse to frame its support for healthcare reform. Consequently, the document draws attention to humankind's equality in order to advance a human rights conceptualisation of healthcare. It notes:

> In the bonds of our human family we are created to be equal [...] Affirming our commitment to the common good, we acknowledge our enduring responsibility to care for one another [...] we are led to discern the human right to health care.

This vision also states that "as spiritual and sacred vessels we are responsible for [...] the care of one another". The group considers a universal notion of

28 American Muslim Health Professionals, "AMHP Lauds Supreme Court Decision", *http://amhp.us/american-muslim-health-professionals-lauds-supreme-court/* (accessed on 30 March 2014).

29 Faithful Reform in Health Care, "About Us", *http://www.faithfulreform.org/index.php?option=com_content&task=view&id=13&Itemid=77* (accessed on 4 January 2014). FRH comprises a loose coalition of national and state-based organisations that signed their core document, "A Faith-Inspired Vision of Health Care". Most of the signing organisations are of Christian affiliation and the organisation's director is an ordained minister in the Christian Church (Disciples of Christ). Nonetheless FRH's messaging is developed in consultation with multiple faith groups and identifies theological perspectives and scriptural narratives that inform healthcare reform dialogue common to all participating faith communities.

30 A.F. Rosen and S. Clement, "Religious Groups Weigh in on Healthcare Reform".

social justice to provide the basis for a (religious) calling "to ensure that all of us have access to health care". Together, these notions contribute to FRH's advocacy for universal health care access. FRH states that working to "overcome barriers to and disparities in health care" demonstrates the carrying out of a broader religious obligation to be "partners in health".[31]

With respect to Islamic participation, in addition to the support of the Muslim organisations above, FRH's website also quotes Imam Sa'dullah Khan of the Islamic Center of Southern California. This quotation coheres with the social justice and human rights framing of their advocacy of health care reform. Imam Sa'dullah remarks:

> The right of every individual to adequate health care flows from the sanctity of human life and that dignity belongs to all human beings [...] We believe that health is a fundamental human right which has as its prerequisites social justice and equality and that it should be equally available and accessible to all.[32]

After the passage of the PPACA, FRH issued a press release lauding the US Supreme Court's upholding of the law. In it they affirm a "moral imperative to collectively care for one another" and state that "the scriptures of the Abrahamic traditions of Christians, Jews, and Muslims, in addition to the sacred teachings of other faiths, understand that addressing the welfare of the nation includes" meeting the needs of the sick.[33] Both AMHP and ISNA co-signed this press release.

The Islamic Society of North America

ISNA is the largest and most prominent Muslim organisation in North America. It presents a Muslim voice to national policy stakeholders and leads civic engagement programmes across the nation. In addition to partnering with FRH, ISNA worked with Cover the Uninsured to advance healthcare reform. Cover the Uninsured was a programme funded by the Robert Wood Johnson Founda-

31 Faithful Reform in Health Care, "A Faith-Inspired Vision of Health Care", *faithfulreform.org* (accessed on 16 April 2014).

32 Faithful Reform in Health Care, "Perspectives", *http://www.faithfulreform.org/index.php?option=com_content&task=view&id=136&Itemid=162* (accessed on 4 January 2014).

33 L. Walling, "Faith Groups Applaud the U.S. Supreme Court for Upholding the Affordable Health Care Act", Faithful Reform in Health Care Press Release (28 June 2012), *http://www.faithfulreform.org/storage/frhc/ACA_Supreme_Court/press%20statement_scotus_062812.pdf* (accessed on 16 April 2014).

tion[34] from 2003 through 2011 that helped to enroll Americans into healthcare insurance programmes and raised awareness about the plight of uninsured Americans in support of the goal of generating grassroots support for healthcare reform. Accordingly the group organised tailored sermons and study circles at mosques, churches and synagogues. ISNA's Director of Interfaith and Community Alliances, Sayyid Syeed, was a member of the National Interfaith Advisory Board for Cover the Uninsured and involved in the Muslim portion of its programming. Cover the Uninsured, presumably in collaboration with ISNA, produced a packet of materials including fliers, a sermon guide, and discussion resources that included narratives of Muslims without health insurance for Muslim consumption. A respected imam and Muslim chaplain, Ahmed Kobeisy, was charged with preparing these materials. A quote from Sayyid Syeed incorporated into these materials sets out an Islamic motivation for healthcare reform:

> Islam calls on its followers to practice compassion and justice, to act out of concern for the needy. The needs of the 46 million Americans without health care coverage are surely a cause to which we who are Muslim must respond. I encourage every Muslim and masjid to focus attention on the needs of people without health care coverage and to urge solutions to the problem.[35]

The key document within the packet that outlines an Islamic ethos for healthcare reform is titled *An Islamic Perspective on the Plight of Americans Without Health Care Coverage* (henceforth referred to as *The Perspective*). *The Perspective* highlights the "non-Islamic" status quo where individuals without health care coverage suffer and argues that supporting healthcare reform is part of an Islamic obligation to promote justice. Illustratively, one passage reads,

> Justice means that [...] the value of a human being's health and life is not determined by the level of their wealth or status [...] It is an Islamic duty, as a step in the pursuit of justice, to raise the awareness of the growing

34 The Robert Wood Johnson Foundation is America's largest philanthropy dedicated solely to the health sector. Through grant funding and collaborative projects and programs the foundation seeks to improve the health and healthcare of all Americans. For more information see: *www.rwjf.org* (accessed on 16 April 2014).

35 Ahmed Kobeisy, "Materials for Muslim Prayer and Study", Robert Wood Johnson Foundation (June 2011), *http://covertheuninsured.org/materials/files/2007/InterfaithMuslimPrayerStudy.pdf* (accessed on 29 June 2011).

> problem of the uninsured and seek to bring about a change in our health care system and public policy so that Americans are provided with the health care coverage needed.[36]

The Perspective also proposes that the remedy to the problem of the uninsured is to live out the Prophetic mission of mercy by "providing health care" to them. Near the end of *The Perspective*, the concepts of justice, mercy and health care coverage are tied together as the basis for an Islamic obligation for health care reform. "It is hard to imagine a person who claims to be just, merciful and kind who [...] does not work to change" the plight of the uninsured, claims *The Perspective*, and it lays out that "health care and treatment must be afforded to every citizen". *The Perspective* closes by offering a selection of three Quranic verses (5:8, 60:8, 16:90) that preachers may draw from to exhort the Muslim community towards healthcare reform. *The Perspective* directs preachers to use these verses that assert "the essential nature of justice and standing for justice [and] the obligation to cooperate with everyone – Muslim or non-Muslim – on issues of justice". For example, verse 5:8 urges Muslims to be "witnesses to justice" (*qisṭ*) and not let hatred make you "depart from justice" (*ʿadl*).[37]

From the above description of AMHP and ISNA's involvement in healthcare reform we see that they were motivated by notions of Islamic sensibilities and ethics. Indeed, they fashioned "Islamic" arguments by using Quranic verses and nominally universal virtues and they used mosque settings and the pulpit to deliver that message to the American Muslim community at large. As such their public communications can be considered examples of Islamic bioethics discourse in as much as they directly call upon the Islamic tradition to advance ethical arguments related to biomedicine.

Before delving into a deeper analysis of the ethical arguments and language used to signify the Islamic content of AMHP and ISNA's messages, I wish briefly to describe the contrasting approach of another category of producers of Islamic bioethics material, namely Islamic jurists. Unfortunately, there are no documented opinions from Islamic jurists debating healthcare reform directly. My discussion of the juridical commentary on the American healthcare system is thus confined to its contextual role in the background of electronic fatwas on the permissibility of purchasing health insurance.

36 Ibid.

37 Ibid.

Fatwas on Health Insurance in the American Context

In stark contrast to the positive messages of the Islamic organisations considered above, all of the fatwas reviewed consider commercial insurance to be ethico-legally impermissible, or *ḥarām*. For example, Mufti Ikram ul-Haq from the Fatwa Center of America (FCA) states that "according to the research of *ulama* all forms of conventional insurance is [sic] haram" and corroborating this assertion Mufti Muhammad ibn Adam al-Kawthari, the Director of the Institute of Islamic Jurisprudence in the United Kingdom, states that the Islamic Fiqh Academy of Jeddah, comprised of the "top recognized scholars from around the globe" with "no less than 150 such scholars from 45 Islamic countries", unanimously judged "all types of prevalent insurances to be [Islamically] unlawful".[38] Dr al-Qudah from the Assembly of Muslim Jurists of America (AJMA) also cites this opinion.[39]

38 Ikram ul-Haq, "Life Insurance & Health Insurance", Fatwa no. 1918, *http://www.askamufti.com/Answers/ViewQuestion.aspx?QuestionId=1918* (accessed on 2 January 2014); Muhammad al-Kawthari, "Islam's Position on Prevalent Forms of Insurance", Fatwa no. 383, *http://spa.qibla.com/issue_view.asp?HD=1&ID=383&CATE=43* (accessed on 7 October 2013).

39 Main Khalid al-Qudah, "Offering Medical-Health Insurance", Fatwa no. 77826, *http://www.amjaonline.org/fatwa-77826/info* (accessed on 2 January 2014). Given the varied nature of America's Muslim communities, some comment on the various backgrounds of the American scholars mentioned might be apposite here. Mufti Ikram ul-Haq is the founding president of Fatwa Center of America. He graduated with the degree of *takhaṣṣus fī l-iftā'* and certification as a Mufti from Jāmi'a Dār ul-'Ulūm in Karachi, Pakistan, and studied there with Shaykh ul-Islām Mufti Muḥammad Taqī 'Uthmānī and Mufti Muḥammad Rafī' 'Uthmānī, the current grand Mufti of the Islamic Republic of Pakistan. He holds traditional licenses (*ijāzāt*) to teach hadith, alongside an Aalim degree (Master's equivalent) from Darul-Uloom Al-Madania in Buffalo, New York, USA; see *http://askamufti.com/1/mufti-ikram-ul-haq* and *http://masjidalislam.wordpress.com/imams-bio/* (both accessed on 16 April 2014). Dr Main Al-Qudah, on the other hand, currently an assistant professor of Islamic Studies at the American Open University and member of the Fatwa Committee of the Assembly of Muslim Jurists of America, holds a PhD in the Science of Economics in Islam from the American Open University, a Master's degree in Islamic Studies from Yarmūk University in Jordan, and a Bachelor's degree in Economics from al-Azhar University in Egypt. But he also holds traditional licenses (*ijāzāt*) to teach the Quran; see *http://www.amjaonline.org/en/dr-main-al-qudah* (accessed on 16 April 2014). Dr Salah al-Sawy holds a PhD and Bachelor's degrees from the Faculty of Islamic Legislation and Law at the al-Azhar University in Egypt. He is a former Professor at the same university as well as at Umm al-Qurā University in Saudi Arabia. He is a founder, and served as President, of the American Open University and also co-founded the Assembly of Muslim Jurists of America. He currently serves on the Fatwa Committee of the Assembly of Muslim Jurists of America; see *http://www.amjaonline.org/en/dr-salah-alsawy*

The jurists explain that this assessment is based on the elements of usury (*ribā*), chancing (*qimār*), and uncertainty (*gharar*) present within conventional insurance contracts. Each of these features is, they agree, expressly forbidden by the Quran and Sunna. While the fatwas, generally speaking, do not exhaustively detail the verses and traditions that undergird their prohibitions, the following two verses condemning usury and chancing are cited as sources here:

> Those who swallow usury cannot rise up save as he ariseth whom the devil hath prostrated by (his) touch. That is because they say: Trade is just like usury; whereas Allah permitteth trading and forbiddeth usury [...] As for him who returneth (to usury) – Such are rightful owners of the Fire. They will abide therein (2:275).
>
> They question thee about strong drink and chancing. Say: In both is great sin, and (some) utility for men; but the sin of them is greater than their usefulness [...] Thus Allah maketh plain to you (His) revelations, that haply ye may reflect (2:219).[40]

A core precept in Islamic contractual law, derived from numerous Prophetic traditions, is that the amount paid be fixed and the product to be transacted clear so as to avoid deception. *Gharar* is the legal term for ambiguity or uncertainty on either point and Muslims are enjoined to avoid it. As Dr al-Qudah explains, conventional insurance schema are prohibited "because of the ambiguity and uncertainty built into the contract for neither of the two parties knows whether or not he will pay, how much he will pay and for how long".[41]

While acknowledging the categorical prohibition of commercial insurance, the American fatwas (from Mufti Ikram ul-Haq at FCA, Dr Main al-Qudah and Dr Salah al-Sawy at the AMJA, and from Dr Monzer Kahf at islam-online.net)

(accessed on 16 April 2014). And Dr Monzer Kahf holds a PhD in Economics from the University of Utah and a bachelor's degree in business from the University of Damascus. He worked as a research economist at the Islamic Research and Training Institute of the Islamic Development Bank in Jeddah, Saudi Arabia (1985–99), and as Professor of Islamic Economics and Banking at the School of Sharīʿa of Yarmūk University in Jordan (2004–5). He is a collaborating expert for the Islamic Fiqh Academy of the Organisation of the Islamic Conference; see *http://monzer.kahf.com/about.html* (accessed on 16 April 2014). One notes that even though he does not have a formal Islamic degree his writings on islamonline.net and elsewhere are labelled as fatwas.

40 M. al-Kawthari, "Islam's Position on Prevalent Forms of Insurance". The translation is that used in the source cited.

41 M.K. al-Qudah, "Offering Medical-Health Insurance".

all view health insurance as an exception. For Mufti Ikram and the scholars at AJMA, the exemption stems from the legal maxim "extreme necessity renders the impermissible to be permissible" (*al-ḍarūrāt tubīḥ al-maḥẓūrāt*).[42] These scholars consider the excessive costs of healthcare in the United States as satisfying the threshold to invoke dire necessity (*ḍarūra*). Mufti Ikram notes that "health insurance in America is allowed under the principal [sic] of necessity" due to "skyrocketing prices of medicine and medical procedures".[43] Similarly, Dr al-Qudah states that Muslims in North America have a special dispensation "from the basic rule of prohibition of all kinds of commercial insurance [...] due to the very high and unaffordable healthcare expense".[44] Dr al-Sawy bolsters the *ḍarūra* rationale with another argument to allow for the exception. He suggests that health insurance is linked to one of the higher objectives of Islamic law, the preservation of life (*ḥifẓ al-ḥayāt*), and therefore given "the lack of Islamic alternatives and also considering the elevated cost of treatment without insurance coverage there would be no blame in getting medical insurance".[45] Finally, Mufti Ikram offers another circumstance that serves to invoke necessity: when health insurance is required by the law of the land an individual is not considered blameworthy when purchasing it.[46]

While acknowledging that the majority of Islamic scholars deem commercial insurance *ḥarām*, Dr Kahf's fatwas deem health insurance to be permissible without needing to invoke *ḍarūra.* He notes that unlike life insurance, there is no usurious component in health insurance as there is no guaranteed payout. Thus the contract does not contain *ribā* and, according to him, the main issue to resolve is that of *gharar*. Following Shaykh Muṣṭafā al-Zarqa's[47]

42 On which see e.g. M.H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge 2003).

43 I. ul-Haq, "Life Insurance & Health Insurance"; I. ul-Haq, "Medical Insurance from Employer", Fatwa no. 2516, *http://www.askamufti.com/Answers/ViewQuestion.aspx?QuestionId=2516* (accessed on 2 January 2014).

44 Main Khalid Al-Qudah, "Health Benifits [sic] in Canada", Fatwa no. 83603, *http://www.amjaonline.org/fatwa-83603/info* (accessed on 8 April 2014).

45 Salah al-Sawy, "Getting Health Insurance for Family Coming to Visit", Fatwa no. 23107, *http://www.amjaonline.org/fatwa-23107/info* (accessed on 2 January 2014).

46 Ikram ul-Haq, "Car Insurance, Home Insurance, Health Insurance", Fatwa no. 2921, *http://www.askamufti.com/Answers/ViewQuestion.aspx?QuestionId=2921* (accessed on 2 January 2014).

47 The late Shaykh Muṣṭafā al-Zarqā' was a leading Ḥanafī jurist of Syrian origin who passed away in 1999. He was a prominent member of the Islamic Fiqh Council of Mecca, and was awarded the King Faisal International Prize for his work in Islamic *fiqh*. He is credited with being one of the earliest jurists involved in matters of Islamic finance and one of the first to judge certain types of commercial insurance to be permissible; see *http://www.arabnews.com/node/212596* (accessed on 16 April 2014).

opinion (according to Dr Kahf a view shared by a minority of jurists), Dr Kahf suggests that the ambiguity within the contract is remedied by actuarial studies "and the application of the theory of probability". Hence there is "no *gharar* on the part of the insurer" and purchasing health insurance is ethico-legally permissible (*mubāḥ*).[48]

Although these jurists find the purchasing of healthcare insurance to be Islamically permitted, it is worth noting that other Islamic jurists do not believe that the high costs of healthcare in America, nor the argument concerning the preservation of life, merit exceptions from the normative prohibition on commercial insurance. The Permanent Committee for Scholarly Research and Iftā' in Saudi Arabia addressed a student's question concerning the permissibility of purchasing health insurance in the United States given that "treatment costs are exorbitant" with the reply that "health insurance falls under commercial insurance which is prohibited".[49] The jurists reject the exceptional nature of the American context, stating elsewhere that there is no contextual difference in ethico-legal rulings here as all commercial insurance involves *gharar*.[50]

While each of the American fatwa authors find an Islamic legal (*sharʿī*) basis for allowing Muslims to purchase health insurance in the United States, all of them, however, consider the Islamic ideal to be a restructuring of conventional health insurance systems. For example, Mufti Ikram remarks that "Muslims should make effort to replace the conventional insurance with the Islamic alternative that is called *takāful*".[51] Dr Kahf also expresses this view, explaining that *takāful* avoids *ribā* and reduces *gharar*. He states that,

48 Monzer Kahf, "Fatawa on Insurance", *http://monzer.kahf.com/fatawa/2000–2002/FATAWA_INSURANCE.pdf* (accessed on 2 January 2014).

49 The Permanent Committee for Scholarly Research and Iftā', "The First Question of Fatwa No. 9580: Health Insurance Cards for Students in the USA", *http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=true&FatwaNumID=9580&ID=5665&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=EXACT&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=AnyWord&PagePath=&siteSection=1&searchkeyword=#firstKeyWordFound* (accessed on 2 January 2014).

50 The Permanent Committee for Scholarly Research and Iftā', "Fatwa no. 7723", *http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=true&FatwaNumID=7723&ID=5664&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=EXACT&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=AnyWord&PagePath=&siteSection=1&searchkeyword=#firstKeyWordFound* (accessed on 2 January 2014).

51 Ikram ul-Haq. "Car Insurance, Home Insurance, Health Insurance".

> The solution is to create a [sic] insurance Islamic cooperative (mutual) [...] In a cooperative you pay a premium as a contribution to the insurance pool of funds and if anything is left it will be distributed back to the members (contributors) and if the pool wasn't sufficient they [the insurance managers] go back to the members for the deficit [...T]he condition of avoidance of gharar is relaxed in cooperative/contributory entities that are based on some kind of membership relationship.[52]

Dr al-Sawy, on the other hand, suggests that the Islamically permissible alternative to current health insurance systems would be a government-run single-payer system that "aims to look after the citizens and not to gain profit" by giving them access to a greater quantity of healthcare services than what their fiscal contributions might warrant so that the schema includes an element of gifting beyond simply getting only that amount of healthcare one has "paid" for.[53]

From the above, we see that while insurance schema are normatively prohibited according to Islamic law, in light of the excessive costs associated with American healthcare the America-based jurists deemed the purchase of healthcare insurance in the U.S. to be contingently permissible. They constructed Islamic ethico-legal arguments by drawing upon the maxim of dire necessity, calling upon the higher objective of Islamic law to protect life, and in one case considering *gharar* to be offset by actuarial science. Such fatwas represent a distinct genre of Islamic bioethics – one often taken as its quintessential form[54] – where the machinery of Islamic law is used to advance ethical arguments concerning biomedicine.

Connections and Disconnections

AMHP's and ISNA's textual outputs incorporate two types of discourses, healthcare equity discourse and human rights discourse, not present in the fatwas.[55] The AMHP press releases, the FRH pamphlets and the ISNA-sponsored Muslim

52 M. Kahf, "Fatawa on Insurance".

53 S. al-Sawy, "Getting Health Insurance for Family Coming to Visit".

54 See the introduction to this special edition on how fatwas are often taken to represent the core instance of Islamic bioethics.

55 Here I draw on the Critical Discourse Analysis approach as presented by Wodack and Meyer, "Critical Discourse Analysis", and Fairclough, "A Dialectical Relational Approach". I have structured the following sections according to Fairclough's analytical paradigm by examining social practices, interdiscursivity and gaps.

study packet produced for Cover the Uninsured call attention to the numbers of people who are un- or underinsured, propose a causal link between lack of insurance and poor health and/or having insurance and maintaining healthy behaviours, and suggest that healthcare should be accessible to all. AMHP states that their work towards reform is motivated by the "120 million people" who "are uninsured or underinsured", and that "the status quo is untenable and [we are] prepared to work with all stakeholders to ensure that all Americans have access to high-quality and affordable health care". AMHP also lauds the passage of PPACA by noting that "the [health] benefits of the Law [PPACA]" will extend to millions of Americans and will include "free preventive checkups for women".[56] The Muslim study packet is also replete with messaging about the health detriments resulting from lack of insurance:

> Too many Americans are living without coverage – forced to gamble every day that they won't get sick or injured. Going without insurance means that minor illnesses can become major ones if health care is delayed.[57]

The FRH materials co-signed by AMHP and ISNA similarly invoke healthcare equity messages by stating that "all persons should have access to health services" and "that society is whole only when we care for the most vulnerable among us" by "sharing our abundant health care resources with everyone".[58]

FRH materials also incorporate notions of human rights, that is, that human beings have rights that accrue to them simply because they are human and which belong to all humans in equal measure, to support their cause.[59] They note that they "discern the human right to health care" and that the right to health care is "grounded in our common humanity".[60] Imam Sa'dullah adopts this lexicon in his words for FRH, calling access to healthcare "a fundamental human right".[61]

Although the fatwas, on the other hand, respond to questioners by acknowledging the high costs of healthcare in the US, there is no trace of healthcare equity discourse in their writings. They do not comment on the relationships

56 AMHP, "Muslim Health Professionals from Across the Nation"; AMHP, "AMHP Lauds Supreme Court Decision".

57 A. Kobeisy, "Materials for Muslim Prayer and Study".

58 FRH, "A Faith-Inspired Vision of Health Care".

59 For this framing of human rights see A.A. Sachedina, *Islam and the Challenge of Human Rights* (Oxford 2009).

60 FRH, "A Faith-Inspired Vision of Health Care".

61 FRH, "Perspectives".

between not having healthcare insurance and poor health and/or disadvantaged healthcare seeking behaviours nor do they suggest that healthcare should be accessible to all. The only oblique references to an "Islamic" responsibility to provide healthcare are Dr al-Sawy's mention of the higher objective of Islamic law being to preserve life and in his suggestion that a single-payer governmental health coverage schema that "aims to look after the citizens" is permitted.[62] These limited statements evidence very little interdiscursivity with the language of health equity. Furthermore, human rights discourse is not invoked by the jurists in their fatwas.

One is thus faced with the question as to why the jurists refer neither to healthcare equity discourse nor to notions of human rights, while both are present in the Muslim organisational material. The lack of healthcare equity language may be explained by the fact that Islamic jurists in the United States, in general, are not involved in national policy-level dialogue, and thus are less likely to be familiar with or adopt health equity vocabulary. Illustratively, to my knowledge, there have been no Muslims (jurists or otherwise) appointed to the Presidential Commission for the Study of Bioethical Issues, although the current commission includes a prominent Franciscan friar and Catholic theologian (Daniel Sulmasy) who can present normative "Christian" perspectives.[63] To be fair the Commission has sought out Muslim academics for comment from time to time. However, as far as I know, Islamic jurists have not been involved in this dialogue. And with no Muslim members on the commission there is little opportunity for a Muslim representative to voice the need to bring jurists to the table nor for that representative to learn (and share this learning with muftis) the health equity lexicon that is relevant to American bioethics policy discussions.

Muslim-led engagement with health policy issues through ISNA and AMHP also lacks Islamic juridical voices. AMHP has no bioethics committee or fatwa-giving body. Most conspicuously, however, the Fiqh Council of North America, ISNA's own jurisconsults, do not appear to have engaged with healthcare reform debates, as none of ISNA's communiqués concerning healthcare reform cite these jurist members. Accordingly, the absence of healthcare equity vocabulary in the fatwas may be attributed to the dislocation between Islamic jurists and the circles of dialogue concerning healthcare equity and policy.

To take a different tack, another underlying reason for the lack of healthcare equity discourse within the fatwas may be intrinsic to the genre. Fatwas, as a

62 S. al-Sawy, "Getting Health Insurance for Family Coming to Visit".

63 See *http://bioethics.gov/members* (accessed on 30 April 2015). Members of the Commission are chosen by the US President.

discursive medium of Islamic law, are part of a dialogue between a questioner (*mustaftī*), and a jurist (mufti). The questioner usually is concerned about whether a certain course of action he or she is considering is Islamically permissible or whether Islamic law requires a specific action of him or her in a given set of circumstances. This particular and local concern occupies the jurist's thinking; larger scale theorising may, therefore, not be present within fatwas (although it could be; see below). In other words, a jurist's fatwas generally speak to individual levels of concern, and so societal considerations about healthcare equity from an Islamic bioethics perspective may not be accessible from research limited to fatwas alone.

Admittedly, while the distinctive form of fatwa-giving remains one of question and response, as Jakob Skovgaard-Petersen describes in his paper in this volume, fatwas can serve different sorts of purposes and may speak to multiple different audiences beyond the individual questioner.[64] Given their wider electronic dissemination, the fatwas studied in the present paper could be classified within Skovgaard-Petersen's schema as "public fatwas" that "transcend[s] the nexus between the mufti and *mustaftī*" such that the broader public is addressed and may construe the fatwa to be actionable for them. While Skovgaard-Petersen suggests that in such public fatwas muftis will "avoid taking the individual circumstances of the question into account and seek to issue a generally valid fatwa", the extent to which muftis act in this manner is no doubt variable. In the fatwas we present here, it would seem that the jurists took care to address the individual questioner's circumstances while at the same time presenting accepted ethico-legal doctrine. Societal-level considerations – which one might imagine more likely to appear in "public fatwas" – appear to have been absent or at best secondary concerns for these jurists.

As far as the absence of human rights discourse within the fatwas, one might point to a significant tension between the theoretical underpinnings of human rights doctrine and Islamic moral theology, which complicates the adoption of the discourse of human rights by Islamic jurists. The points of contention revolve around the capacities of human reason to discern moral norms and around the notion that rights inhere within the human. In short, orthodox Sunni Islamic theology does not recognise the ontological authority of human reason.[65] Rather, human reason is seen as a fault-prone tool for moral assessment, and can, in general, only confirm or corroborate normative values

64 J. Skovgaard-Petersen, "A Typology of Fatwas" in this special edition.

65 D. Brown, "Islamic Ethics in Comparative Perspective", *MW* 89/2 (1999), pp. 181–92; E. Moosa, "The Dilemma of Islamic Rights Schemes", *Journal of Law and Religion 15/1–2* (2000), pp. 185–215; A.M. Emon, "On Islam and Islamic Natural Law; A Response to the

established by revelation (Quran and sunna), and "rights" are conferred by God through revelation. The tension between some versions of human rights and Islam is attested to by the fact that Muslim nations and Islamic authorities crafted their own versions of the Universal Declaration on Human Rights (UDHR), the Cairo Declaration on Human Rights in Islam and the Universal Islamic Declaration of Human Rights, by replacing references to rights inhering within humans with references to the sharia as the divine source of moral norms and evaluation. Human rights talk thus has a controversial status within Islamic discourse.[66]

I will now turn, by contrast, to what discourse could be seen as missing from the American Muslim organisation outputs. While the dominant concern of the jurists was the prohibited (*ḥarām*) status of commercial health insurance schemes, the AMHP and ISNA texts appear to be oblivious to this core Islamic ethico-legal concern. More broadly, instead of using the jurists' ethico-legal vocabulary of permissibility, recommendation, and impermissibility to describe Islamic moral obligations, these communiqués use a vaguer ethical lexicon, employing phrases such as "the Islamic faith encourages…" and "Islam calls on its followers to…".[67] This language does not clarify in the same way the precise moral duty one has, in this case, towards promoting healthcare reform. One must reckon, then, with different sorts of motive forces in play in the effort to change Muslim attitudes and behaviour.

In an allied point, one notes also another dominant theme within the interfaith discourse practices in which Muslim organisations are involved. While FRH aimed to utilise messaging "embedded in faith values and scriptural narratives" to advance healthcare reform, it by and large incorporated Christian phraseology such as "calling", "sacred vessels" and spiritual love rather than much of the conventional Islamic ethico-legal lexicon.[68] Notably, Imam

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International Theological Commisson's 'Look At Natural Law'" in J. Berkman and W.C. Mattison (eds.), *Searching for a Universal Ethic* (Grand Rapids, MI 2011).

66 Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, CO 1991).

67 AMHP, "AMHP Lauds Supreme Court Decision"; A. Kobeisy, "Materials for Muslim Prayer and Study".

68 AMHP, "About Us"; FRH, "A Faith-Inspired Vision of Health Care"; L. Walling, "Faith Groups Applaud"; L. Walling, "A Moral Vision for our Healthcare Future", Faithful Reform in Health Care leaflet, *http://www.faithfulreform.org/storage/frhc/heart/vision-reform-web.pdf* (accessed on 2 January 2014); L. Walling, "An Open Letter to President Barack Obama and to Members of the United States Senate and House of Representatives", Faithful Reform in Health Care communique (January 2010), *http://circle.org/jsource/an-open-letter-to-president-barack-obama-and-to-members-of-the-united-states-senate-and-house-of-representatives/* (accessed on 2 January 2014).

Sa'adullah's quotation for FRH is also devoid of conventional Islamic ethico-legal vocabulary and instead uses human rights phraseology. The Christian overtones present in the "interfaith" FRH materials evidence a larger cultural challenge for American Muslims and Islam. Islam and Muslims evoke an emotional response across the socio-political spectrum in the post 9/11 era.[69] In particular, references to the Islamic ethico-legal code (sharia) are met with fears of the Islamisation of society. As the principal target audience for FRH was non-Muslim policy makers, it perhaps appeared prudent for Islamic overtones to remain muted. On the other hand, references to Christian concepts are omnipresent in American socio-political discourse, and FRH appears to have remained content to tug subtly at these religious motivations alone. The social conditions contributing to the need for Muslims to discard overt references to their faith, in particular to Islamic law, when engaging in the American civic arena compound the marginalisation of Islamic jurists and contribute to confusion about what (policies, ethical values, and the like) qualifies as suitably "Islamic". The space vacated by Islamic jurists and their legal discourse is instead filled by other Muslim figures and other types of values that contribute to what I perceive as a discontinuity between the notion of being Muslim, as a social identity within a plural society, and that of living out Islam, that is, acting in accord with ethico-legal values derived from the scriptural tradition.

Calling (and Not Calling) upon the Quran and Sunna

The Quran and Sunna are the sacred source-texts of Islam. Both represent divine communications (*waḥī*) and thereby represent a link to the Divine, and serve as the foundational source texts for all Islamic teachings. Consequently, examining the ways in which the Quran and Sunna are called upon by our texts should provide some insight into their various orientations towards the tradition. To start with those of the Muslim organisations, the only AMHP writing to call upon the Quran and/or Sunna is the press release that followed the Supreme Court's upholding of PPACA. That document cites the verse "never shall

69 L. Cainkar, "The Impact of 9/11 on Muslims and Arabs in the United States" in J. Tirman (ed.), *The Maze of Fear: Security and Migration after September 11* (New York 2004); M. Potok, "FBI Reports Dramatic Spike in Anti-Muslim Hate Violence", *Huff Post Crime* (November 2011), *http://www.huffingtonpost.com/mark-potok/fbi-reports-dramatic-spik_b_1092996.html* (accessed on 18 September 2012); Council on American-Islamic Relations, *The Status of Muslim Civil Rights in the United States: Unequal Protection* (Washington 2005).

you attain to true piety unless you spend on others out of what you cherish yourselves; and whatever you spend – verily, God has full knowledge thereof" (3:92) to support the claim that Islam enjoins "equity in all things".[70] Leaving aside the exegetical and hermeneutical contestations over this verse, it is notable that the Quran and Sunna were not cited in AMHP material advocating for healthcare reform prior to the passage of the final bill. While one can only speculate as to why, this may be further evidence of a cautious approach to invoking Islamic sacred texts in public policy-level dialogue. Once the bill became law, of course, there remained no need for AMHP to suppress such explicit mention of Islamic sources. Indeed in post-PPACA communiques AMHP has engaged in further direct quotations of the Quran.[71] The interfaith FRH material, signed onto by AMHP and ISNA, also does not cite Islamic scriptures, whether consciously – in light of the political climate – or otherwise. It is, I should say, unclear how much influence AMHP and ISNA had upon the FRH publications.

The Cover the Uninsured materials produced in collaboration with ISNA, on the other hand, are replete with Quranic references. Since the materials' sole target audience is the Muslim laity, the authors appeal to scripture, presumably in an effort to influence Muslim attitudes and motivate their behaviour. An intriguing aspect of these appeals to the Quran is that *The Perspective* uses verses to support "universal" values (justice and mercy) rather than to derive a distinctively "Islamic" position by locating a particular virtue or ethical notion in a verse and then using other verses and Sunna traditions to clarify an Islamic conception of that value, before then encouraging Muslims to uphold this version of it. An example will make this clearer, in this case with regard to the virtue of justice.

The Perspective notes that the concept of justice is critical to understanding "the Islamic perspective on the issue of the uninsured" for "justice [...] requires that health care and services necessary for one's well-being and survival are not offered on the basis of how much the person has or what the person can afford". Linking justice and the Islamic tradition, *The Perspective* states that justice is central to all of God's revelations and quotes verse twenty-five of Surat al-Ḥadid (57:25). The following translation of the initial part of the verse is offered: "We sent aforetime our apostles with clear signs and sent down with them the Book and the Balance (of Right and Wrong), that they may stand forth in justice" (*Laqad arsalnā rusulanā bi-l-bayyināt wa-anzalnā maʿahum*

70 AMHP, "AMHP Lauds Supreme Court Decision".

71 American Muslim Health Professionals, "Get Covered Outreach Materials", *http://amhp.us/get-covered-outreach-materials* (accessed on 2 January 2014).

al-kitāb wa-l-mīzān li-yaqūm al-nās bi-l-qisṭ), here by "justice" translating the Arabic, *qisṭ*. *The Perspective* next defines justice as "equity", and links this notion to the provision of healthcare to all. The final rhetorical move advances the pursuit of healthcare reform as an Islamic obligation by linking it back again to justice: "it is an Islamic duty, as a step in the pursuit of justice, to [...] seek to bring about a change in our health care system and public policy so that Americans are provided with the health care coverage needed" as healthcare reform is needed for "justice to be achieved".[72]

The Perspective thus uses the aforementioned verse to support its claim that justice (as a value) is "a core value not only for Islam but also for all previous messages of God", and offers a translation where the role of revelation (the book) is to assist Prophets (and by extension faith communities) in standing for justice. With respect to the content of "Islamic" ethics, *The Perspective*'s discursive framing and interpretative strategy appears to incline towards a universalist or common morality type of ethical framework, where the Quran affirms moral values that are shared by humankind. The same method is used to confirm the value of, but not define, the concept of mercy. The Perspective quotes a verse (21:107) that proclaims that the Prophet was sent as a "mercy for all creatures" and asserts that "providing health care is one of the most important" ways to live out this Prophetic mission of distributing mercy to humankind. With respect to the Sunna, it is called upon only once by *The Perspective*, but for an analogous use.[73]

However the verse (57:25) can be translated, or interpreted, differently, such that revelation ("the Book") is given primacy in defining moral values and provides the ethico-legal code through which justice is established. For example, Muhammad Asad's translation suggests that it is revelation that is the source of the moral code: "We bestowed revelation from on high, and (thus gave you) a balance (wherewith to weigh right and wrong), so that men might behave with equity".[74] He also renders the word *qisṭ* as "equity" rather than justice.[75]

72 A. Kobeisy, "Materials for Muslim Prayer and Study".

73 Ibid.

74 See Quranic Arabic Corpus, "Verse 57:25", *http://corpus.quran.com/translation.jsp?chapter=57&verse=*25 (accessed on 16 April 2014); M. Asad, *The Message of the Qur'an* (Mecca and Zurich 1964).

75 Ibid. *The Perspective* translates the Quranic terms *'adl* and *qisṭ* equally as justice. While the two are to a certain extent interchangeable, and while for *The Perspective*'s purposes any difference between them is perhaps irrelevant, the two words are used differently in the Quran. *Qisṭ* refers to the notion of equity and balance and is metaphorically used to indicate justice, while *'adl* has a much broader meaning including judging with equity and is used to refer to both God's actions and humankind's in different verses. See O. Leaman

Several classical Quranic commentators further elaborate upon the primacy of revelation for establishing justice by considering the word *al-mīzān* ("the Balance") used in verse 57:25 to refer to the divine laws derived from revelation.[76] This is to give revelation and the distinctive Islamic ethico-legal tradition primacy, in contrast to *The Perspective*'s usage and translation of Quranic verses to affirm conceptions of justice that can be seen as shared within a universalist or common morality framework.

The manner in which the Quran is mobilised by *The Perspective* to discuss justice (and other concepts such as mercy) is relevant to our discussion regarding the nature of "Islamic" bioethical values. *The Perspective* would seem to view justice (or mercy) as a universal concept and value, self-evident in meaning. The way in which the Quran is translated coheres with this strategy. Yet, *The Perspective* argues for an Islamic moral obligation to support healthcare reform and encourages imams to deliver sermons that follow the reasoning laid out by *The Perspective* to convey this obligation. Both the message (an "Islamic" obligation) and the medium to deliver the message (the Friday sermon) would appear to be targeted at "practicing" Muslims; it is Muslims who choose to be motivated by Islamic teachings and attend Friday prayer services that *The Perspective* seeks to persuade to support health reform. While arguments based on common morality may be effective in motivating such support, it is equally possible that many such Muslims would be more motivated by a line of reasoning that argues from the Quran outwards, as it were, and sets up the moral imperative to support healthcare reform through the vernacular of Islamic law. While Muslim study materials and Friday sermon guides produced for the Muslim laity in collaboration with ISNA do not seek to serve as fatwas, involving jurists in their production might have given a very different flavour to *The Perspective*'s advocacy of an Islamic obligation to support healthcare reform.

The Islamic Jurists' Fatwas

Given that the Quran and Sunna are the primary sources of Islamic law one might expect an ample amount of references to them in the fatwas. Yet, curiously perhaps, none of the fatwas from the Fatwa Center of America or the Assembly of Muslim Jurists of America cite Quranic verses or Prophetic traditions. And while Dr Monzer Kahf does use the Quran and Sunna, he does so in limited fashion. He paraphrases the verse 2:279 to support the Islamic prohibition of *ribā*, noting of the "*riba* that is mentioned in the Qur'an, it is

The Qur'an: an Encyclopedia (New York 2006), and J.E. Brockopp, "Justice and Injustice" in J. McAuliffe (ed.), *Encyclopedia of the Qur'an* (Washington 2015).

76 M.M.M. Shafi, *Maariful Quran* (Karachi 2004).

strongly prohibited with a declaration of war by the Almighty Allah and His messenger". With respect to Sunna traditions, Dr Kahf only notes that *gharar* is prohibited by several Prophetic statements.[77]

The paucity of references to Quranic verses and Sunna traditions in the juridical writings may arise from the conventions of fatwa-giving. A questioner usually asks for an Islamic ethico-legal opinion from someone he deems is an Islamic ethico-legal authority. As such Islamic jurists may think that the questioner does not require detailed evidences from the Quran and Sunna to substantiate a ruling, because the very act of seeking their opinion signifies deference to their expertise. This type of understanding is captured by the saying, oft-repeated in circles of Islamic learning in my experience: "The fatwas of a mufti constitute [actionable and sufficient] evidence for the layperson" (*qawl muftī dalīl ʿāmm; fatāwa al-muftī dalīl mustaftī*). Indeed the seeker's obligation is only to find a suitably qualified expert to consult; it is not his burden to "know the proof behind a particular ruling".[78] Consequently, fatwas tend to have minimal direct scriptural referencing, content to deliver the ruling rather than the entire proof.

If the measure of "Islamicness" for Islamic bioethics were to be taken as the extent of quotation from Quran and Sunna, then, one would have to consider the fatwas to be less "Islamic" than the AMHP and ISNA produced materials. But as regards the task of influencing Muslim behaviour, it appears that these jurists felt that their statements carried sufficient motive force in themselves and did not require much in the way of Quranic verses or Sunna traditions to bolster them. Even if juridical voices had been convened to help craft AMHP, FRH, and ISNA's healthcare reform-related materials then, it is not that their quotient of "Islamicness" as measured by quotation of scripture would have risen. Rather, it would have entailed the introduction of a set of very different ideas about the "Islamic" ethical obligation or otherwise of supporting healthcare reform. "Islamicness" is not something that can be measured on a continuous unitary scale.

77 M. Kahf, "Fatawa on Insurance".

78 Shaykh Hamza Karamali, "Questions about Taqlid and Ijtihad", *http://spa.qibla.com/issue_view.asp?HD=3&ID=1568&CATE=389* (accessed on 4 January 2014).

The Social Practices of Islamic Bioethics Discourse: Representing the "Islamic"

Thus far I have demonstrated that two types of producers of what could be characterised as Islamic bioethics discourse, American Muslim organisations and Islamic jurists, have been similarly concerned about the burdensome costs of healthcare in the United States. While both types of producers developed "Islamic" ethical arguments for health reform, the different ways in which they use (and neglect) Quranic verses and Sunna traditions, the language and moral reasoning they employ, as well as the other types of discourses they incorporate into (or leave out of) their communications evince different formulations of what constitutes "Islamic" ethics. In this section I want to more closely tie together the social practices and ideological stances that potentially influence their respective representations of the "Islamic" as a means for discussing the challenges in producing an authentic and robust Islamic bioethics theoretical framework and discourse.

While AMHP describes its work as inspired by an Islamic vision and framed its support for healthcare reform as part of an Islamic duty, the grounding of their "Islamic" ethical imperative remains unclear in their materials. Unlike in the ISNA materials, however, Quran and Sunna supports are not called upon by AMHP in order to highlight a common morality sort of ethical framework, nor, on the other hand, are the methods and vocabulary of Islamic law deployed to make an ethical argument for supporting healthcare reform.

Again, perhaps the lack of scriptural references was intended as part of a socially-conditioned muting of Islamic sources in policy discussions in order to avoid hostile reactions to Islam and Muslims. However, since a major portion of AMHP's target audience was Muslim, avoiding scriptural referencing potentially detracts from their ability to affect Muslim attitudes and behaviour. Further, if AMHP's ethical framework does require scriptural justification then a strategic or socially conditioned concealing of the scriptural references and Islamic law lexicon obscures an understanding of what precisely the sources of "Islamic" ethical imperatives are and renders problematic the project of developing a distinctive "Islamic bioethics" in the American context at least.

The materials produced under the aegis of ISNA, on the other hand, appear to frame the push for reform as part of living out universal and self-evident virtues such as justice and mercy. As discussed above, this manner of ethical argumentation arguably differs from the inherited orthodox Sunni modes. Sunni *uṣūl al-fiqh* holds that "Islamic" ethical values must be sourced within

scripture, and when scripture is silent, then there can be no ultimate normative assessment: actions can be recommended but not obligated.[79]

It is hard to believe that ISNA (and their representative Imam Kobeisy), being closely linked to the Fiqh Council of North America which promotes "classical Islamic jurisprudence" and deliberates according to "accepted norms of Islamic jurisprudence", would be oblivious to the epistemological and theological implications their messaging could be seen to pose.[80] We could lean again on the notion of a perceived need to show similarities between Islam and other moral frameworks in the post-9/11 policy arena. But nonetheless the discursive framing utilised by ISNA also renders fuzzy notions of what might be distinctively "Islamic" about Islamic bioethics.

Further muddying the waters is AMHP and ISNA's adoption of FRH's usage of human rights vocabulary. As noted above, the metaphysical underpinnings of human rights doctrine are arguably in tension with Islamic moral theology. Perhaps these organisations consider there to be no theological divide between human rights doctrine and their "Islamic" ethico-legal frameworks (one notes again the lack of involvement of jurists in their conversations). Or this may have been another strategic choice made in the hopes of achieving a positive policy outcome. Once again, either scenario challenges the development of the field of Islamic bioethics by offering a contested account of, or simply obscuring, the distinctive nature of "Islamic" content.

With respect to the juridical materials, on the other hand, the lack of explicit arguments from scripture, combined with the conventions of the fatwa discourse, suggests that in the jurist's view the text of the fatwa contains in itself the legitimating power to label actions as "Islamic". Such an articulation of the "Islamic" fuels concerns about the scope of Islamic bioethics discourse. Recall that there was little mention of healthcare equity within the fatwas. If one was to take the fatwas as standing for Islamic bioethics on their own, one could justifiably come to the conclusion that Islamic jurists, as a class of Islamic ethical experts, have little concern for social justice and the right ordering of society, but are instead concerned only with finding a loophole within the Islamic ethico-legal tradition through which Muslim actions can be

79 A.M. Emon, "On Islam and Islamic Natural Law"; A.K. Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany 1995); A.M. Emon, *Islamic Natural Law Theories* (New York 2010). An Islamic obligation refers to refraining from actions and non-actions that carry sin and therefore have the potential for punishment in the afterlife.

80 On the Fiqh Council of North America see their website *fiqhcouncil.org* (accessed on 16 April 2014).

deemed permissible. To be sure, the fatwas do note the problem of the escalating costs of American healthcare and some muftis did mention alternative Islamic insurance schemes, but they did not deploy Islamic constructs that take into account societal-level harms and benefits, such as *maṣlaḥa* and *ʿumūm al-balwā* for instance, in their fatwas nor did they speak about Islamic ethical obligations to redress the problematic American healthcare situation. Perhaps the muftis felt their duty was only to the individual's (*mustaftī*'s) question and that it was inappropriate to use the medium to provide social commentary and construct obligations for American Muslims at large.

Hence, for the developing field of Islamic bioethics it would thus be a mistake to consider fatwas as a complete portrayal of the relevant Islamic values as they pertain to a bioethical issue, as representing the totality of ethico-legal discussions on an Islamic bioethical topic, or even as the final word on Islamic bioethical norms.[81] For one thing, many, perhaps most, fatwas are ephemeral, personal interventions rather than published texts. Researchers need to be aware of the bias inherent to taking the latter as standing for the totality of the phenomenon. The contingent nature of fatwas and the pragmatic approach generally taken to giving them should thus give researchers pause when developing comprehensive Islamic bioethics theories from these sources. Perhaps counterintuitively then, given their totemic status, extant fatwas and their writers also contribute to confusion over the scope of Islamic bioethics and the nature of the "Islamic".

Implications

An order of discourse is a particular social ordering of relationships among different ways of making meaning (i.e. different discourses and genres and styles).[82] Competing perspectives on what is and is not "Islamic" take us to the heart of the question as to the appropriate order of discourse for an emergent Islamic bioethics. These contestations are both epistemological and methodological, because Islam is both a lived tradition recognisable in the social practices of Muslim individuals and communities, and a scriptural tradition that holds the Quran and Sunna to be transcendental sources of moral

81 H.A. Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa", *American Ethnologist* 37/1 (2010), pp. 2–18; A.I. Padela, "Islamic Verdicts in Health Policy Discourse".

82 N. Fairclough, "A Dialectical-Relational"; N. Fairclough, *Discourse and Social Change* (Cambridge 1992).

guidance. One aspect of a social ordering of discourse is dominance: some ways of making meaning become mainstream in a particular order of discourse while others come to be marginalised.[83] As Islamic bioethics coalesces into a field of intellectual inquiry and disciplinary practice, internal social pressure from stakeholders of the field as well as external sociocultural and political forces will impact upon which mode of meaning making (the method of moral reasoning) will come to occupy the dominant position in Islamic bioethics discourse. Our snapshot of two orders of Islamic bioethical writing reveals a disconnected Islamic bioethics discourse: the jurists' "Islamic" concerns about the permissibility of healthcare insurance find no mention in the output of Muslim organisations, while the Muslim organisations' "Islamic" concerns regarding healthcare equity are absent from the jurists' ethico-legal assessments. From each party maintaining its own perspective on how to construct and label an Islamic bioethical obligation, a lack of clarity regarding the nature of the distinctively "Islamic" aspect of Islamic bioethics discourse ensues.

The disconnected nature of Islamic bioethical material production appears to have further practical effects at the ground level. Although the national Muslim organisations have sought to mobilise Muslims towards supporting healthcare reform, religious affiliation has reportedly had little to do with subsequent attitudes.[84] Perhaps the discursive framing they adopted – one that lacked references to the Quran and Sunna, that seemed to employ little of the standard Islamic legal lexicon and that adopted human rights discourse – failed to have an impact upon Muslim attitudes. In other words, the attempt to present Islamic values in the public policy arena according to secular conventions may have removed the potential power of more explicitly Islamic motivators over the Muslim laity. Or, conversely, perhaps religious arguments have little influence over Muslim attitudes in the United States and the impact of religion on health policy attitudes is more limited than is generally believed. Alternatively, perhaps it was not the messaging but rather its dissemination that contributed to the less than ideal impact of these programmatic efforts; perhaps they did not reach enough members of the target Muslim audience. While the PPACA did become law, there is no data as to the impact of Muslim voices upon its passage, rendering it almost impossible to evaluate the effect of Muslim engagement in the healthcare reform debate.

We can, however, point to a different possible effect of the absence of jurists collaborating with these Muslim organisations. The fatwas suggested that an ideal Islamic schema of healthcare coverage would involve either a single-

83 N. Fairclough, *Discourse and Social Change*.

84 A.F. Rosen and S. Clement, "Religious Groups Weigh in on Healthcare Reform".

payer governmental system or a cooperative insurance scheme (*takāful*). Unfortunately, these types of transformative ideas never made it to the proverbial policy market. No national Muslim organisation brought forth such notions, which would arguably have been more potent in bringing about healthcare equity than the expanded commercial healthcare insurance set out by the PPACA. Since some religious groups, such as the Amish, with a mutual aid system of paying for healthcare were granted exemptions from the PPACA insurance mandate, it seems that there would have been precedent (and potential partners) for Muslim voices to promote a *takāful* system for national healthcare reform, or at the least for Muslims to seek an exemption of their own based on religious grounds.[85]

Islamic bioethics producers, whether they are jurists or Muslim organisations, tend to give inadequate attention to the implications of the language they use as they make their determinations of the "Islamic". The myriad of notions they put forth creates problems for the field. If one were to examine the output of Muslim organisations one would wonder what is distinctive about the Islamic bioethics they call for. On the other hand when one looks to juridical writings that seem devoid of sufficient theorisation and consideration of social reality, one might view the vision of these scholars as missing the forest for the trees. Neither the national Muslim organisations nor the jurists have the upper hand in instituting the social order of Islamic bioethics discourse and neither group presents a comprehensive and cohesive Islamic bioethics theory nor meets the needs of the myriad of Islamic bioethics stakeholders.

Multi- and interdisciplinary methods are necessary to understand the present state of Islamic bioethics discourse. The different categories of Islamic bioethics producers also need to come together so that they can effect a more holistic discourse through a mutual understanding of their respective disciplinary tools and areas of concern, and by generating a common conceptual Islamic bioethics vocabulary. This essay, with its reliance on a range of methods and source texts, has sought to provide fodder for such much-needed conversation.

Ultimately, the movement "beyond" religion in the field of bioethics anticipates a democratic and reasoned consensus on social policies and an objec-

85 Supreme Court of the United States, "National Federation of Independent Business v. Sebelius"; K. O'Brien, "Obamacare Religious Exemption Hard to Get", *Religious News Service* (April 2014), *http://www.religionnews.com/2014/04/28/obamacare-religious-exemption-hard-get/* (accessed on 8 January 2015).

tive, empirical approach to research.[86] Yet this type of public square, and such a bioethics academy, has its own secular ideology. The silencing of certain voices or types of discourse may ultimately undermine the democratically liberal ideals of the public square itself. Without bringing a range of disciplinary methods and producers into the conversation about the field of Islamic bioethics, we may very well fall into the trap of silencing certain voices in favour of others. And we would thereby ultimately fail to meet the needs of the Muslim patients, physicians, religious leaders, healthcare policy stakeholders, and others who seek out "Islamic" bioethical guidance.

86 T. Bracanovic, "Respect for Cultural Diversity in Bioethics: Empirical, Conceptual and Normative Constraints", *Medicine, Health Care and Philosophy* 14 (2011), pp. 229–36; J. Savulescu, "Two Worlds Apart: Religion and Ethics", *Journal of Medical Ethics* 24 (1998), pp. 382ff.; T. Bracanovic, "Against Culturally Sensitive Bioethics", *Medicine, Health Care and Philosophy* 16 (2013), pp. 647–52; T. Murphy, "In Defense of Irreligious Bioethics", *American Journal of Bioethics* 12 (2012), pp. 3–10.