



Session 2: Research Methods, Outputs & Producer Roles in Islamic Bioethics Summary



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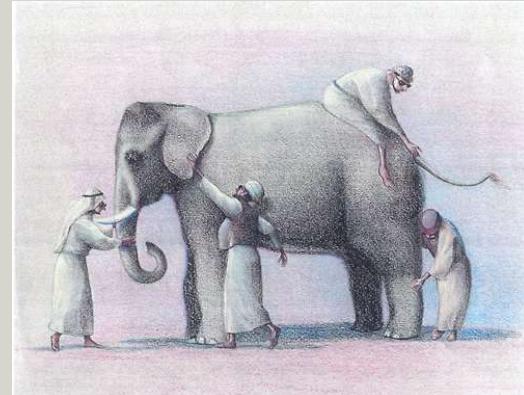
Focus Questions

- What are the cognitive frames and biases of specific *producers* of Islamic bioethics?
- What are the limitations of *fatwa research*, *Medline reviews*, and *uṣūlī* approaches to understanding Islamic bioethical perspectives?

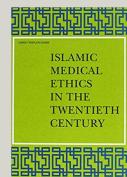
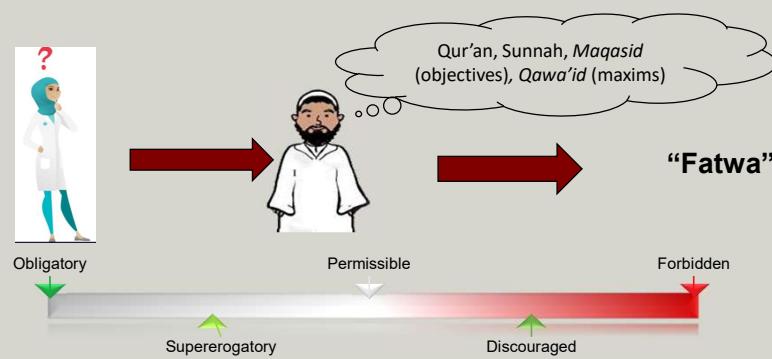


Limitations of Research Methods & Materials

- *Uṣūlī* → *hukm*
- Fatwas & *qararāt*
- Biomedical literature [Medline]



What are Islamic bioethical views on?



Problems with Fatwa Discourse & Research

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Islamic Bioethical Positions on Organ Donation and Transplantation: Stressing Rigor and Caution in Fatwa Reviews

Asim I. Padela, MD, MSc^{1,2}

CHAPTER 12

Using Fatwa within Islamic and Muslim Bioethical Discourse: The Role of Doctrinal and Theological Considerations- A Case Study of Surrogate Motherhood

Asim I. Padela, Hasan Shanavani, Mohammed Amin Khelwati, Ahsan Arzoulih

Introduction

Studies of *fatwa*, or legal opinion issued by Muslim scholars based on the Islamic ethical legal structure, are the cornerstone of Muslim and Islamic bioethics studies. Islamic bioethics researchers utilize *fatwa* as source texts for study, clinical guidelines, and policy advocacy. In many areas of medical intervention, health policy advocates use *fatwa* as the basis for constructing health policy options, and Islamic studies experts use *fatwa* as source texts from which to derive and prioritize principles for a global Islamic Bioethics. In all of these and other disciplines, regardless of methodology, the focus is on analyzing fatwa in the study of twentieth century Islam: it is almost the only channel through which Muslim scholars' attitudes and legal opinions can be learned.^[1]

Why use Fatwa as a basis of bioethical discourse?

As we study ethical issues that arise in human biology and medicine, bioethicists, clinicians, historians and sociologists delve into the principles that a fifth of the world's population use to guide their daily lives, form the basis of their social and political structures, and define their sense of community. Yet, the study of Islam and Muslims is complex. The study of Islamic doctrine and principles of the faith, legal theory, and bedrock ethical values as the basis of an "Islamic" bioethics is substantially different from the observation and analysis of non-Islamic bioethics. What is the nature of *fatwa*, and what we might refer to as "Muslim" bioethics. We believe that Islamic bioethics is the realm of religious studies scholars, philosophers, and theologians in other words those who have content expertise within the religious Muslim bioethics, on the other hand, is the subject of study of religious scientists, historians, and others who have content expertise in the practice of those who adhere to Islam on societal and personal levels. Both

B. Arslan and F. Rupke-Chait (eds.), *Islam and Bioethics*, 151-167, Ankara University, 2010

- **Limitations of Normativity**
 - By def'n Contingent morality/ non-ideal
 - Contextually derived & driven
 - Purposefully 'strained' reasoning
→ eclectic methods
- **Limitations of Research Method**
 - Publication bias
 - Sampling error
 - "Seeing part for the whole" – incomplete morality
- **Limitations of Application**
 - Imprecise
 - Errors in problem-space conceptualization
 - Perceived lack of importance to MDs



Three broad positions

- ◆ Organ donation is **impermissible**, because it violates human dignity (*hurma* and *karāma*)
- ◆ Organ donation is **impermissible in principle, but is conditionally permitted** on the basis of dire necessity (*darūra*)
- ◆ Organ donation is **permissible** with several stipulations, because it serves **general public interest** (*maṣlaḥa*)

Rulings

ORIGINAL ARTICLE WILEY Xenotransplantation

The ethics of organ donation, donation after circulatory determination of death, and xenotransplantation from an Islamic perspective

Asim I. Padela^{1,2,3} | Rosie Duivenbode¹

Seven Faces of A Fatwa: Organ Transplantation and Islam

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Clarification on Islamic Jurisprudence and Transplantation

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TABLE 1.
Summary of Islamic fatwas regarding the permissibility of transplantation

Y	Source	Sect	Permissible	Notes	Citation
1969	Sheikh Hassan Monzon, Grand Mufti, Egypt (Fatwa no. 1084)	Sunnī	Conditional	Deceased donor corneal transplants	▪
1966	Sheikh Hamed, Grand Mufti, Egypt (Fatwa no. 903)	Sunnī	Yes	Extended prior ruling to other organs	▪
1968	Sheikh Hamed, Grand Mufti, Egypt (Fatwa no. 904)	Sunnī	Yes	▪	▪
1969	International Islamic Conference (Malaysia)	Sunnī	Yes	▪	▪
1972	Algerian Supreme Islamic Council	Sunnī	Yes	▪	▪
1973	Algerian Supreme Islamic Council	Sunnī	Yes	▪	▪
1973	Sheikh Kosta, Grand Mufti, Egypt	Sunnī	Conditional	Allowed reimplantation from unidentified corpse	▪
1978	Iranian fatwa (531-471/HAD/23-172)	Sunnī	Yes	Brain and teeth	▪
1979	Iranian fatwa (531-471/HAD/23-172)	Sunnī	Yes	Corneal transplants	▪
1979	Iranian fatwa (531-471/HAD/23-172)	Sunnī	Conditional	Live and deceased donor transplantation	▪
1979	Grand Mufti (fatwa no. 46)	Sunnī	Conditional	Live and deceased donor transplantation; donated freely	▪
1979	Grand Mufti (fatwa no. 1323)	Sunnī	Conditional	Organ reimplantation from unidentified corpse	▪
1980	Kuwait Ministry of Charitable Endowments (Fatwa no. 1327/78)	Sunnī	Yes	Live and deceased donor transplantation; autotransplantation	▪
1982	The Supreme Council of Clerics of the Royal Fatwa no. 999	Sunnī	Yes	Sanctioned autografts unreservedly; live and deceased transplants by majority	▪
1985	Islamic Religious Council of Singapore	Sunnī	Yes	▪	▪
1987	Islamic Fiqh Academy of the Muslim World League (Decision no. 2, 19th)	Sunnī	Yes	Emphasized all prior fatwas on organ transplantation	▪
1988	Fourth International Conference of Islamic Juris	Shī'a and Sunnī	Yes	Emphasized all prior fatwas on organ transplantation; clearly rejected organ trafficking, deceased donors	▪
1990	Fourth International Conference of Islamic Juris	Sunnī	Conditional	Discouraged deceased donor transplants for non-Muslim projects, nerve tissue (including xenografts), inanimate donors, and prohibited graft transplantation	▪
1997	Sheikh Muhammad Moustafa al-Shazani	Sunnī	No	▪	▪
1999	Al-Azhar Al-Ulmaa Al-Sayyid Al-Husain Al-Sweitan	Sunnī	Yes	Live and deceased donor transplantation, and xenografts from animal donors	▪
1999	Grand Ayatullah Muhammad Taqi Sharif (Question no. 24)	Shī'a	Conditional	Deceased donor transplant if deceased donor is non-Muslim	▪
2000	Grand Ayatullah Hassan Vahid Khavari (Question no. 2884)	Shī'a	Conditional	Deceased donor transplant if deceased donor is Muslim	▪
2000	Grand Ayatullah Sayyid Ali Muhammad Daqiqi	Shī'a	Conditional	Deceased donor transplant if permissible, but donor must be deceased	▪
2000	Grand Ayatullah Sayyid Ali Muhammad Daqiqi	Shī'a	Conditional	Deceased donor transplantation, and xenografts with exception of pecten.	▪
2001	Sheikh Ahmad Al-Kutbi	Sunnī	Yes	▪	▪
2001	Grand Ayatullah Hassan Neur Hamzawi (Question no. 699)	Shī'a	Conditional	It is lawful for Muslims to receive transplants from non-Muslims	▪
2002	Grand Ayatullah Sayyid Al-Sistani (Question no. 299)	Shī'a	Conditional	Deceased donor transplant if deceased donor is non-Muslim	▪
2002	Grand Ayatullah Sayyid Al-Musawi (Question no. 276)	Shī'a	Conditional	Deceased donor transplant from Muslim donor	▪
2003	Grand Ayatullah Sayyid Al-Musawi (Question no. 277)	Shī'a	Conditional	Deceased donor transplant if permissible	▪
2003	Islamic Fiqh Academy (Decision no. 3, 17th session)	Sunnī	Conditional	Permits using leftover pre-existing for stem cell research and treatment of serious ailments	▪
2003	Grand Ayatullah Sayyid Al-Sistani (Fatwa no. 1051-6)	Sunnī	Yes	▪	▪
2003	Grand Ayatullah Sayyid Al-Musawi (Question no. 156)	Shī'a	Conditional	Permissible if donor is Muslim and it is a blessing	▪
2004	Grand Ayatullah Sayyid Al-Sistani (Question no. 163)	Shī'a	Yes	If blessing for recipient	▪
2005	Grand Ayatullah Sayyid Al-Musawi (Question no. 246)	Shī'a	Yes	Permissible among and between Muslims and non-Muslims	▪
2006	Grand Ayatullah Mirza Javad Tariq	Shī'a	No	▪	▪
2006	Grand Ayatullah Sayyid Fazil Lakhani (Question no. 373)	Shī'a	Conditional	Permissible if blessing for recipient, and donor is not approached after the removal of the deceased donor	▪
2007	Grand Ayatullah Muhammad Husayn Melekani (Question no. 243)	Shī'a	Yes	Permissible among and between Muslims and non-Muslims	▪
2008	Ministry of Health (Fatwa no. 767/2)	Sunnī	Yes	▪	▪
2009	Grand Ayatullah Sayyid Al-Faik and Research (second collection, resolution 2/8)	Sunnī	Yes	If done within the prescribed limits of the Shari'ah	▪
2010	Grand Ayatullah Sayyid Al-Khawari (Question no. 1250)	Shī'a	Conditional	Deceased donor transplant if donor gave prior consent, the donor's death is not hastened, and the transplant is blessing	▪
2012	Grand Ayatullah Sayyid Al-Musawi (Question no. 282, 283)	Shī'a	Conditional	Permitted if transplant recipient from death or major illness	▪
2016	Grand Ayatullah Sayyid Al-Husaini Khomeini (Question 12098)	Sunnī	Conditional	▪	▪
2016	Iranian fatwa (Fatwa no. 32006)	Sunnī	Conditional	Xenograft (including porcine) is permissible if no pure alternative exists and it is the only remedy	▪
2018	FCNA	Sunnī and Shī'a	Conditional	Permissible if done with the intent to harm no donor reproductive organs or living donor of vital organ. Requires informed consent. Deceased donation only after death by cardiac determination	▪

Disagreements exist regarding transplantation *fatawa*. Of 42 identified *fatawa* (Table 1), 23 were Sunnī (13 permissible, 7 conditional, 3 prohibited), 16 were Shī'a (4 permissible, 11 conditional, 1 prohibited), and 3 were joint Sunnī/Shī'a (1 permissible, 2 conditional). Thirty-six (86%) of *fatawa* permit organ donation conditionally or unconditionally.

THE ONGOING CHARITY OF ORGAN DONATION. CONTEMPORARY ENGLISH SUNNİ FATWAS ON ORGAN DONATION AND BLOOD TRANSFUSION

STEF VAN DEN BRANDEN AND BERT BROECKAERT

Results: All 70 fatwas allow for organ donation and blood transfusion.
Autotransplantation is no problem at all if done for medical reasons... Allotransplantation is no problem at all if done for medical reasons...

Juridical Academies

- Process = Collective *ijtihād*
 - Religious scholars, Biomedical scientists, and other stakeholders → judicial decree
- Rationale:
 - Diverse experts allow for overcoming individual gaps in knowledge
 - Group deliberation brings different religious perspectives into dialogue

Examples:

- IFA-MWL (Makkah)
- IFA-OIC (Jeddah)
- IOMS (Kuwait)
- JAKIM (Malaysia)
- FCNA (USA)



Case Illustration: Vaccines, Porcine Components & Big PHARMA



ISLAMIC VERDICTS IN HEALTH POLICY DISCOURSE: PORCINE-BASED VACCINES AS A CASE STUDY

by Aasim I. Padela

Abstract. In this article, I apply a policy-oriented applied Islamic bioethics lens to two verdicts on the permissibility of using vaccines with porcine components. I begin by reviewing the decrees and then proceed to describe how they were used by health policy stakeholders. Subsequently, My analysis will highlight aspects of the verdict's ethico-legal arguments in order to illustrate salient legal concepts that must be accounted for when using Islamic verdicts as the basis for health policy. I will conclude with several suggestions for facilitating a more judicious use of verdicts in policy-relevant discourse. My analysis is meant to contribute to the dialogue between science and religion, and aims to further efforts at developing health policies that value health while accommodating religious values. In the encounter between the Islamic tradition and global public health, a multidisciplinary dialogue, where Islamic legists become aware of the health policy implications of their ethico-legal pronouncements, and where health policy actors gain a literate understanding of Islamic ethico-legal theory, will lead to verdicts that better meet the needs of patients, health workers, and religious leaders.



DIRE NECESSITY AND TRANSFORMATION: ENTRY-POINTS FOR MODERN SCIENCE IN ISLAMIC BIOETHICAL ASSESSMENT OF PORCINE PRODUCTS IN VACCINES

AASIM I. PADELA, STEVEN W. FURBER, MOHAMMAD A. KHOLOWADIA AND EBRAHIM MOOSA



1995 Meeting of IOAMS

Can Muslim take medicines/vaccines with porcine components

Baseline Scriptural Norms:

- Prophetic statement
 - “God has not made things that are unlawful (*haram*) for you to consume to be your medicine”
- Verse in the Qur'an
 - “verily it is filthy [fa innahu rijsun]” (6:145)
 - Pig → *najas al-ayn* [majority opinion in Sunni legal schools]
 - All parts are impure

Juridical Reasoning

Argument For Permissibility #1

Exemptions allowed by Prophet

- Wearing of silk for skin diseases
- Camel urine allowed for 1 tribe for medical purpose

➔ Necessity renders impermissible things permissible **IS** the operative principle

1. Must be necessary for life
2. Recommended by upright Muslim doctor
3. Contingent on other lawful medicines not being available

Argument For Permissibility #2

Legal Precedent

- Transformation- *Istiḥāla* (impure → pure)
- Medieval construct
 - Swine falling into salt-mine ceases to be swine [Ibn Abedin]
 - Wine turns into vinegar → can drink vinegar
- Basis
 - Change of nature (*Tabdil al mahiyyat/hal*)



Islamic Organization for Medical Sciences (IOMS)

- 8th & 9th Medical *Fiqh* seminars (1995 & 1997)
 - Ruling on porcine in medications
 - “The Gelatin formed as a result of the transformation of the bones, skin and tendons of a juridically impure animal is pure and...permissible”
 - Reaffirmed pig = *najas* → not permissible to consume/use
 - *Istiḥāla* for porcine components in medicine → mubah
 - *Istiḥlak* for porcine enzymes used in medicine → mubah



- Kuwait Ministry of Health
- World Health Organization (WHO)
- Islamic Educational, Scientific, and Cultural Organization [ISESCO]

■ WHO

- 2001: release a letter to “relieve the burden of all Muslims” → “medicine with porcine components is halal by *Istiḥāla*”

- Sent to

- “all health ministries”
- United Nations Children’s Fund (UNICEF)
- Institute for Vaccine Safety



Fiqh & Policy Discourse

- 2009- Indonesian Ulema Council [MUI]
 - Declare GSK meningitis vaccine *haram* due to pig-related enzymes used in production
 - Indonesian government drops GSK from approved vaccine suppliers
- Problem
 - Saudi Arabia requires vaccine for Hajj
 - 212,000 Indonesian pilgrimages in jeopardy
 - → Dire necessity invoked
- 2010
 - MUI declares Novartis & Tian Yuana meningitis vaccines *halal* (porcine free)



Limitations

- *Istiḥāla* not universally accepted for porcine
 - Yes- Ḥanafī & Malīkī
 - No- Shāfi‘ī & some Ḥanbālī
- Fatwa caveat not understood:
 - “(we) recommend the necessity of utilizing...(halal) animals for gelatin” → no impact on PHARMA
- Non-normative contingency not acknowledged
 - A ruling based on necessity → drove conditions for necessity to exist
- Fatwa vs. hukm
 - IOMS vs MUI rulings carry different ethico-legal weight

Fatwa → Policy Document

Fiqh Perspective

- The issue
 - Is it halal to take porcine medications & vaccines for Muslims?
- Who is the audience?
 - Muslims
- What marks the Islamic?
 - Justifiable *darūra*

Policy Discourse

- The issue
 - Does pharma need to adjust manufacturing for Muslims?
- Who is the audience?
 - Global community of physicians, pharma, and hospitals
- What marks the Islamic?
 - A porcine medical supply?



Fatwa vs. *hukm*

	<i>Fatwa</i>	<i>hukm</i>
Binding	No	Yes; Moral (sin) Legal (penal)
Pre-requisites	Training in <i>usul al-fiqh</i>	State authority (<i>hukuma</i>)
Essential Feature	Context-dependent	Governance (<i>wilaya</i>)
English connotation	Recommendation	Law or Rule

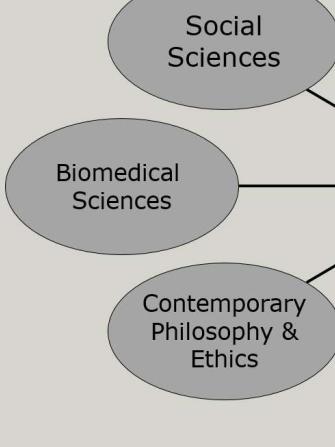
- *Fatwa* → *hukm* on the back of a Muslim state authority
- IOMS = *Fatwa*; MUI → *hukm*
- Types:
 - *Uṣūl al-fiqh*: *hukm al wadi*- enacts a cause or condition; *hukm taklīfī* – ethical gradient
 - *Siyasa* (political-legal): *hukm al qadi*
 - *Kalam* (Theological-Moral): *hukm* = Normative goal

al-hukm 'ala shay far' 'an tasawwurihi

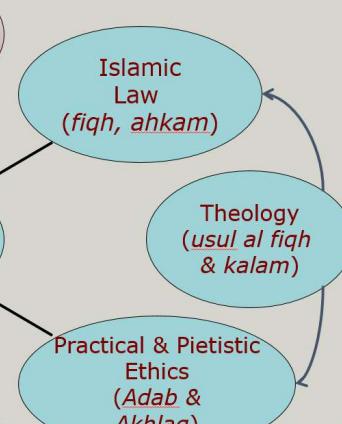
- Implications

- Fiqh Councils need to move to incorporate experts beyond jurists and doctors
- Islamic Bioethics Councils are more than *fiqh* bodies
- Need multidisciplinary perspectives to address the contexts of the question and the social implications of a ruling before deliberating
→ *maṣlaḥa* and *darūra* need to be broadly conceptualized

Data Inputs & Dialogic Partners



Moral Machinery



Insights into the Materials

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National Survey of American Muslim Physicians



Methodology

- Mailed questionnaire (3 waves with cash+book incentives) to random sample of 746 physicians from IMANA in 2013

Results (n=255)

- 85% report being somewhat or very familiar with Islamic bioethics and
- 59% report Islamic bioethics somewhat or greatly influences their practice



National Survey of American Muslim physicians

55% never or rarely read Islamic bioethics books

64% never or rarely consult Islamic jurists

79% never or rarely look to Islamic medical fiqh academy verdicts

