



Session 9: Islamic Bioethics of Abortion & Human Reproduction Summary



Talk Agenda

- Present dominant Islamic ethico-legal rulings regarding biomedical solutions to childlessness
 - Selected “fatwa-hunting”: IOMS, IFA-OIC, and prominent jurists [Sunni]
 - Share dominant scriptural and ethico-legal rationale
- Critically analyze the “constructions” of parenthood
 - What is the link between progenitor and offspring, social rearer and child
 - Privileging scientific or social imaginaries?
- Complete the circle for a holistic Islamic bioethics

Intro



The Importance of Family

- Family Unit:
 - Locus of reciprocal moral responsibilities- “rights talk” ~ adab
 - Expanding circles of relatedness (*nisba*)
- *Maqāṣid al-Sharī‘ah* Frameworks
 - Human interests → moral ends (axiology of values) for Islamic ethico-legal tradition
 - Preservation (*ḥifẓ*) of lineage (*nasl*) and progeny (*nasab*)
 - Preservation of wealth (*māl*) → inheritance flows through family

Part 1



An Ontological Perspective

Realm of Existence	Description
<i>Lahūt</i> (Creator)	Absolute and Eternal Divine existence
<i>Malakūt</i> (Creation)	World of spirits (<i>arwāḥ</i>) and other celestial beings
<i>Mithāl</i> (Creation)	World of non-physical forms and similitudes
<i>Ajsām</i> (Creation)	World of corporeal bodies

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PHILOSOPHICAL EXPLORATION

 CrossMark

Causes and Means of Healing: An Islamic Ontological Perspective

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Potential Means of Healing	Ontology	Scriptural Source
Completely rely on and trust Allah, (<i>tawakkul</i>)	<i>Lahūt</i>	Prayer of Job in Qur'an
Supplicate for cure (<i>du'ā</i>)	<i>Malakūt</i>	Prophet's statements
Give Charity (<i>ṣadaqah</i>)	<i>Malakūt</i>	Prophet's statements
Prayer of others	<i>Malakūt</i>	Prophet's statements
Preventive action based on dreams	<i>Mithāl</i>	Companion practices
Medications, surgery	<i>Ajsām</i>	Prophetic statements
Incantations, amulets from traditional healers	<i>Malakūt</i>	Prophetic practice

“Treating” Infertility

- God’s dominion

لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ ۚ يَخْلُقُ مَا يَشَاءُ ۚ يَهَبُ لِمَن يَشَاءُ إِنثًا وَيَهَبُ لِمَن يَشَاءُ
الذَّكَرَ ۚ

- Prophetic Responses to Childlessness

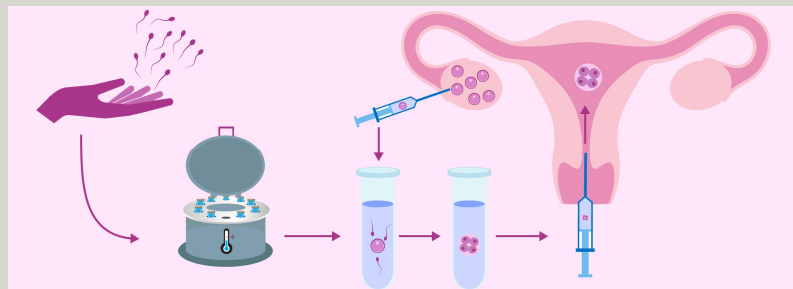
فَاسْتَجَبْنَا لَهُ، وَوَهَبْنَا لَهُ، يَحْيَىٰ وَأَصْلَحْنَا لَهُ، زَوْجَهُ ۚ إِنَّهُمْ كَانُوا
يُسرِعُونَ فِي الْخَيْرَاتِ وَيَدْعُونَنَا رَغَبًا وَرَهَبًا ۚ وَكَانُوا لَنَا خَاشِعِينَ

- General “Rules”:

- Not wajib/fardh to have children or seeking treatment for medical infertility at individual level

Part 2

Sperm Donation



- **ḥarām**

- Resembles adultery
 - In Process and/or Result
- Threatens preservation of lineage
 - Genetic Contribution of the sperm donor is problematic to defining parent-child link

وَلَا تَقْرُبُوا الزَّانِيَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Treating
Infertility

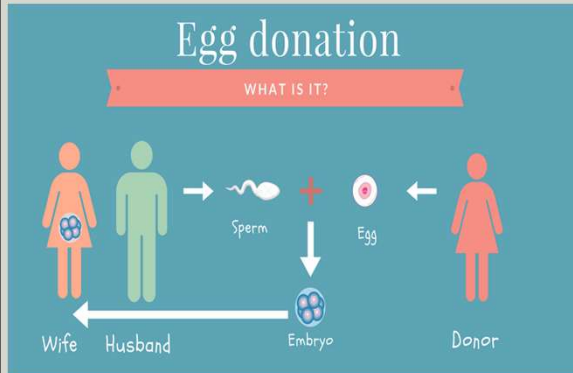
Ova Donation

○ *ḥarām*

- Confusion of lineage

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مَنْ نَسَاهُمْ مَا هُمْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوءٌ غَفُورٌ ﴿٢﴾

- A necessity-based exception may exist
 - Mitochondrial Disease Transmission



Treating
Infertility

Gestational Surrogacy

○ *ḥarām*

- Confusion of lineage
 - Mother?
 - Father?
 - Parents (genetic vs social)

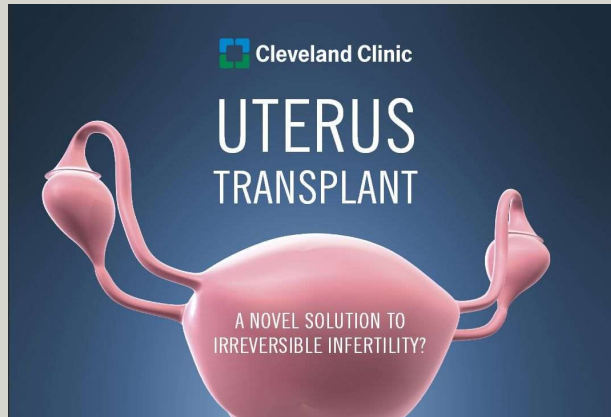


"الْوَلَدُ لِلْفَرَّاشِ وَلِلْعَاهِرِ الْحَجَرُ"

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مَنْ نَسَاهُمْ مَا هُمْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوءٌ غَفُورٌ ﴿٢﴾

Treating
Infertility

Uterus Transplantation



- Organ transplant
 - If life-saving → *wājib*
 - If not → ~ *mubah*
- Sex organs
 - *ḥarām* → contain genes (confusion of lineage)
- Uterus → metaphysical reality of creating bonds

Treating
Infertility

يَتَأْتِيهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا
وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

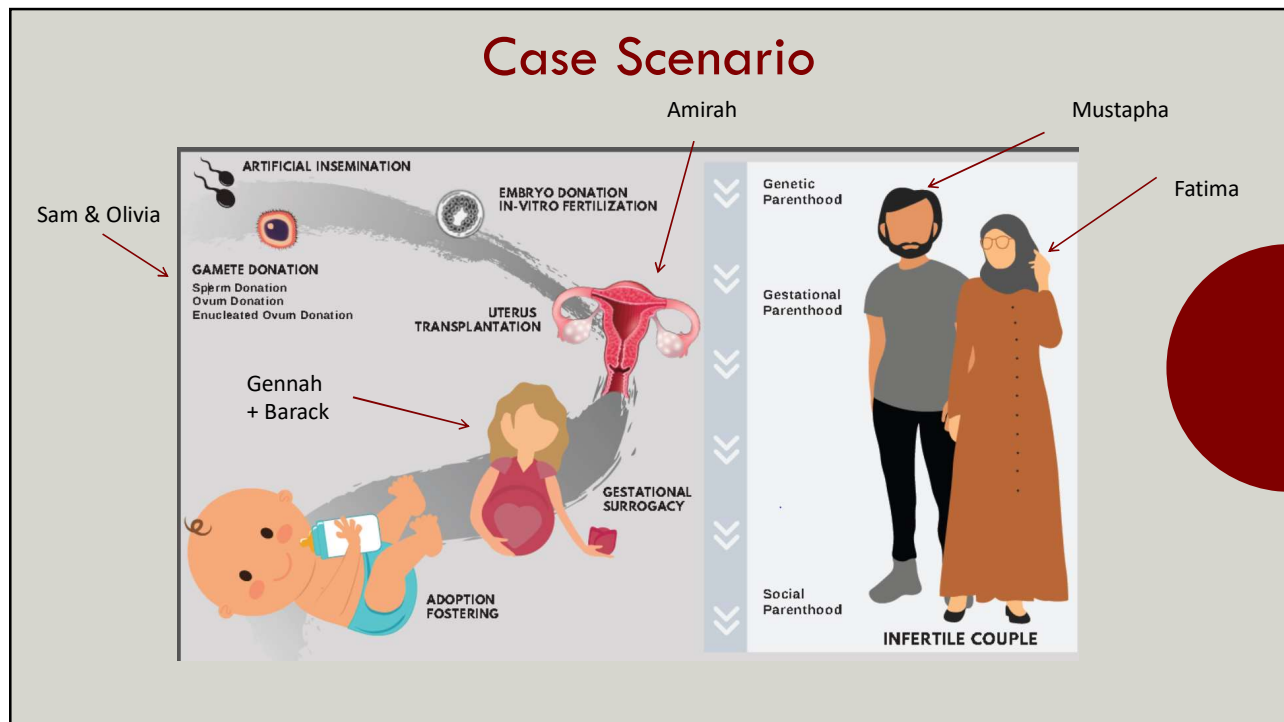


The Two Wives Scenario



- 1984-5, the IFA-MWL
 - Gestational surrogacy between two wives of same husband
- Initial Ruling 1984: *mubah*
 - There is no confusion about the father (~ lineage)
 - Genetic = legal father (is marriage partner of surrogate)
 - Gestational carrier ~ milk-mother
 - Legal mother = genetic progenitor (ovum contributor)
- Revised one year later: *ḥarām*
 - Possible that the zygote is fusion of gestational carrier's egg & husband → confusion of lineage

Treating
Infertility



Summary & Contestations

Therapeutic Strategy	Genetic Progenitors ("Parents")	Gestational Parents	Rearing Parents	Contested Linkage
Sperm donation	<u>Sam</u> & Fatima	Mustapha & Fatima	Mustapha & Fatima	Genetic bonds
Ova donation	Mustapha & <u>Olivia</u>	Mustapha & Fatima	Mustapha & Fatima	Genetic bonds
Gestational Surrogacy	Mustapha & Fatima	<u>Gennah & Barack</u>	Mustapha & Fatima	Gestation & Legal construction
Uterus Transplantation	Mustapha & Fatima	Mustapha & Fatima	Mustapha & Fatima	Amirah-Afterlife?
Two wives scenario	Mustapha & Fatima	<u>Gennah (?)</u> & Mustapha	Mustapha & Fatima	Gestation

Juridical views

Genes, Gestation, Rearing and Islamic Normativity

- Integration of science → positive development for *naşl/nasab*?
 - Genetic bonds from ova & egg lead to “new” notions of parenthood
 - In gamete donation: could consider
 - dad = “owner of bedspread”
 - mother = gestational
 - In gestational arrangements
 - Genetics are maintained
 - Social rearing remains intact
 - Legal precedent and scriptural interpretation is at odds [cf. Shia]
 - DNA is not end all
 - No clear prioritization
 - Priority of lian over fingerprinting to negate paternal claims when marital relations in doubt



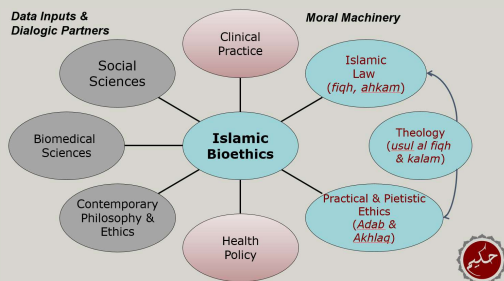
Discussion

Social Scientific Imaginaries, Empirical Data, and Constructing Islamic Bioethics

Is producing offspring essential to a singular human's existence?

Are prayer and social arrangements viable healing for childlessness?

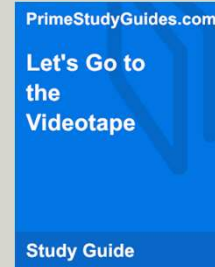
Preserving family units and lineage is of paramount importance when considering ART and genetic testing.



Deep Thinking

Insights into the Materials:

- Yusuf, H., 2022. *When Does a Human Foetus Become Human?* In Islam and Biomedicine Afifi al-Akiti and Aasim I. Padel (eds). pp. 113-134. Springer, Cham.
- Stodolsky, Muhammed V., and Aasim I. Padel. 2021. *Abortion in Hanafi Law*. In *Abortion Global Positions and Practices, Religious and Legal Perspectives* (A. Bagheri ed.), pp. 127-136. Springer, Cham,
- Eich, Thomas. *Maliki Perspectives on Abortion*. Pages 137-145 in book above
- Al-Bar, M. *Abortion: Shafi'i Perspective*. Pages 147-153 in book above
- Al-Khatib, M. *Abortion in the Hanbali School of Jurisprudence: A Systematic Ethical Approach*. Pages 155- 167 in book above.
- Bagheri, A. *Abortion: Shi'ite Perspective*. Pages 169-177 in book above.
- Padel, Aasim I., Katherine Klima, and Rosie Duivenbode. 2020. *Producing parenthood: Islamic bioethical perspectives & normative implications*. The New Bioethics 26(1): 17-37.
- Padel, AI. *Muslim Conceptions of Motherhood: Gestational Surrogacy and Uterine Transplantation* 31st Annual Dorothy J. MacLean Fellows Conference on Medical Ethics. November 8, 2019, Chicago, IL.



Padela, A. July 22nd 2022, *Abortion & Reproductive Ethics*.
Bayan Islamic Graduate School. Chicago, IL

