



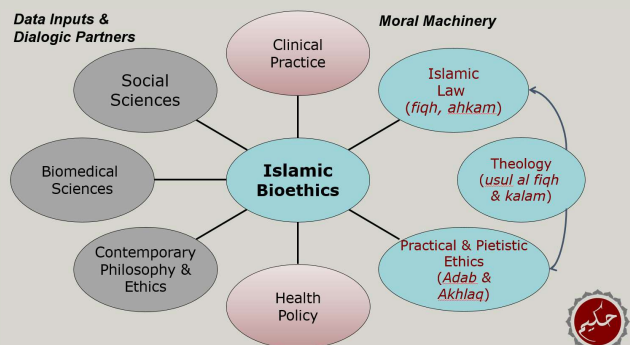
## Session 6: Contestations over Stakeholder Roles in Islamic Bioethical Discourse Summary



@aasim\_padela

### Focus Questions

- What is an expert hierarchy for Islamic bioethical deliberation based on the readings?
  - Well, it depends whom you ask
  - Could be context dependent
  - To be further discussed in **Session 10...**



## Insights into the Materials: Contestations over Roles

- Hamdy, S. 2013. *Reframing Islamic Bioethics*. Contending Modernities Project. University of Notre Dame.
- Mobin-Uddin, Asma. 2019. *Journal of Islamic Faith and Practice. Practicing Clinical Bioethics: Reflections from the Bedside*. doi:10.18060/23275
- Padela, AI. 2015. *Muslim Perspectives on the American Healthcare System: The Discursive Framing of "Islamic" Bioethical Discourse*. Die Welt des Islams.55:413-447
- -Ghaly, M. *Biomedical Scientists as Co-Muftis: Their Contribution to Contemporary Islamic Bioethics*. Die Welt des Islams.55:286-311
- -Stodolsky, M. V. Y., & Kholwadia, M. A. 2021. *A jurisprudential (Uṣūlī) framework for cooperation between Muslim jurists and physicians and its application to the determination of death*. In *Medicine and Shariah: A Dialogue in Islamic Bioethics*, edited by AI Padela. Notre Dame: University of Notre Dame Press

- Hamdy: Social Scientist
  - Bioethics >> Fiqh & Individual
  - Why are social structures as they are; the intellectual/historical legacy of framing is critical for a moral response
  - Is there an "Islamic" just because a scholar declared something
- Mobinuddin: Muslim bioethicist
  - Practical ethics needs to involve people of the practice to understand bedside concerns
  - Hybrid scholars bridge build and can assess relevance

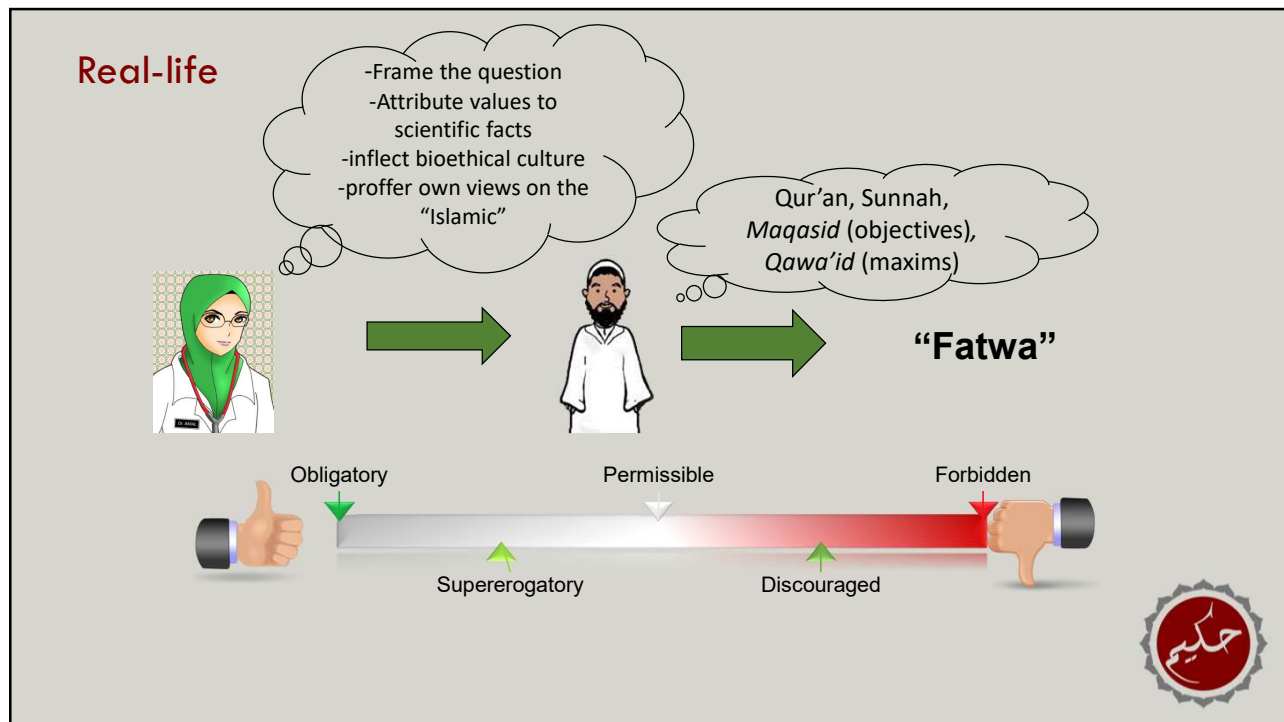


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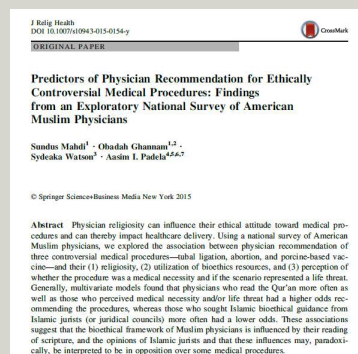
- Ghaly: Islamic studies expert
  - Insights into workings of fiqh councils
  - Role of the MDs and who are the MDs
  - 'co-mufti' role is controversial
- Dr. Muhammad & Sh. Amin: Islamic jurists
  - Division of labor
    - *Takhrīj* (derivation)
    - *Tanqīh* (refinement)
    - *Tahqīq* (actualization/certification)
  - Directly rebut the collective *ijtihād* operative schema





## Disconnected and Distanced

- There is an ethical, practical and spatial gap between juridical and medical imaginations
- Traditional idealized role:
  - Jurists defer to physicians to perform *tahqiq*
  - Imagine they have to apply a ruling based on *darūra*
    - Jurists may define the condition differently
    - No clinical consensus on when a life threat or medical necessity exists
    - Concepts don't wholly overlap but neither group is fully cognizant of that



## Recall

- ‘*al-darūra*’ = dire necessity
  - *ḍarar* connotes harm and injury
- Ethico-legal construct
  - Moral valuation of a social (biomedical) reality
  - If X then Y; but X is “fuzzy”
- Ethico-legal maxim: *al-darūrāt tubīḥu al-maḥẓurāt*
  - “Circumstances of necessity make the unlawful lawful”
  - Can overturn a normative prohibition when:
    - Classical jurists: there is a life threat
    - Contemporary scholars: *maqāsid* of Islamic law are threatened

## Case 1: Permanent Sterilization

“It **is impermissible...except** .. if *competent, trustworthy doctors* declare that the woman would very likely **die or lose an organ/limb** due to a new pregnancy.”

Islamic Fiqh Assembly of India<sup>1</sup>

“Cases of **absolute necessity include a women's life or her permanent health being severely threatened** by pregnancy, or her facing the risk of **losing her life...**”

Dar ul-iftaa Institute of Islamic Jurisprudence<sup>2</sup>

## Case 2: Abortion after ensoulment (120 days)

“it is **not permissible to abort** the child...unless a medical report [shows] that keeping the child raises **a high risk on the mother's life**

Fiqh Assembly of the Muslim World League (MWL)<sup>1</sup>

“This dispensation [for abortion after rape] is to be given because of **necessity**...But this case of necessity should be determined by *religious scholars, doctors and people of wide experience and wisdom.*”

Shaykh Yusuf al-Qaradawi<sup>2</sup>

## Case 3: Porcine-based medication

Avoidance of impurities, such as gelatin in medicine, **unless there is no alternative** to a particular medicine, then **it may** be consumed - Fiqh Assembly OIC<sup>2</sup>

Usage of porcine-based medication [**is permitted**] when **a significant health threat** exists under the ethico-legal construct of **darurah**<sup>3</sup>

Malaysian Juridical Council [JAKIM]

## Juridical Prescription

- *Ḍarūra* exists when
  - life is in danger
  - risk for loss of limb/disability
  - no alternative
- Physicians are to certify its existence
- Scriptural sources for edicts
  - Sterilization
    - Prophet's prohibition of castration
    - Ijma of jurists
  - Abortion- **Session 9**
  - Porcine-based Products
    - Various versions of hadith: "God does not put cure for my nation in that which He has made prohibited for them"

## National Survey of Muslim American physicians

- Participant Recruitment & Data Collection



- Self-administered questionnaire (post; e-mail)
- Incentives: \$2; book; raffle for iPad

- Survey Instrument
  - Tailored design method
  - Combination of existing measures and those created de novo

## Variables of interest

In answering the following questions, please consider the Islamic maxim of: necessity overrides prohibition (*al-darurat tubih al-mahzurat*). This maxim allows for items or treatments that are generally prohibited to be used in medical care when a necessity (*darurah*) exists. With this legal maxim in mind please consider the following scenarios:

28. HA is a 36 year-old Muslim female patient who was diagnosed with dilated cardiomyopathy associated with severe heart failure. The patient's OB/GYN physician advised her to undergo surgical sterilization (bilateral tubal ligation) to prevent conception in the future.

In this case:

	No	Yes	Do not know
A. Is bilateral tubal ligation (sterilization) a <b>medical necessity</b> ?	<input type="checkbox"/> <sup>1</sup>	<input type="checkbox"/> <sup>2</sup>	<input type="checkbox"/> <sup>3</sup>
B. Does a future pregnancy constitute a <b>life threat</b> ?	<input type="checkbox"/> <sup>1</sup>	<input type="checkbox"/> <sup>2</sup>	<input type="checkbox"/> <sup>3</sup>
C. If I were the treating physician, I would recommend tubal ligation.	<input type="checkbox"/> <sup>1</sup>	<input type="checkbox"/> <sup>2</sup>	

## Predictor variables

### 1. ISLAMIC RELIGIOSITY

#### Religious importance

"How important is religion in your life?"

#### Religious practice

Congregational worship; Ritual prayers;  
Reading of Qur'an; Fasting; Meat  
consumption; religious appearance

### 2. ISLAMIC BIOETHICS RESOURCE UTILIZATION

Sources and frequency of use

### 3. SOCIODEMOGRAPHIC CHARACTERISTICS

## Results

- Case 1: tubal ligation
  - Muslim female patient
  - Dilated cardiomyopathy; severe heart failure
  - Surgical sterilization (bilateral tubal ligation) to prevent future conception is advised by gynecologist

Variable	Recommend the procedure	
Percentage	76% yes	24% no
Positive predictor	-Reading Quran weekly > than on special occasions never (OR 31)  -Perceived medical necessity (OR 295)	
Negative Predictor	-Seeking fiqh council guidance; rarely (OR 0.01), sometimes (OR 0.01) or often (OR 0.0011)	

## Results

- Case 2: abortion
  - Muslim female patient
  - Leukemia; intensive chemotherapy
  - Pregnant, gestational stage after ensoulment
  - Abortion advised by oncologists and gynecologist

Variable	Recommend the procedure	
Percentage	61% yes	39% no
Positive predictor	Perceived life threat (OR 108)	
	Perceived medical necessity (OR 295)	



## Results

- **Case 3: Porcine vaccine**
  - Influenza outbreak with no reported deaths
  - CDC recommends all individual be vaccinated
  - Vaccine contains porcine components

Variable	Recommend the procedure	
Percentage	76% yes	24% no
Positive predictor	<p>-Reading Quran weekly &gt; on special occasions/never (OR 36)</p> <p>-Perceived medical necessity (OR 148)</p>	
Negative Predictor	Seeking fiqh council guidance; rarely (OR 0.08), sometimes (OR 0.05)	

TABLE 2. Frequencies of assessments of case scenarios (N=255)

	Tubal ligation Scenario N (%)	Abortion Scenario N (%)	Vaccination Scenario N (%)
Medical Necessity			
Yes	145 (57.1)	113 (44.8) ←	155 (61.2)
No	78 (30.7)	68 (27.0)	82 (32.4)
Don't know	31 (12.2)	71 (28.1)	16 (6.30)
Life Threat			
Yes	206 (81.1) ←	123 (49.2) ←	154 (61.1)
No	14 (5.50)	52 (20.8)	74 (29.3)
Don't know	34 (13.4)	75 (30.0)	24 (9.50)

## Speculations and Implications

- Those who read Qur'an more permissive and those who refer to juridical sources less- why?
  - Perhaps independent reasoning by those reading Qur'an
  - Perhaps those who seek juridical insights have greater appreciation for the conditions under which *darūrāh* can be invoked or greater insight into nuances
- Medical necessity & *darūrāh* (Life Threat) related?
  - *darūrāh does not have any effect upon physician recommendation*
    - Physicians who consider medical necessity to exist more likely to recommend

## Disconnected yet interdependent

- Jurists rely on physicians for medical knowledge
- Physicians concede domain of Islam to jurists (sometimes)
- The ethical constructs dominating Islamic bioethics discourse are constructions
  - Biomedical imaginary
  - Social reality
- A multidisciplinary model for understanding contexts and offer ethical guidance is needed [Session 10]
  - Jurists
    - Deliver scriptural evidence for *ḍarūra*
    - Transmit ethico-legal understandings of the construct
  - Biomedical scientists
    - Clinicians speak to the aspects of the case & practice conventions (the biomedical)
    - Researchers/Statisticians provide relevant epidemiological and statistical data that speaks to life-threat, risk of disability/harm, etc
  - Bring in social, political and others to fill out the context



DIE WELT DES ISLAMIS 55 (2015) 413-447

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brill.com/wdi

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

Aasim I. Padera

### Sources:

- American Muslim Health Professionals (AMHP) communiques (press releases and reports)
- Islamic Society of North America- khutbahs and outreach packet

-Online fatawa from America-based jurists:

- Fatwa Center of America (FCA)
- Assembly of Muslim Jurists of America (AJMA)

### Why similar:

- Making "Islamic" moral assessments regarding American healthcare system
- Fashioning "Islamic" arguments to motivate Muslim behaviors
- Making public statements describing Islamic ethical values



WHERE FAITH &amp; HEALTHY COMMUNITIES COME TOGETHER

Vision: committed to improving "the health of Americans" by "improving public health through efforts inspired by Islamic tradition"

Materials used to argue for healthcare reform:

- Created taskforce on healthcare reform 2008-09 → health policy brief- *Principles of Healthcare Reform*
- Penned a congressional brief for Muslim staffers
- Health reform seminars in *masajid*

Motivations:

- "an Islamic and American background it is our duty to support these grassroots efforts" – press release





WHERE FAITH & HEALTHY COMMUNITIES COME TOGETHER

**'Islamic' arguments:**

-Serving the "poor and destitute" is an Islamic obligation –

letter to staffers

-“the Islamic faith encourages Muslims to strive towards equity in all things”

press release

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ (3:92)

-“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”

Imam's "Islamic arguments" in sponsored material



Fatwa Center of America

**Judgment:**

-according to the research of *ulama* all forms of conventional insurance is haram”


Mufti Ikram ul-Haq @ FCA

-“no less than 150 such scholars from 45 Islamic countries” at the Islamic Fiqh Academy in Jeddah unanimously judged “all types of prevalent insurances to be [Islamically] unlawful” – Sh. Main Qudah @ AMJA


**Grounding:**

-elements of usury (*ribā*), chancing (*qimār*), and uncertainty (*gharar*) present within conventional insurance contracts





**Amjaonline**  
Assembly of Muslim Jurists of America




Fatwa Center of America


**Qualification:**

- "extreme necessity renders the impermissible to be permissible" (*al-ḍarūrāt tubīḥ al-maḥẓūrāt*)


**Conditions for invoking necessity:**

- Excessive costs leading to bankruptcy - Mufti Ikram
- when health insurance is required by the law of the land an individual is not considered blameworthy when purchasing it- Mufti Ikram
- very high and unaffordable healthcare expense - Sh. Qudah
- "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"  
– Sh. Al-Sawy






**Amjaonline**  
Assembly of Muslim Jurists of America



Fatwa Center of America

**Solutions:**

- "Muslims should make effort to replace the conventional insurance with the Islamic alternative that is called *takāful*" – Mufti Ikram
- government-run single payer system that "aims to look after the citizens and not to gain profit" – Sh. Al-Sawy



## Disconnections

### AMHP

- Use health equity and human rights discourse

### Jurists

- Absent
  - Why?
    - Unfamiliarity (disassociation from health policy circles)
    - Human rights lexicon theoretically problematic



## Disconnections

### AMHP

- Absent
- Why?
  - unfamiliarity with Islamic ethico-legal constructs
  - working within interfaith, post-9/11 context so "Islamic" sources might be muted

### Jurists

- Use tools of Islamic law to identify *ḥarām* status make conditionally permissible



## What is lost?

- Jurists offered solutions not advanced by Muslim organizations
  - Takaful- the Amish were exempted from ACA because they had such mutual cooperative schema in place
  - Single-payer – not advanced as an “Islamic” solution
- Confusion about the “Islamic” in Islamic (bio)ethics discourse
  - Are human rights and social justice arguments sufficient to equate **sin to non-action**?
  - Is it **ethical to call use the pulpit** to call towards a contingently permissible?
  - Is Islamic law, as gleaned by these fatawa, not concerned with **societal disparities**?

## Orders of Discourse

- Orders of discourses
  - Some types of vocabulary and arguments are privileged and others marginalized in discourses



### Wittgenstein's Language Game Approach

- A **functional** and postmodern approach to language
- Language statements are **not 'true or false'** but bear meaning to the speaker/person expressing themselves.
- In each '**form of life**' language therefore is part of a '**game**' – people part of each game communicate with each other.
- Each game has a '**criteria of coherence**', which is only understood in relevance to **that** game.
- Religious Language is meaningful when used in **the context of the correct 'game'**, hence believers understand each other.
- If one does not understand it, it is deemed a '**category mistake**' e.g. a scientist physically looking for a 'soul'.

## Target Article

## In Defense of Irreligious Bioethics

Timothy F. Murphy, University of Illinois College of Medicine at Chicago

DOI: 10.1111/dewb.12210

EDITORIAL

WILEY bioethics

### On the role of religion in articles this journal seeks to publish

Bioethics as a field of inquiry has many parents, its writers come from a wide variety of academic disciplines. What they all have in common, whether they are historians, lawyers, philosophers or social scientists, is an understanding that the arguments presented must be a variety of public-reason based arguments. Religion based arguments are, by definition, arguments that do not fall into the category of public-reason based arguments. They rely on premises involving the existence of unobservable supernatural powers giving us direction in terms of how we must live our lives. Typically their guidance is provided in religious documents the content of which is credited to said unobservable supernatural powers. This, of course, is a very much simplified description of the world's major monotheistic religions, but its key elements are pretty much like this:

authoritative religious source of wisdom, and defends that inter against other interpretations of that same source of religious wisdom. In our field, their arguments are truly only relevant then to people who share their beliefs or people who might be interested in knowing what religious scholars who believe in the dicta of a particular religion argue about these issues. Lisa Sowle Cahill, a Christian scholar, commented nearly three decades ago on contributions to bioethical discourse by Christian scholars, raised concerns about such approaches and pointed convincingly, to the limited relevance of such contributions. She wrote, "Public bioethical discourse (or public policy discourse) is actually a meeting ground of the diverse moral traditions that make up our society. Some of

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## LETTER TO THE EDITOR

bioethics WILEY

### Contextualizing the role of religion in the global bioethics discourse: A response to the new publication policy of Developing World Bioethics

-Many societies are not liberal democracies where public reason holds sway; some have public squares that are informed by religion  
-Text-based/rational argumentation is common to both secular and religious ethicists

-Religion based arguments...do not fall into category of public-reason based arguments  
-Religious scholars examine scriptural texts that are not of universal appeal

