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"No Harm, No Harassment": Major Principles of Health Care Ethics in Islam

Abdulaziz Sachedina

Islam as a comprehensive religious-moral system does not divide the public space in terms of spiritual and secular domains with separate jurisdictions. Rather, it strives to integrate the two realms to provide total guidance about the way human beings ought to live with one another and with themselves as citizens, or professionals, or workers of one kind or another, or simply as human beings. Muslim ethics tries to make sense of human moral instincts, institutions, and traditions in order to provide a plausible perspective on the making of moral judgments, the fashioning of rules and principles, and devising of a virtuous life. Its judgments are ethical in the sense that they deal with the sense of what reasonable people count as good and bad, praiseworthy and blameworthy, in human relationships and human institutions. Ultimate questions connected with human suffering through illness and other afflictions, reproduction and abortion, death and dying are within the purview of its religiously based ethics. Human beings are essentially God's creatures, and, hence, their total welfare related to this and the next world is within the domain of religious deliberations.

How do Muslims solve their ethical problems in biomedicine? Are there any distinctive theories or principles in Islamic ethics that Muslims apply in deriving moral judgments in bioethics? Is the sacred law, the Shari'a, which is regarded as an integral part of Islamic ethics, the only recognized source of ethical judgments in Islam? What is the role of human experience/intuitive reasoning in moral justification? This chapter will be devoted to an exploration of these questions and their answers.

The Nature of Islamic Juridical-Ethical Discourse

Legal-ethical decisions in Islamic law are determined by concerns of justice and public good. The problem arises as to the authority that can define the parameters of justice and public good. Since there is no organized "church" in Islam, the responsibility falls on Muslim scholars of legal tradition. In dealing with immediate questions about issues in biomedicine, Muslim jurists draw on legal doctrines and rules in addition to analogical reasoning based on paradigm cases. The practical judgments or legal opinions, known as *fatāwa*, reflect the insights of a jurist who has been able to connect cases to an appropriate set of linguistic and rational principles and rules that actually provide keys to a valid conclusion of a case under consideration.

Undoubtedly, the enunciation of underlying ethical principles and rules that govern practical ethical decisions is crucial for making any religious perspective an intellectually insightful voice in the ongoing debate about a morally defensible ethics of biomedicine cross-culturally. Given that all cultures share such moral principles as beneficence or nonmaleficence, all require rules including truthfulness and confidentiality as essential elements in regulating responsible physician-patient relationship, yet there are major issues that generate controversy on a global scale such as the right of a woman to decide about terminating her pregnancy, discrimination against ethnic and religious minorities, recognition of respect for individual autonomy against competing moral considerations of the community, and so on. What kind of ethical resources do different traditions possess to provide internationally collaborative efforts in creating a common ethical discourse to resolve issues in biomedicine?[1]

The Question of Cultural Relativism in Ethical Values

To be sure, ethical values seek cultural legitimacy by adapting themselves in prevailing economic and political circumstances. Accordingly, these values can hardly be expected to be free from cultural relativity. Since human reason depends on information gleaned from experience to make correct ethical judgments, moral presuppositions operative in society interact with the specific experience to provide culturally conditioned moral justification.[2] In fact most objectivist ethical theories, which affirm that value has a real existence in particular things or acts, regardless of the opinion of any judge or observer, include a certain aspect of social or conventional relativism. In the highly politicized debates about the applicability of the International Bill of Human Rights, cultural relativism figures prominently in the arguments made by the non-Western nations against the charter's ethnocentric language that defies its absolute application across cultures.[3] Similar arguments against universalizability of a single bioethical theory in the inherently pluralistic ethical discourse

are commonly heard in national and international biomedical ethics conferences.

However, there is already an intellectual movement to search for "metacultural" ethics, which can ameliorate the negative effects of the overemphasis laid on cultural relativism in the areas of human rights as well as medical ethics. There is a growing effort in the international community to adopt a more or less transcultural framework of ethical principles and rules that could engage theologians, scholars, and policymakers in the health profession in a dialogical mode to search for solutions to the ethical problems in biomedical technology and research across nations. Is such an ethical framework and dialogue among traditions to enunciate underlying moral principles and applicable rules feasible?

In this chapter, my purpose is not merely to search for Islamic equivalents of the primary principles of autonomy, nonmaleficence, beneficence (including utility), and justice expounded by Beauchamp and Childress in the context of Western-American culture characterized by deeply ingrained with distinctly Western values of empirical science, principle-based ethics, and the democratic political philosophy. Rather, I intend to make a strong case for distinctly Islamic, and yet cross-culturally communicable, principle-based deontological-teleological ethics[4] that is operative within the Muslim social-cultural context in assessing moral problems in Islamic biomedical ethics.

The process has already begun in Egypt and Iran, where religious scholars, medical professionals, and the government are searching for ontological foundations of Islamic law to enable them to make authentic choices of what is morally and legally justifiable conduct in biomedical research and practice and its application in the Muslim society. I mention Egypt and Iran only because these are the only Muslim countries where religious scholars (ulema) are engaged in formulating national policies related to health care. In Iran, one can even observe the relative independence enjoyed by religious scholars from government interference in formulating their judicial decisions. Accordingly, there the function of the Muslim jurists is not merely to provide endorsement of the decisions made by the government, as happens in Saudi Arabia or, to a lesser extent, in Egypt, for instance. In these latter countries, since the religious authority is under the direct control of the government, usually the dissenting opinion against the fait accompli is repressed. In the case of Pakistan,[5] there seems to be a wide gulf between medical professionals and the religious scholars, to allow for practical Islamic guidance to emerge in the area of imported medical technology and the government policy to that effect.

The important thing that deserves serious consideration in Islamic context is that even when the source of normative life was believed to have been revealed by God in the Shari'a, the procuring of a judgment and its application was dependent upon reasons used in moral deliberation. This moral deliberation took into account particular human conditions, which affected the way Muslims justified an action to be moral. In other words, Islamic law developed its rulings within the pluralistic cultural and historical experience of Muslims

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

Islamic Ethical Discourse

When one considers the normative Islamic tradition for standards of conduct and character, it becomes obvious that besides the scriptural sources like the Qur'an and the Tradition (*sunna*) ascribed to the founder of Islam, which prescribe many rules of law and morality for humans, Muslim scholars recognized the value of decisions derived from specific human conditions as equally valid source for social ethics in Islam. But how exactly was human intellectual endeavor to be directed to discover the effective cause, the philosophy and the purpose behind certain paradigm rulings provided in divine commandments, in order to utilize these to formulate rational deductive principles for future decisions?

The question had important implications for the jurists who were faced with practical necessity to make justifiable legal rulings, which could be defended against accusations of making arbitrary decisions. There was a fear of reason in deriving the details of law. The fear was based on the presumption that if independent human reason could judge what is right and wrong, it could rule on what God could rightly prescribe for humans. In other words, human reasoning could arrogate the function that was in large measure within the jurisdiction of revelation. However, it was admitted that although revealed law can be known through reason and can aid human beings in cultivating the moral life, human intelligence was not capable enough to discover what the reason for a particular law is, let alone demonstrate the truth of a particular assertion of the divine commandment. In fact, as these theologian jurists asserted, the divine commandments to which one must adhere if one is to achieve specific end prescribed in the revealed law are not objectively accessible to human beings through reason. Moreover, judgments of reason were arbitrary, as demonstrated by the fact of their contradicting each other, and reflected personal desire of the legal expert.

Besides the problem of resolving substantive role of reason in understanding the implicit effective cause of a paradigm case and elaborating the juridical dimension of revelation as it relates to the conduct of human affairs in public and private spheres, there was a problem of situating the credible religious authority empowered to provide validation to the ethical-legal reasoning associated with the derived philosophy behind legal rulings. On the one hand, following the lead of the Sunni jurists like Shāfi'ī and Ibn Ḥanbal in the tenth and eleventh centuries C.E., Sunni Islam located that authority in the Qur'an and the Tradition. These scholars represented the predominant schools of Sunni theology that held that in deciding questions of Islamic law one could work out an entire system based on juridical elaboration of Islamic revelation and the Tradition. On the other hand, following the line of thought maintained by the Shi'ite Imams, Shi'ite Islam located that authority in the rightful successors of the Prophet. The Shi'ite Imams maintained that there was an ongoing revelatory guidance available in the expository ability of human reason in comprehending the divine revelation exemplified by the solutions offered by the Shi'ite religious leadership.

In general, Muslim theologians paid more attention to the nature of God and of creation and of human beings' relation to God as the Creator, Lawgiver, and Judge. They were also interested in the extent of divine power and human freedom of will as it affected the search for right prescription for human behavior. In the final analysis, in view of the absence of the institutionalized religious body that could provide the necessary validation of the legal-moral decisions on all matters pertaining to human existence, the problem of determining the Sacred Lawgiver's intent behind juridical-ethical rulings that had direct relevance to the social life of the community was not an easy task. The entire intellectual activity related to Islamic law can be summed up as a jurist's attempt to relate specific moral-legal rulings to the divine purposes expressed in the form of norms and rules in the Qur'an and the Tradition, but this did not proceed without ambiguities. In view of incomplete state of their knowledge about present circumstances and future contingencies of human conditions, in most cases of ethical judgment, the jurists proceeded with a cautious attitude on the basis of what seemed most likely to be the case. Such ethical judgments were appended with a clear, pious statement that the ruling lacked certainty because only God was aware of the circumstances and consequences affecting human beings.[6]

Sometimes the effective causes that discovered the rulings were derived directly from the explicit statements of the Qur'an and the Tradition that set forth the purpose of legislation. At other times, human reasoning discovered the relationship between the ruling and the effective cause, in order to provide sound theoretical basis for jurisprudence. However, the jurists admitted and determined the substantive role of human reasoning in making valid legal or moral decisions. Moreover, admission of reasoning as a discoverer of a legal-ethical judgment depended upon the jurist's comprehension of the nature of ethical knowledge and the means by which humans can access information about good and evil. In other words, legal reasoning depended upon the way

the human act was defined in terms of human ethical discernment about good and evil and the relation of human act to God's will. In an important way, any advocacy of reason as a substantive rather than formal source for procuring moral-legal verdicts required authorization derived from religious sources like the Qur'an and the Tradition. In the Qur'an, a teleological view of human being with the very ability to use reason to discover God's will is possible to maintain, more particularly when the revelation itself endorses reflection on the reasons for revealed laws as well as obeying them. Without the endorsement of the revelation, reason could not become an independent source of moral-legal decisions.

This precautious attitude toward reason has its roots in the belief that God's knowledge of the circumstances and of the consequences in any situation of ethical dilemma confronted by human existence is exhaustive and infallible. Whereas the Qur'an and the Tradition had provided the underlying justification for some moral-legal rulings when declaring them obligatory or prohibited, on a number of issues the rulings were expressed as divine commands which had to be obeyed without knowing the reasons behind them. Thus, for instance, the effective cause for the duty of seeking medical treatment is to avoid grave and irremediable harm to oneself, whereas the reason for prohibition against taking human life is the sanctity of life as declared by the revelation. The commandments were simply part of God's prerogative as the Creator to demand unquestioning obedience to them. To act in a manner contrary to divine commands is to act both immorally and unlawfully. The major issue in legal thought, then, was related to the defining of the admissibility and the parameters of human reasoning as a substantive source for legal-moral decisions. Can reason discover the divine will in confronting emerging legal-ethical issues without succumbing to human self-interest?

Rationalist and Traditionalist Ethical Reasoning in the Sacred Law—the Shari'a

The enunciation of legal-ethical principles thus begins with the jurists' elaboration of the sources of Islamic law. Central to this discussion was the analytical treatment of the twin concepts of justice (*'adāla*, usually defined as "putting something in its appropriate place") and obligation (*wujūb*, sometimes defined as "promulgation of divine command and prohibition"). The concept of justice provided a theoretical stance on the question of human obedience to divine commands and the extent of human capacity in carrying out the moral-religious obligations. The concept of obligation defined the nature of divine command and provided deontological grounds for complying with it. The commandments have reasons of their own that can be explained in terms of the function they fulfill for the good of humankind.

Gradually, two responses emerged to the pressing need of providing consistent and authentic guidance in the matter of social ethics. Some prominent jurists of the tenth and eleventh centuries C.E. maintained that in deciding

questions on which there was no specific guidance available from the normative sources of Islamic law and ethics, judges and lawyers had to make their own rational judgments independently of the revelation. This was certainly the case when the law, being stated in general terms, did not provide for the peculiarity of situations. Other jurists disapproved of this rational method not adequately anchored in the normative writings, and insisted that no legal or moral judgment was valid if not based on the revelation, both the Qur'an and the Tradition. There was no way for humanity to know the meaning of justice outside the divine revelation. In fact, they contended, justice is nothing but carrying out the requirements of the revealed law. It was the revealed law, the Shari'a, that provided the scales for justice in all those actions that were declared as morally and legally obligatory. At the end of the day, the latter traditionalist thesis became the standard view held by the majority of the Sunni Muslims. The Shi'ite Muslims, on the other hand, maintained the rationalist thesis about the fundamentality of intuitive reason in ethical epistemology with some adjustment in conformity to their doctrine about supreme religious authority of the Imam, who could and did arbitrate in cases that confounded human intellect in offering a resolution.

However, the role of ethical principles in deriving moral judgments was articulated in greater detail by the theologians who, too, were divided on the same lines as the jurists: those who supported the substantive role of reason in knowing what is right and obligatory; and those who argued in favor of the revelation as the primary source of ethical knowledge. In other words, ethical reasoning is directly related to religious epistemology in Islamic thought. Ethical objectivism or deontological theory, with its thesis that human being can know much of what is right and wrong because of the intrinsic goodness or badness of actions is connected with the rationalist ethicist Mu'tazilite theologians; whereas ethical voluntarism, the traditionalist ethics, which denied that anything objective in human acts themselves that would make them right or wrong, is connected with Ash'arite theologians.[7]

Very early on, scholars of jurisprudence were led to distinguish between duties to God (*'ibādāt* = "ritual duties") and duties to fellow human beings (*mu'āmalāt* = "social transactions"). Ritual duties were not conditioned by specific human conditions, and hence were absolutely binding. Social transactions were necessarily conditioned by human existence in specific social and political context, and, hence, adjustable to the needs of time. It was in the latter sphere of interpersonal relations that the jurists needed to provide fresh rulings generated by the changing human conditions. The entire area of social ethics in Islam falls under the *mu'āmalāt* sections of jurisprudence. However, authoritative decisions in matters of social ethics could not be derived without first determining the nature of human acts under obligation (*taklīf*). The divine command, understood in terms of religious-moral obligation (*taklīf*), provided the entire ethical code of conduct and a teleological view of human and the world. More pertinent, violation of divine command, as Muslim jurists taught, is immoral on the grounds that it interferes with the pursuit of human goal of achieving perfection that would guarantee salvation in the Hereafter. Ulti-

mately, human salvation is directly connected with human conduct—the subject matter of legal-theological ethics.

Legal and Theological Ethics in Islam

Islamic law is concerned with human conduct. It pertains to the total welfare of human being. Human perfection involves having a correct belief and a noble moral quality. This perfection guarantees the good end in this and the next world. In this latter sense, human perfection is salvific because it strengthens the bond between God and humanity. Hence, the revealed law of Islam is concerned with apprehending the divine wisdom through the study of rules derived from revelatory sources for the acts of people under legal-moral obligation.

Every class of act, whether incumbent, recommended, permitted, disapproved, or forbidden by God, is founded upon explicit or implicit rules in the Qur'an or the Tradition. Thus, Islamic law, as a religious science, is theoretically able to discover the divine judgment on every class of human act in the area of ritual duties and social transactions. But Islamic law also investigates the revelatory sources, the Qur'an, the Tradition, and the consensus of the learned for their validity and evidentiary use in deducing fresh legal-moral prescriptions. This part of the law is concerned with the science of legal principles (*uṣūl al-fiqh*) or jurisprudence. Islamic jurisprudence is an inquiry into the principles of normative ethical judgments on external human acts. The philosophical aspects of ethics of action are concerned with fundamental questions about whether reason on its own can rule things necessary, good, or evil.[8]

The Principles and Rules in Islamic Juristic Ethics

Theological debates about ethical evaluation of human actions and of the nature of human beings as moral agents were foundational to the development of Islamic jurisprudence. The consideration of ethical good and prevention of evil as known to the sound mind made the legal doctrines adaptable to the contemporary legal problems and issues. The ultimate purpose of the legal deliberations entailed doing justice and preserving people's best interest on earth and in the hereafter. How was that purpose to be fulfilled when all possible human contingencies in the future were not covered in the revelation, whether the Qur'an or the Tradition?

Here paradigm cases (preserved in the form of a *ḥadīth*) played a critical role as discoverers of divine purposes for human institutions. Contrary to commonsense expectations that the application of judicial decisions must be posterior to the prior elaboration of legal theory, Islamic jurisprudence actually antedated the genre of paradigm cases. Muslim scholars were able to appropriate these paradigm cases to resolve more immediate cases because these cases had the backing of the consensus built upon the practice of the community. The legal decisions preserved in the paradigm cases marks a transition point wherein the cumulative tradition, the Sunna, was utilized to document substantive law. As precedents for subsequent legal decisions, these cases indicated the underlying effective cause upon which depended the final judgment in those cases. Such cases became the sources for the development of juridical principles and rules. The novel issues were then settled through the evocation of these principles and rules.

At other times principles like justice and equity that were stated directly and in most general terms in the revelation were to be applied to concrete situations in Muslim society to determine the level of culpability in cases of violation of justice. The intellectual responsibility of a Muslim legal expert included providing the definition of the nature of religiously prescribed justice and its determination in the given context of a particular case whether it was distributive or corrective. Moreover, he had to determine whether the scale of violation necessitated financial or other forms of compensations recognized in the penal system. Undoubtedly, a major part of a Muslim jurist's training dealt with learning these principles and rules in the context of the Qur'an and the Tradition to offer new methods of approach to problem solving in the society.

In the context of this chapter we need to determine the most important juridical doctrines and principles that have been evoked in the contemporary situation to provide the necessary solutions to novel issues in biomedicine.

Islamic Principles of Bioethics

In our discussion about the ethical theories known among the Muslims, human reason and its substantive role in deriving legal-ethical decisions, whether through the references to the relevant principles or prescriptive precedents, occupied a central place. Sunni Muslim ethicists assigned a minimal and, to a certain extent, formal role for reason to discover the correlation between divine command and human good. Here, precedents derived from the revelation served as paradigmatic cases for casuistic decisions. Moreover, ethical reflection occurred within the Tradition as a process of discernment of principles that were embedded in propositional statements in the form of rulings (*fatāwa*) as well as approved practice of the earlier jurists. The relationship between legal-ethical judgments and the principles in such cases is overshadowed by reference to revelation, however far-fetched it might appear. It is important to keep in mind that for Sunni Muslims, knowledge of rules of law and ethics is anchored in divine revelation and not in human intuitive reason (*'aql*). The process of deriving rules from revelation is founded upon interpretation of texts. In this sense, Islamic law is a body of positive rules by virtue of the formulations of jurists based on the revealed texts rather than the dictates of their own intuition. The exposition of law depended on text-oriented approach, although a great deal of positive law in the area of interpersonal relations was derived from individual discretion in employing intuitive reasoning.

The substantive role for reason was maintained by Muslim ethicists be-

longing to the Shi'ite school of thought who saw human reason capable of not only discovering the divine purposes for human society, but also establishing the correlation between human moral judgment and the divine commandment. They identified the major principles and rules ensuing from both revelation and rational sources that could be used to make fresh decisions in all areas of interpersonal relationships. In other words, these principles and rules became general action guides to determine the ethical valuation of an act and declare it as incumbent or necessary, prohibited, permitted, recommended, or reprehensible in the context of specific circumstances. But the process of ethical reflection did not necessarily involve unchanging norms from which other rules or judgments were deduced. Rather, it involved a dialectical progression between the insights and beliefs of the jurists and the paradigmatic cases in the revelation that embedded principles and rules for solving particular cases. Nevertheless, there were certain principles that transcended relative circumstances in history and tradition and which became the source for solving contemporary moral problems.

However, there was no unanimity among representatives of four major schools of Sunni legal thought (Mālikī, Ḥanafī, Shāfi'ī, and Ḥanbalī) regarding the principles nor that these principles were derived from foundational, rationalistically established moral theories from which other principles and legal-moral judgments were deduced. Rather, scholars from different legal schools identified several principles, often but not always the same ones. Since the language of Shari'a is the language of obligation or duty the primary principles (*qawā'id uṣūl*) and rules (*qawā'id fiqhī*) in Islamic ethics are stated as obligations and their derivatives, respectively. Some jurists have identified principles to encompass both principles and rules and have indicated the primary and the subsidiary distinction in their application to particular cases.

Two such intellectual sources in Muslim jurisprudence were: *istiḥsān* (prioritization of two or more equally valid judgments through juristic practice) and *istiṣlāḥ* (promoting and securing benefits and preventing and removing harms in public sphere). These represented independent juristic judgment of expedience or public utility. However, the legitimacy of employing these reason-based sources depended upon their assimilation into the textual sources.

Thus, for instance, the duty to avoid literal enforcement of the existing law, which may prove detrimental in certain situations, has given rise to the principle of "juristic preference."[9] This juridical method of prioritization of legal rulings taking into account the concrete circumstances of a case at hand has played a significant role in providing the necessary adaptability to Islamic law to meet the changing needs of society. However, the methodology is founded upon an important principle derived from the directive of "circumventing of hardship," stated in the Qur'an in no uncertain terms: "God intends facility for you, and He does not want to put you in hardship"(2:185). This directive is further reinforced by the tradition that states: "The best of your law (*dīn*) is that which brings ease to the people." In other words, the principle of "juristic preference" allows formulating a decision that sidesteps an established

precedent in order to uphold a higher obligation of implementing the ideals of fairness and justice without causing unnecessary hardship to the people involved. The obvious conclusion to be drawn from God's intention to provide help and remove hardship is that the essence of these principles is their adaptability to meet the exigencies of every time and place on the basis of public interest. In the absence of any textual injunction in the Qur'an and the Tradition, the principle of "necessity overrides prohibition" furnishes an authoritative basis for deriving a fresh ruling.

The limited scope of this chapter does not permit us to undertake to identify all the principles that are applied to make juridical decisions in various fields of interpersonal relations in Islamic law. What seems to be most useful and feasible is to identify a number of fundamental Islamic principles that are in some direct and indirect ways discerned through the general principle of *maṣlaḥa*, that is, "public good." This principle is evoked in providing solutions to majority of novel issues in biomedical ethics. The rational obligation to weigh and balance an action's possible benefits against its cost and possible harms is central to social transactions in general and biomedical ethics in particular. As stated earlier, Islamic juridical studies are undertaken to understand the effective causes that underlie some juridical decisions that deal with primary and fundamental moral obligations. The principles to be elaborated in this chapter are not necessarily the same in priority or significance as those recognized, for instance, in Western bioethics, namely, respect for autonomy, nonmaleficence, beneficence (including utility), and justice. In comparison, Islamic principles overlap in important respects but differ in others. For instance, the two distinct obligations of beneficence and nonmaleficence in some Western systems are viewed as a single principle of nonmaleficence in Islam on the basis of the overlapping between the two obligations in the Tradition: "In Islam there shall be no harm inflicted or reciprocated" (*lā ḍarar wa lā ḍirār fī al-islām*). This is the principle of "No harm, no harassment."[10] Moreover, the principle of "Protection against distress and constriction" (*'usr wa al-ḥaraj*) applies to social relations and transactions, which must be performed in good faith but are independent of religion. There are also a number of derivative rules that are an important part of the Islamic system but are underemphasized in secular bioethics. Thus, among the derivative obligation is the rule of consultation (*shūrā*) as part of the Islamic communitarian ethics, against the dominant principle of autonomy based on liberal individualism.

Moreover, although this research is based on the rulings compiled from four major Sunni and one Shi'ite legal schools, I have attempted to identify only the most commonly referred principles or rules in biomedical jurisprudence without necessarily attributing them to one or the other school except when there has been fundamental disagreement on their inclusion in one or the other legal theory. These are the principles that have made possible the derivation of fresh rulings in bioethics by seeking to identify and balance probable outcomes in order to protect society from harms. In the last two decades, jurists belonging to all the Muslim legal schools have met regularly under the auspices of the Ministry of Health of their respective countries to formulate

their decisions as a collective body. Some of these new rulings have been published through the *Majma' al-fiqhī al-islāmī* (Islamic Juridical Council). A close examination of the juridical decisions made in this council reveal the balancing of likely benefits and harms to society as a whole. In addition, these decisions indicate the search for proportionality (*tanāsub*) between individual and social interests of the community and the need, in certain cases, to allow collective interests to override individual interests and rights. The inherent tension in such decisions is sometimes resolved by reference to a critical principle regarding the right of an individual to reject harm and harassment ("No harm, no harassment"), which constrains unlimited application of the principle of common good.

The Principle of Public Interest/Common Good (*Maṣlaḥa*)

Consideration of public interest or common good of the people has been an important principle utilized by Muslim jurists for accommodating and incorporating new issues confronting the community. *Maṣlaḥa* has been admitted as a principle of reasoning to derive new rulings or as a method of suspending earlier rulings out of consideration for the interest and welfare of the community. However, its admission as an independent source for legislation has been contested by some Sunni and Shi'ite legal scholars. To be sure, *maṣlaḥa* is based on the notion that the ultimate goal of the Shari'a necessitates doing justice and preserving people's best interests in this and the next world. But who defines justice, and what is the most salutary for the people? Here theological ethics defines the parameters of *maṣlaḥa*.

Looking at the majority of the Muslims, who belong to the Sunni-Ash'ari school of thought in its understanding of God's plan for humanity, one needs to understand the Ash'arite view of what is the best for people. The Ash'arites, who maintained the divine command ethics (the theistic subjectivism), confined the derivation of *maṣlaḥa* strictly from the revelatory sources, that is, the Qur'an and the Tradition. Ghazzali (d. 1111), as an Ash'ari theologian-jurist, elucidates this position in his legal theory:

> *Maṣlaḥa* is actually an expression for bringing about benefit (*manfa'a*) or forestalling harm (*maḍarra*). We do not consider [*maṣlaḥa*] in the meaning of bringing about benefit or forestalling harm as part of [God's] purposes for the people or [God's] concern for the people, in order for them to achieve those purposes. Rather, we take *maṣlaḥa* in the meaning of protecting the ends of the Revelation (*al-shar'*). The ends of the Revelation for the people are five: To protect for them (1) their religion, (2) their lives (*nufūs*), (3) their reason (*'uqūl*), (4) their lineage (*nasl*), and, (5) their property (*māl*). All that guarantees the protection of these five purposes is *maṣlaḥa*; and all that undermines these purposes is *mafasada* (a source of detriment).[11]

Hence, justice, according to the Ash'arites, lies in the commission and application of what God had declared to be good and the avoidance of that which God had forbidden in these sacred sources. Moreover, ruling an action good or evil depends on the consideration of the general principles laid down in the revelation. Consequently, human responsibility is confined to the course ordained by God by seeking to institute what God declares good and shunning what God declares evil. Moreover, as far as the derivation of fresh rulings is concerned, the Ash'arites maintain that the principle of *maṣlaḥa* is internally operational in the rulings that reveal with certainty that in legislating them God has the welfare of humankind in mind.[12]

The estimation of the Mu'tazilite Sunni thinkers, who maintained objectivist rationalist ethics, was understandably at variance with the Ash'arites. Their thesis was founded upon human reason as capable of knowing *maṣlaḥa*—the consideration of public interest that promoted benefit and prevented harm. For them, *maṣlaḥa* was an inductive principle for the derivation of fresh decisions in an area for which the scriptural sources provided little or no guidance at all, and in which judgments had to depend upon an evolving moral life that takes into consideration previous moral struggles and reflection derived from particular cases and circumstances.

In the context of matters connected with social ethics, which deal with everyday contingencies of human life, it is important to keep in mind that whether the principle of common good originates internally in the scriptural sources or externally through intuitive reason, no jurist questions the conclusion that legal-ethical judgments are founded upon concern for human welfare and in order to protect people from corruption and harm. In other words, they maintain that God provides the guidance with a purpose of doing the most salutary for people, even when the exact method of deducing this general principle is in dispute.[13]

Some jurists have, for all intents and purposes, related all the ordinances back to the principle of common good by employing case-based reasoning that compared cases and analogically deduced moral-legal conclusions. Hence, for example, Shāṭibī (d. 1388 C.E.) maintained that promulgation of the ordinances took place by referring to the paradigm cases in the scriptural sources like the Qur'an and the Tradition that took into consideration the welfare of the people in this world and the next. This assertion that God has the interest of people in mind is dependent upon an authoritative proof that could determine the validity of the claim that the paradigm case reflects an underlying doctrine that God is bound to do the most salutary thing for his creatures. However, as Shāṭibī correctly points out, regardless of the doctrinal aspects of the principle of common good that are treated in theology proper, it is important to emphasize that the application of this principle in the legal theory permits and even fosters new moral insights and judgments in the Shari'a. The majority of contemporary jurists maintain the latter view and have produced evidence in their works on legal theory in support of the specific legal decisions analogically derived on the basis of the principle of public good.[14]

Shāṭibī provides several examples of ordinances from the Qur'an and the

Tradition that were instituted by God in keeping with people's good in this and the next world. Thus in justifying the rules of purity and ablutions, God says in the Qur'an: "God does not intend to make any impediment (*ḥaraj*) for you; but He desires to purify you, and that He may complete His blessings upon you" (Q. 5:6). In addition, the scriptural sources have made the corruptive aspects of this and the next world known to humanity so that it can protect itself from them. If one investigates the Tradition, one will find nothing but the fact that all religious and moral duties point to God's concern for the welfare of humanity.[15]

The Types of Issues Covered under the Principle of Public Good

In view of the above explanation about public good, this principle consists of each and every benefit that has been made known by the purposes stated in the divine revelation,[16] and because some jurists have essentially regarded public good as safeguarding the Lawgiver's purposes,[17] the jurists have discussed the principle both in terms of types and the purposes they serve. Some have classified public good in terms of types, while others have resorted to purposes for classification. For instance, among the Sunni jurists, Shāṭibī has treated the principle and its corollaries in great detail in his legal theory by pointing out that religious duties have been imposed on the people for their own good in view of the fulfillment of God's purposes for them. These purposes are discussed under three headings:

1. The Essentials or the Primary Needs (*al-ḍarūriyāt*): These are things that are promulgated for the good of this and the next world, such as providing health care to the poor and downtrodden. Such actions are necessary for maintaining public health and the good of people in this life and for earning reward in the next. Moreover, without them, life would be threatened, resulting in further suffering for people who cannot afford even the basic necessities of life. According to Muslim thinkers, the necessity to protect the essentials is felt across traditions among the followers of other religions, too. The good of the people is such a fundamental issue among all peoples that there is a consensus among them that when one member of a society suffers, others must work to relieve the afflicted.[18] Some jurists have claimed unanimity among all religions that among the essentials is the protection of all these five indispensable things (religion, life, reason, lineage, and property) that human beings need to maintain a good order and the prohibition against ignoring them.[19]

2. The General Needs (*al-ḥājiyāt*): These are things that enable human beings to improve their life and to remove those conditions which lead to chaos in one's familial and societal life in order to achieve higher standards of living, even though these necessities do not reach the level of essentials. These benefits are such that, if not attended, they lead to hardship and disorder, but not to corruption. This kind of common good is materialized in matters of religious duties, everyday life situations, interpersonal relationships, and a penal system

that prevents people from causing harm to others. As an example of religious duties, the Shari'a exempts a sick person or a traveler from performing certain obligations under those conditions; under the category of everyday situations the law permits undertaking transactions that are beneficial for one's advancement in life; under the category of interpersonal relationships the law allows all those dealings that are justly executed; and, under the penal system, the law imposes various penalties that deter people from committing crimes that hurt one and all.[20]

3. The Secondary Needs (*al-Taḥsināt*): These are the things that are commonly regarded as praiseworthy in society, which also lead to the avoidance of those things that are regarded as blameworthy. They are also known as "noble virtues."[21] In other words, although these things do not qualify as "primary" or "general" needs, their goal is to improve the quality of life, to make them easily accessible to average member of a society, and even to embellish these noble virtues in order to render them more desirable.[22]

In terms of the principle's application, when a number of beneficial or corruptive aspects converge or when public good and corruption appear in the same instance, it gives rise to disagreement. For example, one of the issues in the Muslim world is assisted reproduction is sex selection. Sex selection is any practice, technique, or intervention intended to increase the likelihood of the conception, gestation, and birth of a child of one sex rather than the other. In the Muslim world, some parents prefer one sex above the other for cultural or financial reasons. Some jurists have argued in favor of sex selection, as long as no one, including the resulting child, is harmed. However, others have disputed the claim that it is possible for no harm to be done in sex selection. They point to violations of divine law, natural justice, and the inherent dignity of human beings. More important, permitting sex selection for nonmedical reasons involves or leads to unacceptable discrimination on grounds of sex and disability, potential psychological damage to the resulting children, and an inability to prevent a slide down the slippery slope toward permitting designer babies. In such cases, it becomes critical to assess the important criteria for the public good, or to lead the jurists to prioritize criteria that lead to public good or corruption, and provide the requisite ruling.

The Change of *Maṣlaḥa* and the Change of Rulings

One of the consequences of considering the public good is the inevitable change of laws in accord with changes of circumstances that require reassessment of what serves the people's interests and what causes corruption among them. Many precedents in the early history of the community, which serve as documentation in support of public good, and which have been used as paradigm cases by the jurists to extrapolate fresh decisions, are rooted in this principle. If it is accepted that religious ordinances are based on considerations that look into increasing positive value and minimizing evil, especially in matters that deal with social transactions, then we must also regard these ordi-

nances as relative to the situations, mutable, and hence specific to the logic of time and space. A number of prominent jurists have accepted this relative dimension of the ordinances dealing with all matters connected with intersubjective relationships. They have also asserted that alteration and adaptation are permissible, even if they go against the religious texts or if there is an agreement among the jurists advocating contrary to the terms of the text. However, a large number of jurists permit modification and adaptation in the ordinances dealing with specific topics about which there does not appear to be a textual proof or an agreement among scholars.[23]

In general, Sunni jurists were connected with the day-to-day workings of the government. Accordingly, they were required to provide solutions to every new problem that emerged in the society. In order to do this they devised methodological stratagems based on analogical reasoning, sound opinion, efforts to promote the good of the people, selection of the most beneficial of several rulings, removal of obstructions to resolving a problem, conventions and customs of the region, and, different forms of reasoning. Through these methodological tools they were, to a large extent, able to respond to the situations that arose in the medical practice. The Shi'ite jurists did not admit public good as a principle of problem resolution until more recently. Not until the Iranian revolution in 1978–79 did Shi'ite jurists take up the question of admitting public good as an important source for legal-ethical decision making. The direction followed by these jurists in Iran is not very different from the one followed by their Sunni counterparts throughout the political history of Sunni Islam.[24]

The Rule of "No Harm, No Harassment"

The rule of "No harm, no harassment" is regarded as one of the most fundamental rules for deducing rulings dealing with social ethics in Islam. Muslim jurists have discussed and debated the validity of this principle because it is regarded as one of the critical proofs in support of numerous decisions that were made in different periods of juridical development. What makes the rule authentic is its ascription to the Prophet himself. Jurists belonging to different legal schools are in agreement that the rule was set by no less a person than the founder of Islam. Hence, whether from the point of its transmission or from the congruity in the sense conveyed by it, the jurists have endorsed its admission among the rules that are employed in making all decisions that pertain to social and political life of the community. In fact, the Shāfi'i-Sunni jurist Suyūṭī regards "No harm, no harassment" as one of the five major traditions that served as authoritative sources for the derivation of the rules on which depended the deduction of legal-ethical decisions in the Shari'a.[25] In addition, he affirms that the majority of juridical rubrics were founded on the principle of "No harm, no harassment," and that closely related to this principle are a number of other rules, among them this one: "Necessities make forbidden permissible, as long as it does not lead to any detriment."[26] Some jurists include "No harm, no harassment" among the five major rules that shaped the new rulings in the area of interpersonal relations. These are as follows:

1. "Action depends upon intention." This rule is deduced from the tradition related by the Prophet: "Indeed, actions depend upon intentions."
2. "Hardship necessitates relief." This rule is inferred from the tradition that says: "No harm should be inflicted or reciprocated."
3. "One needs certainty." To continue an action requires linking the present situation with the past. This rule is rationally deduced on the basis of a juristic practice that links present doubtful condition to the previously held certain situation to resolve the case.
4. "Harm must be rejected." This rule is deduced on the basis of the need to promote benefit and institute it in order to remove causes of corruption or reduce their impact upon the possibility of having to choose the lesser of the two evils.
5. "Custom determines course of action." The rule acknowledges the need to take local custom into account when making relevant rulings.[27]

"No harm, no harassment" functions both as a principle and a source for the rule that states "hardship necessitates relief." As such, it connotes that there can be no legislation, promulgation or execution of any law that leads to harm of anyone in society. For that reason, in derivation of a legal-ethical judgment the rule is given priority over all primary obligations in the Shari'a. In fact, it functions as a check on all other ordinances to make sure that their fulfillment does not lead to harm. In case of dispute in any situation, the final resolution is derived by applying the rule of "No harm, no harassment." For instance, the primary obligation of seeking medical treatment becomes prohibited if it aggravates the affliction suffered under certain medical conditions.

It is important to keep in mind that "No harm, no harassment" functions most effectively when a rule that recognizes the absolute "right of discretion" (*taslīṭ*) of an owner over all his possessions is in competition with "No harm" rule. Simply stated, the problem is: How to protect the owner's interests when excercising one party's discretion leads to thwart another's interests. In situations in which the lack of owner's discretion may harm his interests, the jurists bypass the rule of "No harm" and simply adhere to the rule of "Right of discretion." However, if exercising one party's discretion leads to thwart another's interests, then the deliberations are faced with competing and conflicting interests. In such a case, admitting the "Rule of discretion" to the exclusion of the rule of "No harm" actually results in promoting the owner's interests only. If this occurs. some jurists prioritize the "Rule of discretion" in order to rule in favor of the owner's right to promote his legitimate interests. At the same time, the rule of "No harm" also becomes pertinent in promoting the owner's interests by considering the probable harm that can occur if the right of discretion is denied.

One more instance of competing interests is provided in a case in which

the owner exercises his discretion without any justification to promote or prevent benefit. He simply undertakes something for amusement. Here the rule of "No harm" becomes preponderant in providing the ruling, regardless whether that action causes or reciprocates harm. Actually the tradition that bears the rule narrates a story of a man who had a legitimate right to pass through his own property in order to get into the garden where his neighbor's house was located. But this passing through, done frequently and even for exercise of his discretion over his property, invaded the privacy of his neighbor, making it uncomfortable for that family. Hence, the "Rule of discretion" was sidestepped, and the fact of harm caused by this intrusion in the privacy of the neighbor prompted the use of the rule of "No harm, no harassment." In other words, the "Rule of discretion" is made ineffective by "No harm," because exercise of discretion is restricted by consideration of harm and harassment. Any unreasonable exercise of discretion, which neither promotes nor thwarts the agent's interests, is forbidden. But who defines what is reasonable or unreasonable in the matter of exercise of discretion? At this point, custom and culture provide the guidelines.

In the Shari'a, the definition "No harm" in to derive negative rulings depends upon custom (*al-'urf*), which determines its parameters. Custom also establishes whether harm to oneself or to another party has been done in a given situation. If custom does not construe a matter to be harmful, then it cannot be admitted as such by applying the rule itself, nor can it be considered as forbidden according to the Shari'a, even if the matter is lexically designated as "harmful." It is important to keep in mind that ultimately it is the Sacred Lawgiver who defines the parameters of harm. However, if custom regards as harmful something for which revelation offers no specific evidence against, the harm in that situation becomes more broadly defined as conditions that mediate injustice and violation of someone's rights. Moreover, harms differ as to who is causing the harm, as with self-harm and harm caused by another party. Hence, one's social status, culture, and the time in which one lives play a role in defining harm. Harm is relative to the person who experiences it. Therefore, what appears to be wrong prima facie and is regarded by one party as a harmful act may not be considered wrong or unjustified by another. Human experience, although subjective, attains considerable importance in the evaluation of the kind of harm that is to be rejected in the rule of "No harm, no harassment." The context in which the Prophet gave the rule clearly leaves the matter of harm to be determined by the situation. In the report that speaks about the harm caused by an inconsiderate neighbor who violated the privacy of his neighbor, it was a case of harmful invasion by one party of another's interest. To be sure, the rule "No harm, no harassment" allows for the ruling that one must not become a cause for harm.[28]

The application of the ruling to reject harm has no bearing on the assessment of the actual situation when a person is going through the setbacks to his interests. Nor does the Lawgiver's admission of harm in certain situations as a mediating causation for some rulings that require reparation or compensation. In the final analysis, it is the personal assessment of harm that functions as an important consideration in determining related obligations. Hence, for instance, when a person is sick, she determines whether she can keep the fast of Ramadan as required by the Shari'a in consideration of the harm that fasting can cause. Regardless of the criteria one applies to determine the level of harm, whether it is less or more, once custom establishes its existence, then the Shari'a endorses it as equally so, even when there might be a difference of opinion as to what forms of harm are more detrimental. In any case, when such a difference of opinion occurs, the law requires following the decision that leads to least harm and that causes the least damage to one's total well-being. Hence, in the case of a terminally ill patient, if the decision to prolong life leads to more harm for the patient and his immediate family, then to keep him on life-saving equipment is regarded as causing further harm to the patient's and his family's well-being, and hence forbidden.

A number of subsidiary rules are related to the rule "No harm, no harassment," including the second rule, "Hardship necessitates relief," which becomes almost part of this rule. In addition, a number of traditions and verses of the Qur'an are cited to support its admission as a source of legal-ethical decision making in order to seek benefits and avert sources of harm, or to choose the lesser of two plausible evils. In general, Muslim jurists mention subsidiary rules in various other contexts dealing with interpersonal relations to correlate the establishment of good in order to avert malevolence. Moreover, they provide guidelines that govern situations in which a person has to choose between two evils that appear to be equal, or a situation in which one of the two equal evils has preponderance because of the external or internal causes. It is important to keep in mind that although the jurists do not mention or allude to any traditions in support of the rule directly, in different contexts when applying the five rules they assert that these are figured out on the basis of the four principal sources of Islamic jurisprudence: the Qur'an, the Tradition, consensus, and arguments based on reason.[29]

Moreover, some jurists justify the rule "Hardship necessitates relief" on the basis of the same tradition that sets up the rule "No harm, no harassment," that is, "No harm shall be inflicted nor reciprocated."[30]

However, the question remains as to when the rule was promoted to the status of a principle that had wider application in matters related to social ethics. The problem in applying the rule was connected with the determination of actual harm. Was this harm objective enough to overcome assumptions about it? As discussed above, the tradition uses the word "harm" in its broadest sense to include any setback suffered by a person, whether physical or psychological. At the same time, human experience of harm is key to its actual assessment as such. However, there is evidence in the juridical assessment of the concept, which suggests that even when certain acts appear prima facie wrong and unjustifiable, it is not possible to attach absolute meaning to them. Obviously, there are acts that are regarded as being detrimental, which stop being so as soon as their negative aspect is overcome. This was particularly true in matters that dealt with acts that were classified as being harmful in the area of both God-human and interhuman relationships.[31] Following this dif-

ficulty in determining its reality as harmful, there was the other difficulty arising from consideration that the Lawgiver does not legislate anything harmful to people. In other words, God does not require people to do anything that would necessitate inflicting harm on oneself or on others. There are two verses in the Qur'an that refer to the rule as a negative injunction, in the situation related to conflict between two harms or between harm and benefit, and the Lawgiver's giving preponderance to the weightier among them:

> They will question you concerning wine, and arrow-shuffling. Say: 'In both is heinous sin (*ithm*), and uses (*manāfi'*) for men, but the sin in them is more heinous than the usefulness.' (Q. 2:219)

> If it had not been for certain men believers and certain women believers whom you know not, lest you should trample them, and there befall you guilt unwittingly on their account . . . (Q. 48:25)

These two passages are interpreted to convey the negative injunction against inflicting or reciprocating harm. There is no normative ranking proposed in them. In cases of conflict, not to harm is given preponderance, but the guidelines vary in different circumstances, providing no a priori rule that requires avoiding harm over providing benefit. They simply require weighing an action in a circumstance of conflict in terms of its potential in preventing and removing harm and promoting good.

Some Shi'ite jurists regard the tradition that states the rule "No harm, no harassment" as the source for a juristic principle among principles that are applied to derive laws of the Shari'a. They report several other traditions that speak about negation of harm in all matters related to human interaction to support this view.[32] In fact, as these scholars maintain, since the tradition "No harm, no harassment" is reported by all schools of thought among Muslims, it should be accorded the status of a principle that is a source of a large number of ordinances regarding intersubjective relationships.[33]

Other Shi'ite scholars have permitted carving out a precedence by including the rule about rejection of harm in their discussion about the legal theory. They have afforded it a prominence that is enjoyed by other principal sources like the Qur'an and the Tradition in deriving new rulings. The question of compensation looms large in the rulings that regard the person causing harm responsible for appropriate compensation. Once legal authority establishes that harm has occurred, application of a rule that relieves a person of responsibility for compensating the victim becomes pointless, especially when the person is definitely responsible for the compensation. Using a rational argument, these jurists have contended that it is reasonable and even natural to expect the person who has caused the harm to another be held responsible for the compensation. In fact, both, causing harm or reciprocating it, require restitution in the Shari'a. In other words, one cannot escape paying the compensation by resorting to the rule of "Relief from responsibility" when the rule of "No harm" holds him responsible for compensation. In line with the necessity to compensate the victim of harm, some Shi'ite jurists have ruled that although causing any kind of harm to oneself or to another person is forbidden, one should definitely avoid those harms in which the victim cannot be compensated, as specified in the sacred law. The responsibility to compensate in cases of harm and harassment is ingrained in human nature and confirmed by the Sacred Lawgiver, who has not ruled anything that might cause harm without taking into consideration due compensation. For various situations in which an agent might suffer a setback to his interests the Shari'a has determined a fixed level of compensation. And, in situations that are not covered there, the Shari'a has permitted a fair settlement through arbitration as long as the validity of the claim is indisputable.[34]

In sum, most of the jurists have accepted the rule as being one of the principle sources of legal-ethical decision making. Some others have regarded the rule as being closely related to another rule that states: "No constriction, no distress," regardless of whether constriction or distress is caused by God or by human being. They mention three significations of the tradition "No harm, no harassment":

1. It simply signifies the proscription (*al-nahy*).
2. It simply signifies proscription of harm without compensation.
3. It means that God does not wish harm for his creatures, neither from him nor from human beings.

An obligation not to inflict harm (*nafy al-ḍarar*) intentionally has been closely associated in Muslim social ethics to an obligation to promote good (*istiṣlāḥ*). As a matter of fact, obligations of nonmaleficence and beneficence are treated under a single principle of *istiṣlāḥ* (promoting good). Obligations to promote good cannot be fulfilled without taking stringent measures not to harm others, including not killing them or treating them cruelly, obligations to take full account of proportionality in order to produce net balance of benefits over harms, and obligations to honor contractual agreements. Accordingly, Islamic bioethics regards the principle of "No harm, no harassment" as central to the Islamic conceptions of health care. It is for this reason that there is a constant evaluation of the situation to prioritize obligations of preventing harm in order to make a final ethical decision. In cases of conflict between probable harm and probable benefit, each individual case of such a conflict requires careful weighing of the rule that states, "Preventing or removing harm has a priority over promoting good." To be sure, the principle of "No harm, no harassment" has as its source in both the revelation and reason. Reasonable people are capable of recognizing the sources of good life in the sacred texts and human intellection.

However, whether the obligation not to inflict harm can be regarded as one of the principles or rules of the bioethical system is contested by the Muslim jurists. To be sure, even the rationalist-objectivists, that is, the Shi'ites and the Mu'tazilite Sunnites, who regard human reason to be the sole judge in determining harm or benefit, have debated the centrality of this obligation in ethical deliberations in all fields of human interaction, including the biomed-

ical conditions. In almost 90 percent of cases confronting health care providers in the Muslim world, the issue of inflicting or reciprocating harm is at the heart of the ethical deliberations. In addition, in the rulings studied for the present work, the jurists almost unanimously provided reasons based on the obligation not to inflict harm. For example, in the rulings against human cloning, most jurists refer to the infliction of harm on the well-being of an offspring who will be deprived of normal parentage, regarded as a necessary condition in the healthy upbringing of a child. Or in the rulings about population control through abortion, the references all point to the harm that could be done to the moral fabric of society through legalization of abortion.

As a subsidiary rule, "Preventing harm has a priority over promoting good" also provides the jurists with the principle of proportionality. This principle is a source for careful analysis of harm and benefit when, for example, a medical procedure prolongs the life of a terminally ill patient without advancing long-term cure. The principle also allows for reasoned choices about appropriate benefits in proportion to costs and risks for not only the patient but also his or her family. It is well known that in many complicated cases, decisions about most effective medical treatments are based on probable benefits and harms for the patients and their families. Islamic bioethics require that medical professionals and health care providers ascertain the implications of a given course of medical procedure for a patient's overall well-being by fully accounting for the probable harm or benefit. The principle of "No harm, no harassment" thus is critical in clinical settings where procedural decisions need to be made in consultation with all parties to a case and with a sense of humility in the presence of God: There is nothing for humans but to strive to do their best.

NOTES

1. To speak about such a possibility in the highly politicized "theology" of international relations is not without problems. Like development language for which modern Western society provides the model that all peoples in the world must follow, any suggestion to create a "metacultural" language of bioethics runs the risk of being suspected as another hegemonic ploy from Western nations. However, there is a fundamental difference in the way development language is employed to connote Western scientific, technological, and social advancement, and biomedical vocabulary that essentially captures universal ends of medicine as they relate to human conditions and human happiness and fulfillment across nations. It is not difficult to legitimize bioethical language cross-culturally if we keep in mind the cultural presuppositions of a given region in assessing the generalizability of moral principles and rules.

2. Contemporary moral discourse has been aptly described as "a minefield of incommensurable disagreements." Such disagreements are believed to be the result of secularization marked by a retreat of religion from the public arena. Privatization of religion has been regarded as a necessary condition for ethical pluralism. The essentially liberal vision of community founded on radical autonomy of the individual moral agent runs contrary to other-regarding communitarian values of shared ideas of justice and of public good. There is a sense that modern, secular, individualistic society is no longer a community founded on commonly held beliefs of social good and its relation to responsibilities and freedoms in a pluralistic society. See David Heyd, ed., *Toleration: An Elusive Virtue* (Princeton, N.J.: Princeton University Press, 1996).

3. See Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, Colo: Westview, 1991). Chapter 1, "Comparisons of Rights Across Countries," has endeavored to analyze charges of cultural relativism against the Universal Declaration of Human Rights made by Muslim governments guilty of violating human rights of their peoples. However, in the process of arguing for the universal application of the UDHR document, she has paradoxically led to the relativization of the same by ignoring the historical context that actually produced the UDHR. See my review of her book in the *Journal of Church and State* 34, no. 3 (summer 1992): 614 616.

4. The deontological ethical norm determines the rightness (or wrongness) of actions without regard to the consequences produced by performing such actions. By contrast, the teleological norm determines the rightness (or wrongness) of actions on the basis of their consequences. Deontological norms can further be subdivided into objectivist and subjectivist norms: objectivist because the ethical value is intrinsic to the action independently of anyone's decision or opinion; subjectivist because the action derives value in relation to the view of a judge who decides its rightness (or wrongness). George Hourani, *Reason and Tradition in Islamic Ethics* (New York: Cambridge University Press, 1985), p. 17, introduces the latter distinction in deontological norms.

5. See K. Zaki Hasan's contribution in *Principles of Health Care Ethics*, ed. Raanan Gillon (John Wiley & Sons, 1994), pp. 93–103. Recent publications in Urdu on the subject of new rulings in Islamic jurisprudence indicate a growing interest in the deliberations of the *Majma' āl-fiqhi al-islamī* (Islamic Juridical Council) in Saudi Arabia, with chapters in India and Pakistan, and in growing interest of ulema in these two countries in formulating fresh juridical decisions in bioethics. *Jadīd fiqhī mabāḥith* (Karachi, n.d.), Vol. 1, deals with the proceedings of the seminar in which Indian and Pakistani ulema presented papers on various new issues, including organ transplant and birth control.

6. The usual practice among Muslim jurists is to end their judicial opinion (*fatwā*) with a statement *allāh 'ālim*, that is, "God knows best," indicating that the opinion was given on the basis of what seemed most likely to be the case (*ẓann*), rather than claiming that this was an absolute and unrebuttable (*qaṭ'*) opinion, which could be derived only from the revelatory sources like the Qur'an and the Tradition.

7. George F. Hourani, *Islamic Rationalism: The Ethics of 'Abd al-Jabbar* (Oxford: Clarendon, 1971), calls the Mu'tazilite theory of ethics "rationalist objectivism" because natural human reason is capable of knowing real characteristic of the acts, without the aid of revelation. Majid Fakhry, *Ethical Theories of Islam* (Leiden: E. J. Brill, 1991), pp. 35–43, regards this as quasi-deontological theory of right and wrong in which the intrinsic goodness or badness of actions can be established on purely rational grounds. Hourani calls the Ash'arite theory of ethics "theistic subjectivism" rather than "ethical voluntarism" because the value of action is defined by God as the judge and observer. However, since it is the divine will that is the determinant of right and wrong, it would be more meaningful to retain "voluntarism" in this particular type of divine command ethical theory. See Majid Fakhry, "The Mu'tazilite View of Man," in *Philosophy, Dogma, and the Impact of Greek Thought in Islam* (Brookfield, Vt.: Variorium, 1994), pp. 107–121, and his *Ethical Theories*, pp. 46–55. Further refinement in specifying the Ash'arite theory on the basis of Fakhry's discussions is provided by Richard M. Frank, "Moral Obligation in Classical Muslim Theology," in *Journal of*

Religious Ethics 11 (1983): 207, where he regards Ash'arite ethics "a very pure kind of voluntaristic occasionalism."

8. Madkūr, *Mabāḥith*, Vol. 1, p. 162.

9. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), chap. 12.

10. Literally, the principle translates: "There shall be no harming, injuring, or hurting, [of one person by another] in the first instance, nor in return, or requital, in Islam" (see Edward William Lane, *An Arabic-English Lexicon*, Part 5, p. 1775). Although based on a famous Prophetic tradition, in this work I will refer to this principle as the principle or rule of "No harm, no harassment."

11. Ghazālī, *Mustaṣfā*, Vol. 1, pp. 286–287.

12. Shāṭibī, *al-Muwāfiqāt*, Vol. 2, pp. 4–5, believes that legislating laws and promulgating religions have the welfare of humanity as their main purpose. Furthermore, he maintains that even when theologians have disputed this doctrine pointing out, as the Ash'arite theologian Rāzī has done, that God's actions are not informed by any purpose, the same scholars in their discussions on legal theory have conceded to the notion, however in different terms, that divine injunctions are informed by God's purpose for humanity. Shāṭibī clearly indicates that deduction of divine injunctions provides evidence about their being founded upon the doctrine of human welfare, to which Rāzī and other Ash'arites are not opposed.

13. Subkī, *al-Ibhāj fī sharḥ al-minhāj* (Beirut: Dār al-kutub al-'ilmiya, 1404/19), Vol. 3, p. 62.

14. Ḥusayn Ṣābirī, "Istiṣlāḥ va pūyāyī-yi fiqh," in *Majalla-yi Dānishkada-yi Ilāhiyāt Mashhad*, Year 1379 Shamsī, No. 49–50, pp. 235–286, gives an overview of the principle and its acceptance or rejection among the Sunni and Shi'ite jurists.

15. Shāṭibī, *al-Muwāfiqāt*, Vol. 2, pp. 6 7.

16. Muḥammad Sa'īd Ramaḍān al-Būṭī, *Ḍawābit al-maṣlaḥa fī al-sharī'at al-islāmiyya* (Beirut: Mu'assasa al-Risāla, 1410/1990), Vol. 3, p. 288.

17. Ghazālī, *al-Mustaṣfā*, p. 174.

18. Ghazālī, *al-Mustaṣfā*, p. 174ff.; Shāṭibi, *al-Muwāfiqāt*, Vol. 2, p. 8ff.; Ibn Badrān al-Dimashqī, *al-Madkhal*, p. 295; Ibn Qudāma, *Rawḍat al-nāẓir*, Vol. 1, p. 170.

19. Ibn Amīr Ḥāj, *al-Taqrīr wa al-taḥbīr*, Vol. 3, p. 213; Shāṭibī, *al-Muwāfiqāt*, Vol. 2, pp. 7–8, regards performance of all duties under the category of God-human relationship (*'ibādāt*) as fulfilling the need to protect one's religion; eating and drinking as fulfilling the need to protect one's life; performance of all duties under the category of interhuman relationship (*mu'āmalāt*) as fulfilling the need to protect future generation and wealth; and implementation of penal code and laws of retribution and restitution as fulfilling the need to protect all five essentials.

20. *Al-Muwāfiqāt*, Vol. 2, p. 9. Other jurists have mentioned these categories in different order, with different examples in each category. See, for instance, al-Ghazālī, *al-Mustaṣfā*, p. 175.

21. Shāṭibī, *al-Muwāfiqāt*, Vol. 2, p. 9.

22. Ghazālī, *al-Mustaṣfā*, p. 175.

23. Madkūr, *Madkhal al-fiqh al-islāmī*, p. 102.

24. It is important to note that since the establishment of the Shi'ite ideological state in Iran, the question of public good has become an important source of legal thinking and problem solving, similar to the Sunni states in premodern days. Under the leadership of Ayatollah Khomeini, Shi'ite jurisprudence has once again become research oriented. A number of conferences have been held since the revolution in 1978–79 to discuss the role of time and place in shaping the rulings through independent reasoning. The proceedings have been published in several volumes under the title *Naqsh-e zamān va makān dar ijtihād*.

25. Suyūṭī, *Tanwīr al-Ḥawālik: is'āf al-mubatta' bi-rijāl al-Muwaṭṭa'* (Beirut: al-Maktaba al-Thiqāfīya, 1969), Vol. 2, pp. 122, 218.

26. Suyūṭī, *al-Ashbāh wa al-naẓā'ir fī qawā'id wa furu' fiqh al-Shāfi'īya* (Mekkah: Maktabat Nizār Muṣṭafā al-Bāz, 1990), p. 92.

27. Shahīd Awwal, *al-Qawā'id*, Vol. 1, pp. 27 28.

28. There is a sustained discussion among jurists about the nature of harm that this tradition conveys. Undoubtedly, *ḍarar* refers to general forms of harm that include setbacks to reputation, property, privacy, and specific ones that include setbacks to physical and psychological needs. See 'Alī al-Ḥusaynī al-Sīstānī, *Qā'ida lā ḍarar wa lā ḍirār* (Qumm: Lithographie Ḥamīd, 1414/1993), pp. 134–141.

29. Shahīd Awwal, *al-Qawa'id*, Vol. 1, p. 123.

30. Ibid.

31. Ḍiya al-Dīn al-'Iraqī, *Qā'ida lā ḍarar wa lā ḍirār*, ed. and commented upon by al-Sayyid Murtaḍā al-Mūsawī al-Khalkhālī (Qumm: Intishārāt Daftar Tablīghāt Islamī, 1418/1997), p. 135.

32. Majlisī, *Biḥār al-anwār*, Vol. 2, p. 277.

33. Majlisī, *Mir'āt al-'uqūl*, Vol. 19, p. 395.

34. Ḥakīm, Sayyid Mundhir al-, "Qāi'dat nafy al-ḍarar: Ta'rīkh-ha—Taṭawwur-ha ḥatta 'aṣr al-Shaykh al-Anṣārī," in *al-Fikr al-Islāmī*, No. 7, 1415/1994, pp. 264–290.

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