Intercultural Dialogue in Bioethics

Series Editor: Alireza Bagheri
(Tehran University of Medical Sciences, Iran)

Published

Vol. 1 Islamic Perspectives on the Principles of Biomedical Ethics
edited by Mohammed Ghaly (Hamad Bin Khalifa University, Qatar)

Vol. 2 Islamic Bioethics: Current Issues and Challenges
by Alireza Bagheri (Tehran University of Medical Sciences, Iran) and Khalid Alali (Qatar University, Qatar)

Forthcoming

Indigenous Bioethics: Local and Global Perspectives
edited by Linda Briskman (Western Sydney University, Australia), Deborah Zion (Victoria University, Australia) and Alireza Bagheri (Tehran University of Medical Sciences, Iran)

■ Intercultural Dialogue in Bioethics — Vol. 2

Series Editor: Alireza Bagheri

ISLAMIC BIOETHICS

Current Issues and Challenges

editors

Alireza Bagheri, MD, PhD
Tehran University of Medical Sciences, Iran

Khalid Alali, PhD
Qatar University, Qatar

World Scientific

NEW JERSEY • LONDON • SINGAPORE • BEIJING • SHANGHAI • HONG KONG • TAIPEI • CHENNAI • TOKYO

CHAPTER FOUR

Gender and Sexuality in Islamic Bioethics

Ingrid Mattson

Summary

This chapter examines how various Islamic discourses assert and challenge normative claims about gender and sexuality. In the limited space assigned for this chapter, a comprehensive examination of these issues is impossible. Instead, it focuses on what are, in my opinion, some of the key problematic assumptions, dominant (and dominating) paradigms and under-developed principles that are invoked in discussions of gender and sexuality as they pertain to Islamic bioethics. This will necessarily involve, at times, a historical examination of how particular legal concepts and structures developed.

Gender and Authority in Islamic Bioethics

Gender and sexuality are vast, expansive topics and are obviously (or should be) pertinent to other bioethical issues addressed in this book. For example: in evaluating doctor–patient relationships, concerns such as gendered authority; sexual versus clinical touching; and family paternalism must be addressed in the practice of medicine. Outside the clinic, in the seminaries and universities where theological assumptions and methodologies of Islamic bioethics are taught and evaluated, views about gender and sexuality will widely vary depending on the school of thought.

It is not only the curriculum, but the presence or absence of women alongside of men in teaching circles, mosques, seminaries, universities, and medical schools of each stream of thought that has a tremendous impact on how ethical knowledge is shaped and textured by local culture, shared anecdotes, and personal and group-gendered interests. Many of the major bioethical issues today — abortion, fertility, male and female circumcision, cosmetic surgery, adoption and surrogacy — relate directly to gender and sexuality. Despite this, works on Islamic bioethics by Muslim scholars display a remarkable lack of interest or urgency in involving all genders in any significant way in the decision-making process. And there is no indication in Muslim majority countries, where it is common for national policies on these issues to be decided by committees of religious scholars and scientific experts, that even a minimum of representation by women is required. Given the absence of legal protections for freedom of conscience and academic freedom in many Muslim majority countries, it is unrealistic to expect councils to articulate the experiences and needs of women, much less individuals who do not fit into rigid heteronormative and binary-gender presentations. While Abdulaziz Sachedina does not pay much attention to the lack of gender diversity in these bodies, he (2009, 12) notes the stifling context for most Islamic bioethics debates: "In the absence of consensual politics in the majority Muslim countries, healthcare policies are, in large measure, formulated without public debate over proper assessment of Islamic moral and cultural resources and without respect of human dignity and accruing human rights in furthering public and private health."

Many scholars privilege *fatwas* when researching Islamic bioethics. Rispler-Chaim (1993, 4) says that one of the greatest advantages of *fatwas* as a source for Islamic medical ethics "is that it assumes a dialogue between lay people and scholars." In this way, *fatwas* can be seen as a reflection of the needs and concerns of ordinary Muslims, integrated with the responses of scholars. One of the main limitations with researching bioethics through *fatwas*, Rispler-Chaim admits, is that only a limited number are published. It is therefore questionable how representative they are of the judicial opinions obtained by Muslims. It has been my experience in public settings that religious scholars will simply not respond to questions they deem too sensitive, controversial, or distasteful. More problematic, in

my opinion, is that we cannot deduce how representative the published *fatwas* are of the most pressing concerns of ordinary believers. In addition, *fatwas* normally answer a narrow question and do not address all the relevant and particular concerns in a case. For example, Rispler-Chaim (1993, 7) comments on *fatwas* about abortion on which she was consulted: "Since questions pertaining to the legitimacy/morality of abortions are presented to religious figures and not to the physicians who perform abortions, there is obviously no interest in the surgical procedure itself, nor in its impact upon the woman's health or her future pregnancies. The only question is whether the *Sharī'a* is supportive of the operation or not."

In his study of traditional Islamic legal reasoning, Bernard Weiss (1998, 113) says that "the authority of jurists in Islam is an exclusively declarative authority," meaning that, unless these jurists are given a political or judicial appointment, in theory it is not obligatory for believers to comply with their decisions. Many Muslims, nevertheless, bind themselves to the rulings of particular scholars because of voluntary allegiance, social pressure, or an inability to access other opinions. In a country where Islam is declared the source or one of the sources, of law, there is a strong positivist quality to Islamic law (*fiqh*) as experienced by the people living in those countries. This is a consequence, in part, of the modern expansion of the traditional right of a Muslim government to enact regulations that are in accordance with the goals and limits of the law as established by religious scholars, a branch of Islamic constitutional law called *siyāsa shar'iyya*.[1] As Sachedina suggests, authoritarian political systems, to which many Muslims are subject, severely limit the possibility for citizens to participate in or challenge state policies and procedures. At the same time, large numbers of Muslims, even in authoritarian countries, reject and challenge official interpretations of the law. This is not a new phenomenon in Islamic societies, but one we have seen throughout history[2]; although evidence of such resistance in pre-modern times is often hard to locate, unless a notable person had taken a public stand. For contemporary societies, anthropological research, such as that undertaken by Morgan Clarke (2009) regarding reproductive technology in Lebanon, helps expand our understanding of the way Muslims engage with such *fatwas*. In our internet age it is easier than ever for a Muslim to follow the views of a scholar on the other side of the world, while rejecting, in conscience

if not in practice, the official or dominant interpretations in the lands where they actually reside. Thus, determining what a majoritarian or a marginal position is among those who identify as Muslims, rather than that of published, government-sanctioned scholars, is not a simple task. Research always leaves an impact: distorting relationships, amplifying some authorities and diminishing others. When the opinions of well-known or state-sanctioned legal scholars are published as the current state of "Islamic bioethics," the views of many faithful Muslims who approach the same issues from different perspectives are marginalized. What is particularly salient in discussions about Islamic approaches to gender and sexuality in bioethics is the domination of the legal tradition by men. This does not mean that women have been absent from Islamic scholarship, even in the pre-modern period. Indeed, there is increasing evidence that Muslim women participated in many fields of religious scholarship throughout Islamic history in significant numbers.[3] However, women authorities have been hard to find among traditional legal scholars, much less among those who have held judicial power.

Nevertheless, as I have written elsewhere, even in the pre-modern era, "female authorities were never completely absent from the process of law-making and adjudication. Female witnesses were regularly called in paternity cases and in cases which required expertise in some aspect of female physiology or reproduction." Further, women "had opportunities to shape the law to the extent that custom was recognized by and incorporated into Islamic law. On matters on which revelation was silent, custom (*'urf*; *'adāt*) was explicitly recognized as a source of law by the classical jurists.... What this means is that women were not simply passive recipients of legal rulings. Rather, where women had any power to shape and articulate community norms (a power that depended on a vast range of sociological and material factors) they had the ability to influence the application of the law (Mattson 2005a, 451)."

With modernity came the codification of the law which erased much of its diversity; separated "law" from individual spiritual guidance; and diminished the impact of the moral sentiments of a local community upon the law. Wael Hallaq (2009, 449–50) has demonstrated that the flexibility of pre-modern Islamic law came from a jurist's authority to draw upon the principles, concepts and opinions he considered most applicable to

particular case. Codification, in contrast, which came from European example and pressure, "eliminates almost all such juristic and hermeneutical possibilities, leaving both the litigants and the judge with a single formulation and, in all likelihood, a single mode of judicial application." A "new patriarchy" arose out of nationalism which, Hallaq argues, "has always been a masculine conception that subordinates the feminine." Further, an "increasing sense of individualism, combined with a male-oriented national state, a new male-oriented economy and bureaucracy, and a wholesale collapse of the domestic economies that had been the exclusive domain of women, all combined to produce legal codes and legal cultures that, under the banner of modernity, tended to subordinate women rather than liberate them (Hallaq 2009, 458)." In this regard, a possible ethical issue which needs to be raised is whether the domination of men in most modern Islamic legal institutions creates an endemic conflict of interest on issues related to gender and sexuality.

Legal historians note that family law emerged from the colonial experience as "the preferential symbol of Islamic identity," placed in opposition to the West. The reality is that modern Islamic family law is not a pristine remnant of something "authentic," but is the result of accumulated social and political changes in the last few centuries that were then subject, particularly in neo-fundamentalist discourses, to a kind of arrested development. Kecia Ali (2016) clearly lays this out in her work on sexual ethics where she notes, for example, that concubinage was simply dropped out of modern works as if it never existed, while the underlying system of patriarchal control that traditional law gave to men over the sexuality of free and slave women was rarely addressed. Thus, this law, "which seemed to be the last fortress of the *Sharī'a* to survive the ravages of modernization (Hallaq 2009, 446)," was rather, a limb severed from the body of Muslim society.

The patriarchal impact of colonialism and fundamentalism has been ameliorated in many Muslim countries where women are increasingly present in public life as medical professionals, public officials, and religious scholars. Yet debates among Muslims over Islamic family law, which sets the parameters for discussions of Islamic bioethics related to gender and sexuality, are contentious, anguished, and far from resolved. Identity politics derail discussions of Islamic family law time and time

again. What is "Islamic" is often negatively defined against what is seen as paradigmatically western. Shahidan (2008, 109) notes this dynamic in the medical literature of contemporary Iran, "When expedient the West is jettisoned as decadent and destructive, and imitating the West becomes reprehensible, yet the findings of the American Psychological Association are presented as objective proof for arguments without any qualification about the socio-historical context of psycho-physiological sciences."

In the internet age, spokespersons for various discursive streams of Islam — traditional, traditionalist, modernist, progressive, fundamentalist among others — vie for the hearts and minds of Muslims. The consequences of these schools' diverse approaches to Qur'anic hermeneutics, legal reasoning, and even cosmological doctrine are profound for their bioethical positions. If a particular school, for example, teaches that women and men are spiritually equal but that men have superior innate intellectual capacities and/or emotional regulation to women, they might teach that a female patient does not have the same bioethical right as a male to "autonomy". This paternalistic view of the relationship between men and women is commonplace in most traditionalist and fundamentalist schools of thought, but is challenged by progressive and feminist discourses.[4] Yet while almost all schools tolerate, in principle, juristic differences, the limits of toleration displayed by some are very narrow indeed with much of the male scholarly establishment rejecting any validity to feminist or progressive Qur'anic hermeneutics and deeming them to be Western innovations.

The conflation of Islam with patriarchal structures and a denial of female autonomy, with the latter deemed "western" constructs, is evident in this passage, taken from a book written by two Saudi medical professionals (Al-Bar and Chamsi-Pasha 2015, 109) about the "Islamic" approach to bioethics:

> *The western attitude of individualism is not accepted in many societies. In most countries of Asia, Africa, and the Middle East there is no health insurance for the public at large. Usually the family bears the burden of cost of any medical intervention.*
>
> *Similarly, there is no welfare state, and hence the breadwinner takes care of the elderly, the children, and ladies. Though females and children may be working at home, and in the field, or looking after the cattle and sheep of the family, they are usually not the breadwinners.*

> *The role of the family and close friends should be respected in places where they have different philosophies and cultures that differ greatly from western liberal, individualistic patterns ... and health providers have to understand that there are different cultures that do not give priority to autonomy, as it is understood in the West.*

The concern for the extended family's role in providing financial support for dependent members in traditional societies has merit. Here, we see, perhaps, a legitimate attempt to address what Sachedina (2009, 28) criticizes as having happened thus far in wealthy Muslim nations such as Saudi Arabia where "advanced western medical technology is imported with little heed taken for its potential impacts on the political, economic, communal, social, and individual lives of the population." However, making agency and autonomy dependent upon whether one earns a wage is extremely problematic. Amina Wadud (2006, 142) notes that this "idealizes the woman as one who only reproduces and cares for offspring. Many assume that this is natural, and hence a voluntary contribution with no bearing on female agency." Further, the denial that women are "bread-winners" in "many societies" is a statement made without the support of any evidence, and in fact, seems more of an ideological stance in favor of traditional patriarchy.[5] In reality, what Bruce Caldwell (2006, 341) says about South Asian societies is true across much of the globe, "The population is rapidly urbanizing, thereby undermining the traditional patriarchal patrilineal families and beginning to offer choices to women other than marriage and childbearing, and enabling them to support themselves when abandoned without having to resort to socially unacceptable practices."

Those who wish to deny full autonomy (or less autonomy than men) to women in Islamic bioethics need to be clear about their reasons for doing so. And if those reasons depend not on claims about financial realities, which can be debated on the basis of facts, but on a scriptural hermeneutic that assigns men authority over women, then researchers need to know that there are alternative hermeneutics. Feminist, progressive, and egalitarian schools of Islamic thought are no less relevant to Islamic bioethics than traditionalist or fundamentalist schools of thought. Some argue "western influence" puts a culture in opposition to Islam (I do not believe it does). Given the increasing proliferation of western universities and medical institutions in wealthy Muslim countries, and coming in the wake

of centuries of western colonialism and imperialism in many other countries, it is apparent that "westernization" is not confined to the Europe and the Americas. So-called "Muslim countries" are not necessarily, then, the best place to find an "authentic" or even widely-supported approach to Islamic bioethics. Among the most problematic aspects of many of these societies is the centralizing and homogenizing approach to Islamic law. As Asifa Quraishi (2010, 25) argues, "Muslim governments today are a deliberate departure from the pre-modern constitutional model that recognized a separation of *fiqh* and *siyasa* law [politics]. Instead, they are built on the nation-state model inherited from colonialism, where the government has a monopoly on all lawmaking power and there is no legally protected space for *fiqh* pluralism. When law is centralized in this way, these governments can easily be pressured to legislate and enforce one set of *fiqh* rules on everyone. This approach merges *fiqh* and *siyasa* power in a pseudo-theocratic way that was not possible in pre-modern systems." Some scholars, such as Faisal Rauf (2015), have even argued that the most "Islamic" discourses and views can be found, not in Muslim-majority countries, necessarily, but it in those societies where Muslims are free to challenge, express and debate legal opinions.

Beyond Fiqh in Islamic Bioethics

The relevance of this reality to gender and authority in Islamic bioethics discourses today compels to include a greater plurality of Islamic hermeneutics and theological ethics, including feminist, progressive and egalitarian approaches in our surveys of Islamic bioethics. I submit that we also need to look beyond *fiqh* to other normative religious discourses if we are to argue for an "Islamic" perspective on bioethics, especially when it comes to seriously attending to the priorities and values of many Muslim women.

Guidance on bioethical issues is provided across the Muslim world not only by legal scholars and congregational imams, but by other authorities whose ranks include far more women than in the legal establishment: spiritual advisors (*Sufi sheikhs* among them), Muslim chaplains and respected elders. In these pastoral care and family settings, *fatwas* and other legal literature have a role, but they are not necessarily determinative

of the guidance given. Key Islamic values such as mercy, forgiveness, and reconciliation, and the fundamental need to preserve faith in God come to the fore in these settings. More documentation of these encounters is needed to show the vital place of these values in the landscape of normative Islamic bioethics.

Islamic pastoral care is a developing field of religious authority critical to bioethics which draws upon the traditional legal and *Sufi* discourses.[6] Often such counseling helps the believer place a physical ailment in perspective such that she sees it as a positive opportunity for spiritual growth. For example, a woman might decide to eschew fertility treatment that has been deemed Islamically lawful in order to elevate her spiritual position by demonstrating trust in God (*tawwakul*). Can we say that we truly understand the landscape of Islamic bioethics if we marginalize such approaches? And if the preservation of a believer's relationship with God is prioritized in spiritual counseling, whether done on an informal or professional level, the most Islamic bioethical position in this context might be one which contradicts the law as commonly understood by people.

A number of Muslim feminists, such as Sa'diyya Shaikh (2015, 106–7), argue that some (not all) traditional *Sufi* teachings can help Muslims get past the "central deficits in various iterations of classical Islamic law" that are based in "limited gender understandings of human nature, as developed in different sociohistorical contexts." Shaikh says that "*Sufi* thinkers in particular have provided detailed discussions on the human condition; the spiritual landscape of human submission to the divine will; and the ways in which the fundamental theological imperative of submission provides the ontological basis for the juridico-ethical legacy and related norms of sociability." From a *Sufi* perspective, the law must be scrutinized to see whether our "understanding" (the literal meaning of *fiqh*) reflects the highest "religious and spiritual prerogatives in Islam."

This is not to argue that Islamic bioethics should be based in an antinomian "spiritual" hermeneutic. In most cases, Muslim counselors will still invoke a legal principle such as "necessity" to allow an individual exemption, rather than an outright contradiction, to the law. However, where advice is being given by spiritual advisors and among circles of family and friends, theological concepts such as God's mercy and forgiveness are, in addition to necessity, often articulated as legitimate Islamic

grounds for veering from the law as asserted by scholars. These observations are anecdotal and without further research we cannot know whether Muslims view greater ethical or spiritual ends are being served when they put aside the law. They may not necessarily reject the law, but may believe that the scholars' legalistic understandings cannot be the whole picture. Nevertheless, the invocations of "necessity" and "mercy" are prodigiously used among Muslims to avoid legal judgments. Thus, the view that the dominant judgment of legal scholars is the correct Islamic one should be called into question.

What "The Sleeping Child" Tells Us About the Priorities and Values of Islamic Ethics

As a case study, the adoption of "the sleeping child" phenomenon in early Islamic law demonstrates that the foundations for the principles underlying Islamic bioethics are less apparent than they might seem. The sleeping child phenomenon is reported to have been introduced into Islamic legal discourse at the earliest stage of its development, during the time of the second caliph, *ʿUmar ibn al-Khaṭṭāb* (ruled 634–644 AD). The situation that was presented to the caliph was that of a woman who had been widowed a few years earlier, then gave birth to a fully-developed baby only six months into her second marriage. As a result, the woman was suspected of having illicit relations before her current marriage and she faced negative consequences from various parties as a result. The caliph *ʿUmar* called for a midwife to serve as an expert witness to see if there was an explanation other than unlawful sexual relations for the woman's delivery of the full-term baby. The midwife testified that this was a case of a "sleeping child" (*al-raqīd*). She explained that the child's mother had been impregnated by her first husband but when he died, the baby was deprived of vital fluids due to the mother's extreme grief and had entered a state of hibernation. When the woman remarried, her new husband's seminal fluid reawakened the baby who then completed his development in six months. *ʿUmar* accepted this explanation by the female expert, thus rejecting claims that the atypical gestation period proved that the mother had illicit sex outside of marriage. The result was that the baby was deemed legitimate; had a right to inheritance and support from his

"father's" estate and relatives; and the woman retained her reputation. The "sleeping child" phenomenon was integrated into the *Mālikī* school of law while other schools gave various alternative reasons to explain why a pregnancy could last much longer (up to five years) or shorter than usual (Mattson 2005, 450–1).

It was only at the turn of the 20th century, with the spread of western science and medicine, that these explanations were challenged by state-sanctioned legal authorities and secular medical authorities. Beginning in the 19th century, gender discourses were subject to "scientification," whereby folk medicine and "old wives' medicine" were criticized and derided as superstitious (El Shakry 2006, 345). "Starting in the 19th century and continuing until the present, a process of medicalization has transformed pregnancy and childbirth.... The displacement of traditional birth attendants by obstetricians and institution-trained midwives, surveillance of pregnancy by medical professionals, a shift in the location of childbirth from the home to institutional settings, and an increase in the number of obstetrical interventions characterize this process of medicalization (Stimler 2006, 342)." Certification in modern medicine depended on literacy which excluded many traditional healers, social classes and, in some places, for a certain period at least, women. Donna Lee Bowen notes that in the pre-modern period, the locus of most abortions was in homes, conducted through "popular medical practices," and that women "usually directly employed the remedies and conducted the procedures" despite the fact that medical and legal texts were written by men. In contrast, in contemporary Muslim societies, "The Islamic decision-making process which discusses permissibility of abortion is carried out by male jurists and scholars" (Bowen 2006, 314) and are conducted within a paternalistic, patriarchal medical system. It was in this context, the highly influential Egyptian modernist Muhammad Rashid Rida (d. 1935) was "troubled" by the contradiction between the duration of pregnancy as recognized by medicine and Islamic law and "wished to remove all differences between Muslim believers and scientific truth, hence he encouraged Muslims to embrace the findings of medicine (Rispler-Chaim 1993, 8)." In Morocco, where the "sleeping child" was firmly ensconced in the *Mālikī* legal tradition, this led to struggles over the authority of science to overturn traditional *Mālikī* law (Jansen 2000).

In dispensing with laws that allowed for shortened or lengthened gestational periods, it seems the modernists assumed that earlier jurists based laws on incorrect scientific theories simply because they did not know any better. This may be incorrect. If we consider the story of the law's origin under *'Umar*, we could interpret it to mean that he was searching for a "way out" for the woman. After all, the fact that the people around her accused her of engaging in illicit sexual relations because of the child demonstrates that people in 7th century Arabia were well-aware of how long a full-term pregnancy lasted. Over the centuries, as the diverse schools of Islamic law developed their distinctive doctrines, it is striking that most of them accepted some theory of atypical pregnancy which would allow more children to be deemed legitimate. The Prophetic *hadith*, "The child belongs to the marriage bed," was interpreted by some scholars to mean that as long as a couple were married and the husband did not challenge the paternity of the child, the child was deemed legitimate; and for some scholars even in the case where the couple had been married only one month (Semerdjian 2008, 152). Clearly there was little eagerness on the part of jurists to sever the bonds of family and community in the service of scientific truth.

The continued reluctance of religious scholars in allowing genetic testing to prove or disprove paternity needs to be understood in this context. When the very conservative Saudi-based Muslim World League (MWL), for example, took this position, they did so while accepting that genetic fingerprinting is highly reliable and can be used in cases unrelated to family law. The MWL stated that their goal was "protection of people's honor and care for their kinship relations (Clarke 2009, 201)." This response might elicit the question whether a paternity test is a better means of establishing "kinship relations" because it could definitively prove that a child was not the progeny of a woman's husband but in fact was another man's child. Here, their reference to "honor" shows that lineage (*nasab*) is not the only aspect of society which deserves protection. Indeed, when the major "priorities" or "goals" of the law (*maqāṣid al-sharī'a*) are listed, "honor" is sometimes added as a sixth to the five others: religion, life, property, intellect and lineage. Lineage is a key concept underlying many rules pertaining to sexuality and gender, and will be examined in some detail after we have discussed some of the implications of taking "honor" into consideration in bioethics and family law.

Honor is, no doubt, the least tangible goal, among the other *maqāṣid al-sharī'a* which deserves protection. Honor in Islamic law is constructed from and protected by a network of laws, procedural rules and manners. The Qur'an assigns a punishment of 80 lashes to those who accuse "chaste women" of unlawful intimacy. Such accusations are deemed lies if there are not four men who swear an oath that they are witnesses — and here jurists elaborated on the Qur'an — to consensual vaginal penetration by a man. Such evidence (unlike proof which could be obtained from a hidden webcam, for example) is exceedingly difficult to obtain. The Qur'an further states that if a man claims to have caught his wife having sex with another man, his only recourse is to swear an oath to the fact; but she can swear an oath to refute his claim. Pre-modern scholars were consistent that the absence of a hymen was not evidence that a woman had had intercourse, and they rejected the legal validity of "virginity tests" which were part of Mediterranean culture (Tucker 1998, 1; 166). Overall, traditional Islamic legal discourse, including *fatwa* literature, shows a concern for attacks on women's sexual morality in particular and puts up many barriers to stop such attacks. Of course, this shows that women were often vulnerable to attacks on their morality and sexual propriety. While defending family or personal "honor" from being degraded by a woman's improper behavior has never been a justification for vigilante justice, also known as "honor killings" in Islamic law, they have been, and still are, a feature of some Muslim cultures. The need to abide by the principle of non-maleficence has thus been raised in places like modern Lebanon where paternity testing has been sought by married men or other family members. A physician specializing in genetic testing in Lebanon told Morgan Clarke (2009, 204), "I stopped doing it because it's a headache in Lebanon — there's no proper recourse after. You don't know what this guy's going to do to his wife and kids."

Privacy is highly valued in traditional Islamic law and ethics. For instance, if a believer has committed a sin, harming only themselves and not another, contrary to the Christian model of confession, he or she should repent only to God and not scandalize the community with stories of his or her sexual transgressions. Likewise, family or friends should not "lift the veil (*sitr*)" that has protected someone from scandal, for this is a divine grace allowing the person an opportunity for repentance and reform. Traditional Islamic law becomes something else altogether when

separated from this culture of privacy, limited government intervention and legal pluralism. The calls of modernists and progressives for greater gender equality and freedoms are therefore not just ideological imitations of "the West" but an ethical response to increased state power and technology in modern societies which intrude on privacy and impede a religious ethic of repentance and reformation.[7]

If we consider the value of chastity, for example, we see that in traditional Islamic texts chastity is equally ordained for men as it is for women who have no lawful sexual partner (although men, if they meet the required conditions, are permitted more lawful sexual partners through polygamy and concubinage). In the pre-modern age no reliable birth control was available therefore women always faced a higher risk of having their transgressions discovered if pregnancy resulted. Most Muslims believe that the "protective" religious norms of gender segregation, veiling, and guardianship can be understood in light of this reality. When these protections failed, families might extend the religious principle of compassion and provide "cover" by helping conceal a pregnancy and conducting secret adoptions, despite legal prohibition (Mattson 2005 b, 1–3).

This traditional ethic of privacy: including "covering" another's sins and "don't ask, don't tell" (which applies to all sexual transgressions, including those of the same sex), is increasingly difficult to sustain in contemporary culture. Surveillance technology pervades private and public spaces and it would be difficult in many places to obtain a birth certificate for a child — a necessary document in contemporary life — that would not name the birth mother. While religious scholars continue to resist the use of technology and science to disprove paternity and prove infidelity, the traditional cultural matrix has weakened to the point of breaking in many places. An honest re-evaluation of the ethical priorities related to sexuality and gender seems to be in order. One question which needs to be asked is whether the religious scholars who currently serve as the "experts" in Islamic bioethics are capable of undertaking such a re-evaluation. Ron Shaham, who has studied this issue in Egyptian Islamic courts (and among Orthodox Jews in Israel, whom he sees as close ideological and cultural counterparts), does not believe they can. As in other modern Muslim countries, Egyptian courts have become convinced of the scientific reliability of genetic testing, and DNA evidence is commonly

used in criminal proceedings. The majority of religious scholars, however, have absolutely opposed the use of genetic testing in paternity cases. The traditional legal maxim, "The child belongs to the marriage bed" remains here, as elsewhere, the highest legal principle. Shaham (2010, 186) argues that the unassailability of the marital presumption of paternity in Egyptian law "indicates that the social purposes it is designed to serve — defending the integrity of the marital family, protecting against the bastardization of children, and preventing exposure of the immoral conduct of the parents — are still the dominant social norm." Seen from this perspective, it is clearly not "purity" of lineage that is the main concern of the jurists. The more important goals of the law are to keep marriages intact and to keep children within the protective custody of a family. All of this seems, on the balance, positive and beneficial for vulnerable women and children. Shaham (2010, 187–8) argues, nevertheless, that beyond these concerns, the jurists have a greater interest than justice or compassion at stake in these debates and that is their desire to preserve a religious worldview and their authority within that world:

> Traditional elites, especially the religious establishment, fear that the erosion of the marital family without offering an appropriate alternative familial model will bring about undesired social consequences and result in social chaos.... Conflicting worldviews are at play, crucial interests have to be weighed one against the other, and serious questions have to be addressed: Is it in the best interests of a child to have a secured legal paternity or to know who his natural father is? Should the interests of the family as a unit take precedence over the individual interests of the husband who is not the biological father? What are appropriate gender relations? Are out-of-wedlock conjugal relations acceptable? Does an open public debate on sensitive socio-moral issues serve society better than "keeping secrets hidden within houses"?

While some contemporary western societies have embraced "openness" as a value, scientific evidence can not claim that it always does more good than harm.[8] However, sensitive discussions cannot be avoided when the coercive and social restructuring power of the state is involved in regulating sexuality and gender. Where state power and services have increased and centralized, as is the case in contemporary societies, and bioethics

regulations are set by the state with the participation of religious scholars, only political openness can bring the perspectives of minorities and marginalized people back into the conversation.

Shifting Notions of *Nasab* and Its Importance for Discussions about Fertility

In this context, it is important to look more deeply into the way legal scholars invoke the need to protect "lineage." *Nasab* (or *nasl*) is one of the five major "priorities" of the Sacred Law (*maqāṣid al-sharīʿa*), according to the majority of scholars, both traditional and modern. Indeed, modern scholars have tended to elevate the importance of *maqāṣid al-sharīʿa* (the "goals of the sacred law"; henceforth, the *maqāṣid*) as a way to bring a more coherent, holistic, values and outcome-based approach to contemporary legal reasoning.

Abdulaziz Sachedina (2009, 103) describes the place of lineage in the Islamic law: "The preservation of proper lineage (*nasab*) in order for the child to be related to his/her biological parents is one of the main purposes of the sacred law of Islam, the *Sharīʿa*. Accordingly, a child's untainted identity through a legitimate conjugal relationship between a man and a woman in marriage is so essential in Islam and Muslim culture that it is regarded as a child's inalienable right." Sachedina continues, "Under one circumstance, however, Islamic law has refused to grant genealogical recognition to an offspring: when the child is conceived through an act of adultery, an illicit sexual relationship under *Sharīʿa* law." Sachedina (2009, 104) concedes that "in practice, Muslim societies grant lineage to the child's biological parents even if there is no certainty about such an ascription, placing the onus on adult behavior and sparing the child from any future social handicap that might result from the stigma of illegitimacy."

Sachedina's observation is in line with what we have earlier pointed out, that traditional Islamic law and Muslim cultures have aimed to ascribe legitimacy to children, including by allowing for cases of unusually long or short gestation (such as the "sleeping child"). Yet, in discussing the denial of the validity of procedures such as sperm or egg donation and gestational surrogacy, which is the majority *Sunni* position

(Al-Bar and Chamsi-Pasha 2015, 175–8), Sachedina often resorts to a notion of purity/impurity in lineage, using words such as "unblemished," "taint," and "sully." I am deeply concerned that this terminology only contributes to the stigmatization of some children who, after all, are not responsible for the manner of their conception. In this regard it is important to remember that the majority of scholars have asserted that the human body is substantially pure; in the words of Imam al-Shafi'ī: "no one who is alive from the children of Adam is substantially impure (Katz 2002, 167; Al-Shafi'ī 1989, 1; 104)."

Perhaps we need to step back and ask whether the major rationale for making *nasab* a priority in the law is the protection of children, or the protection of "pure" bloodlines? It seems that the two goals are so intertwined in the law, that for many, they cannot be separated. If the blood relationship between parent and child is so important, and it is increasingly difficult in modern society to "cover" an unlawful pregnancy, scholars might reconsider the use of paternity testing to assign lineage to a child born out of marriage. After all, in traditional Islamic law marriage is the only licit sexual relationship. Before the abolition of slavery, the child of a concubine was given all the same rights of lineage and support as a child born of marriage. What is notable in this regard is that these rights were instituted by the early caliph *'Umar ibn al-Khaṭṭāb* out of compassion for a child and his mother. When he was criticized by some men for burdening them with more responsibilities in this regard, *'Umar* cited the Qur'anic value of "doing good" (*al-maʿrūf*) as justification for making this law (Mattson 1999, 126; 150).

Jasser Auda (2008, 23–4) notes that most modern scholars have developed *nasab* into "a family-oriented theory." The influential Tunisian jurist Ibn 'Ashūr, for example, made "care for the family" a goal in its own right. It is not only modernist scholars, but some traditionalists too who have substituted "family" or "children" for "paternity" or "lineage" as the meaning of *nasab.* Contemporary American *Mālikī* scholar Umar Faruq Abd-Allah (2007, 19) identifies the "preservation of children" as the priority. This, he says, "focuses on children but entails everything essential to the welfare of the family. It takes in marriage, parenting, caring for the disabled, and so forth. It necessitates guarding against social evils like the abuse of children, spouses, and the elderly."

Here it becomes evident that elevating the *maqāṣid* in modern Islamic legal discourse, while perhaps providing broad, unifying values to frame discussions about religion and family life, nevertheless leaves us with no consensus about how the priorities should be defined and ranked. We see vastly different views among Muslims on whether the main priority is to protect children, to produce children, or to provide a lawful outlet for sexual activity, even if there is no intention to produce children. For example, religious scholars who previously took the position that birth control is prohibited have moved in recent decades to recommending it as a means of having healthier, better cared-for children (Bennett 2005, 115; Rispler-Haim 1993, 12–4). This outcome is certainly welcomed by men and women. Using birth control can, however, have multiple and diverse impacts on men, women, and their relationships. Scholars have always maintained that birth control cannot be used within a marriage without the consent of both partners. The impact of pre-modern versus modern forms of birth control, however, is tremendously different. Pre-modern birth control was not as safe and certainly not nearly as reliable as modern methods, so couples engaging in sexual relations were normally taking a significant risk that this would result in a pregnancy. In contrast, it is now possible to prevent conception completely so that one can engage in a sexual relationship without there being any chance of forming of a family. Perhaps this explains the apparent increase in multiple serial, secret and *de facto* temporary marriages, a development which many see as often exploitative of women (Fadel 2016; Kaukab 2016). On the other hand, spacing or limiting the number of pregnancies can save women's lives and allow them more time and resources to develop and employ capacities other than reproductive and parental. In some cases, there can be a shift in the identities of the husband and wife from being primarily parents, to being a couple where intimacy and friendship are paramount. The social consequences completely severing reproduction from sexual relations have not been well-studied among contemporary Muslims remains an open question whether intimacy and friendship strengthen, or weaken the concept of "family."

Some continue to see the proliferation of children as an absolute benefit, as long as a man has the means to financially support these children. Where having numerous children is seen as the primary purpose of

marriage and a religious, or religiously sanctioned cultural value, a Muslim man has traditionally been encouraged to engage in polygamy if his wife is infertile or to simply father as many children as he can afford (Doi 1984, 144–54). In this context, the development of modern fertility treatments has been welcomed as a "marriage savior" by many Muslims subject to this kind of religiously sanctioned cultural pressure to reproduce. There appears to be universal acceptance of *in vitro* fertilisation as long as the egg and sperm are from a married couple and the embryo is implanted in the womb of the wife. There is an increasing demand among Muslims, however, to expand the range of permissible fertility treatments and reproductive technologies in order to save marriages. In *Shi'ite* jurisprudence in particular, which allows more innovation in legal reasoning (*ijtihād*), scholars increasingly seem willing to prioritize stabilizing a married couple's relationship above ensuring purity of lineage. Ayatollah Khamenei was a groundbreaker in this regard, permitting the use of donated gametes as long as illicit sexual contact is not involved (Clarke 2009, 191–2; Inhorn 2006, 350–1). Other scholars and most Muslims did not embrace this view in large numbers; however, this may be changing. Iran, for example, is reporting significant decreases in fertility, which is attributed (rightly or wrongly) to environmental pollution. A huge increase in demand for reproductive assistance is nudging Iranian society in the direction of accepting more assited reproductive procedures, including the use of donated embryos which can be considered to have "their own identity" and thus can be implanted in a woman's body, unlike non-spousal sperm (*Iranians Fighting Rising Infertility* 2015).

One wonders if it is not time to put more emphasis on the protection of existing children in Islamic bioethics over the concern for purity of lineage and the proliferation of children. Of course, if couples insist on dedicating personal financial resources to lawful fertility treatments, that is their right. But in the interest of justice — a key Qur'anic value, as well as a major concern of bioethics — shelter, security, nutrition, healthcare, and education for orphaned, abandoned, and impoverished children should be given greater priority in public budgets. Textbooks on Islamic bioethics consistently marginalize adoption and fostering, although the Prophet Muhammad could not have been more adamant about the importance of caring for needy children. To say that "adoption is prohibited" is

misleading, given that open adoptions, which are functionally equivalent to Islamic fostering, are common in society today (Mattson 2005b, 1). The medical intervention relevant in this regard is lactation stimulation which many women seek to create the legal bond of "milk-mother" with the fostered child. More research could also be done on the way attachment can be stimulated in men who foster children, so they feel closeness with the child and thus feel less compelled to seek expensive and risky fertility treatments.

Sexuality and Gender Identity

For those interested in a liberal Islam which allows individuals to live according to their own understanding of the religion, the methods and authority of traditional Islamic scholars and their claims that their "consensus (*ijma'*)" on matters is the law will be directly challenged. The priorities and ethics of a progressive methodology regarding sexuality are described here, for example, by Scott Kugle (2010):

> The reformist or progressive approach must take into account new possibilities for human fulfillment in increasingly non-patriarchal societies like those evolving under democratic institutions, where Muslims are living as minority communities and fellow citizens. In these new environments, it is possible for homosexual relationships to be based on ethical reciprocity, trust, justice, and love, just as heterosexual relationships ought to be based on these values in the ethical vision of the Qur'an. What matters is not the sex of the partner with whom one forms a partnership, as long as that partnership is contractual on par with legal custom. Rather, what matters is the ethical nature of the relationship one has within the constraints of one's internal disposition, which includes sexual orientation and gender identity.

Establishing "ethical reciprocity" as a legitimate basis for Islamic marriage would allow non-traditional marriages including same-sex marriages, if same-sex intimacy is not deemed immoral. The majority of Muslims, it seems, remain unconvinced by revisionist readings of the Qur'an in this direction. At the same time, there is a great deal of evidence that pre-modern Muslims treated same-sex attraction as commonplace (El-Rouayheb 2005; Gessinger 2011, 28–35). Since there is no legal

mechanism to legitimize same-sex intimacy in traditional Islamic law, however, it was recommended to suppress such desires with ascetic practices such as fasting and avoiding situations of temptation. The pre-modern culture of privacy we have already discussed has been widely understood to have facilitated discrete, perhaps even life-long, same-sex partnerships within Muslim societies.

Most Islamic bioethics textbooks give little attention to sexuality of any kind, thus neglecting many serious issues related to psychological, physical, and public health. Often scholars seem to feel that harmful behavior is best prevented by asserting the rules of lawful sexual intimacy. There is little evidence that most religious scholars are interested in pursuing harm reduction policies, even though certainly some Muslims engage in risky sexual behaviors which may result, among other harms, in the spread of sexually transmitted diseases. Even where there is evidence that large numbers of unmarried Muslim youth are engaged in unprotected sexual contact, religious scholars and communities often are opposed to public sex education programs (Ahmed *et al.* 2015). This is not necessarily an irrational response to the situation when many families believe they can best teach their own children. The reality is, however, that not all parents will do a good job empowering children with the knowledge and resources they need to protect themselves.

Research done among American Muslims shows that many do not learn about sex from parents or school; instead, they acquire misinformation from peers and seek out pornography on the internet. The result is that some youth are vulnerable to sexual abuse and violence, and have problems with intimacy in their marriages (Mohajir 2016). The ethical principle that there is a communal responsibility (*fard kifayah*) to protect all children and to nurture their capacities is relevant in this context. If the Muslim community has a faith-based objection to the de-stigmatization of extra-marital sexual contact in public education, then it is their responsibility to provide appropraite sex education which gives children the knowledge and resources they need to protect themselves from predators, diseases, and other harms.

It is also important that women, as well as men, are given accurate information about sexual desire and enjoyment. Traditional and modern religious texts need to be scrutinized because they run the gamut in this

regard; one can find discourses emphasizing women's rights and needs and others which are demeaning to women.[9] Broad statements are sometimes made about the difference between men's and women's sexual needs and desires on the basis of Galenic theories of "active" masculinity and "passive" or "receptive" femininity (Avicenna 1970, 100; Murata 1992, 196; Winter 2011). The 14th century text by Ibn Qayyim al-Jawziyya on the so-called "Prophetic medicine" finds wide circulation in the original Arabic and in translation among contemporary Muslims who often naively accept the contents as religiously normative. Many of the teachings in this text and in this genre in general are probably benign or beneficial. Some of the statements, however, reinforce harmful paradigms of male superiority and can have a negative impact on women's and men's self-esteem and enjoyment of sex. For example, Ibn Qayyim (1998, 185) says, "the worst (sexual) position is for the woman to be on top, and that he has intercourse with her lying on his back. For this is contrary to the natural form in which God made the man and woman, or rather the species of male and female ... the woman is passive both by nature and by law. If she should be the active partner, she contravenes the demands of nature and the law." Many traditional scholars viewed strong sexual desire in women so problematic, that it necessitated genital cutting (FGC). Overwhelming scientific evidence of the harmful effects of FGC, in addition to sustained advocacy by women's rights organizations, has brought many scholars in recent times to the conclusion that FGC is religiously prohibited mutilation, etc. (Rispler-Haim 1993, 85–90; Kassamali 2006, 132). The increasing acceptance of this position should be seen as a victory for Islamic bioethics, whereby the principles of non-maleficence and justice have triumphed over bad science, patriarchy, and injustice.

Turning our attention to another, somewhat related concern, gender identity is a topic that has been addressed relatively openly by traditional Islamic scholars due to the appearance in *hadith* literature of the *mukhannath,* a term that is variously translated as "effeminacy, transvestism, transsexualism, or hermaphroditism." Lagrange (2003, 421) says this "puzzling inconsistency" can be understood "when one considers that the term refers to various failings to achieve masculinity in its behavioral features." In traditional Muslim societies, nevertheless, there seems to have always been a distinctive cultural and even religious role for this

non-masculine male (Scalenghe 2014, 124–62; Wikan 1982). The recent development of gender-reassignment surgeries and hormone therapies are allowing and, in some cases, pushing such people to choose one of two gender binaries (Rispler-Haim 1993, 49). In Iran where gender reassignment surgery is allowed, concerns have been raised that non-transgender gay people are essentially being coerced into surgery because there is no other lawful means for them to marry (Jafari 2014). As for hermaphroditism, the question arises whether Islamic bioethics can view this as part of God-created human diversity, or whether it is a medical condition which should be treated in order to ensure that all people fit into a binary gender system of classification. Sachedina (2009, 192–3) seems convinced that cultural norms in Muslims societies, as well as traditional jurisprudence, demand binary gender identity and this is why there is widespread support among Muslim scholars for surgical solutions to achieve this goal. No doubt we will see increasing advocacy in the opposite direction by those who deny that sex designation as male or female is "critical for an individual's interaction and relationships with others in society."

Conclusion

It is my perspective that it is not always necessary to adopt a radically non-traditional legal hermeneutic to bring about significant changes in the law. Where Islamic legal authority is less hierarchical, state-enforced, and patriarchal, new perspectives can be put forward, debated, and eventually integrated into the range of acceptable positions within a framework of legal pluralism. Asserting that this is the intellectual context within which we are surveying Islamic bioethics in this collection, I suggest that reasonable arguments can be made for alternative priorities and solutions for a number of issues related to sexuality and gender in Islamic bioethics. Evidence-based science is critical in Islamic bioethics, but it is important to avoid "scientism," a tendency in much of modern Islamic discourse (Iqbal 2015, 1691). Neither should Islamic bioethics be reduced to legalism. The Islamic values of compassion; helping the weak; restoration of family and community ties; and prioritizing a believer's relationship with God always need to be recognized. Finally, the Islamic requirement of

"consultation (*shura*)" must be fullfiled in any community decisions, and this means that more effort needs to be made to include women and non-gender conforming Muslims in discussions of Islamic bioethics.

Notes

[1] Hallaq notes that "the traditional competence of the ruler's *siyāsa sharʿiyya* has been expended beyond recognition." Hallaq, W. 2009. *Sharīʿa: Theory, Practice, Transformations.* Cambridge, UK: Cambridge University Press, 448.

[2] The clash between Ahmad ibn Hanbal and the Abbasid scholars in 9th century Baghdad is a famous example; see: Mattson, I. 2013. *The Story of the Qur'an: Its History and Place in Muslim Life.* Rev. 2nd ed. Malden, MA: Wiley-Blackwell, 144–5.

[3] Notable in this regard is the work of Mohammad Akram Nadwi summarized in his book: Nadwi, M. A. 2007. *Al-Muhaddithat: the Women Scholars in Islam.* Oxford: Interface Publications.

[4] See, for example, the collection of essays dedicated to feminist critiques of traditional assertions of male guardianship: Mir-Hosseini, Z., Al-Sharmani, M. and Rumminger, J. (eds.). 2015. *Men in Charge? Rethinking Authority in Muslim Legal Tradition.* London: Oneworld.

[5] One wonders if the authors even understand well the actual role of women in the society in which they work, given that contemporary Saudi women have attained significant levels of wealth, educational achievement, and business success. See, for example, Raval, A. 2015. Saudi Women Take the Business Path. *Financial Times,* December 22, 2015. Available at: http://www.ft.com/cms/s/0/a4d20e58-8a33-11e5-90de-f44762bf9896.html#axzz4IqoDCDJf.

[6] "Some of the results of effective Islamic spiritual care are an increase in hope, which acknowledges the fact that Allah is omnipotent and omnipresent and is the ultimate recourse. Such care gives hope and strength to the distressed soul, eliminates or reduces despair and brings the supplicant closer to the Creator, strengthening the bond between them, and returns the client to the community." Isgandarova, N. 2011. *Effective Islamic Spiritual Care: Foundations and Practices of Imams and Other Muslim Spiritual Caregivers.* Wilfred Laurier University Doctor of Ministry Thesis, 86.

[7] Mohammad Hashim Kamali is a strong proponent of this view in his works such as: Kamali, M. H. 2008. *The Right to Life, Security, Privacy and Ownership in Islam.* Cambridge, UK: The Islamic Texts Society.

[8] For example, there is some evidence that greater openness about suicide in order to remove stigma might lead to more suicides. Bielski, Z. 2010. A Teen's

Suicide Rekindles Debate over Openness. *The Globe and Mail,* November 18, 2010.Availableat:http://www.theglobeandmail.com/life/health-and-fitness/health/conditions/a-teens-suicide-rekindles-debate-over-openness/article 595321/.

[9] Such as those extensively documented and refuted by Khaled Abou El Fadl in his work: Fadl, K. A. E. 2001. *Speaking in God's Name: Islamic Law, Authority and Women.* Oxford: Oneworld, 209–62.

References

Abd-Allah, U. F. 2007. *Living Islam with Purpose.* Chicago: Nawawi Foundation.

Ahmed, S., Patel, S. and Hashem, H. 2015. *State of American Muslim Youth: Research and Recommendations.* [n.p.] (USA): The Family and Youth Institute and Institute for Social Policy Understanding.

al-Jawziyya, Ibn Qayyim. 1998. *Medicine of the Prophet.* Trans. Johnstone, P. Cambridge, UK: The Islamic Texts Society.

Ali, K. 2016. *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence.* 2nd ed. Oxford: Oneworld.

Ansari, Z. 2015. Blurred Lines: Women, "Celebrity" Shaykhs, and Spiritual Abuse. Available at: http://muslimmatters.org/2015/05/27/blurred-lines-women-celebrity-shaykhs-spiritual-abuse/.

Al-Shafi'i, M. ibn I. 1989. *Al-Umm,* 8 vols. Cairo: Dar al-Ghada al-'Arabi.

Auda, J. 2008. *Maqāṣid Al-Sharī'ah: A Beginner's Guide.* Occasional papers series 14. London and Washington: The International Institute of Islamic Thought.

Avicenna. 1970. *A Treatise on the Canon of Medicine of Avicenna, Incorporating a Translation of the First Book.* Trans. Gruner O. C. Reprint of 1930 Luzac publication. New York: Augustus M. Kelley.

Al-Bar, M. A. and Chamsi-Pasha, H. 2015. *Contemporary Bioethics: Islamic Perspective.* Heidelberg, etc: Springer Open.

Bennett, L. R. 2005. *Women, Islam and Modernity: Single Women, Sexuality, and Reproductive Health in Contemporary Indonesia.* London: Routledge Curzon.

Bin Bayyah, A. *Ruling on Marriage Intended for Securing some Benefit.* Available at: http://binbayyah.net/english/2012/01/28/ruling-on-marriage-intended-for-securing-some-benefit/.

Bowen, D. L. 2006. Reproduction: Abortion and Islam — Overview. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III: Family, Body, Sexuality and Health.* Leiden and Boston: Brill.

Caldwell, B. 2006. Reproduction: Infertility — South Asia. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III: Family, Body, Sexuality and Health.* Leiden and Boston: Brill.

Clarke, M. 2009. *Islam and New Kinship: Reproductive Technology and the Shariah in Lebanon.* New York and Oxford: Berghahn Books.

El Shakry, O. 2006. Science: Medicalization and the Female Body — Overview. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III: Family, Body, Sexuality and Health.* Leiden and Boston: Brill.

El-Rouayheb, K. 2005. *Before Homosexuality in the Arab-Islamic World, 1500-1800.* Chicago: University of Chicago Press.

Fadel, M. 2016. *Not All Marriages Are Equal: Islamic Marriage, Temporary Marriage, Secret Marriage and Polygamous Marriage.* Available from: http://www.altmuslimah.com/2016/03/not-marriages-equal-islamic-marriage-temporary-marriage-secret-marriage-polygamous-marriage/.

Gessinger, A. 2011. Islam and Same-Sex Sexuality in History: Cultural and Religious Perspectives. In: *Muslim LGBT Inclusion Project — Final Report.* New York: Intersections International.

Inhorn, M. C. Reproduction: New Technologies — Overview. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III: Family, Body, Sexuality and Health.* Leiden and Boston: Brill.

Iqbal, M. 2015. Scientific Commentary on the Qur'an. In: Nasr, S. H., Dahli, *et al. The Study Qur'an: A New Translation and Commentary.* New York: HarperCollins, 1679–93.

Iranians Fight Rising Infertility and Taboos. 2015. *Almonitor,* August 16. Available at: http://www.al-monitor.com/pulse/afp/2016/08/iran-health-children-religion.html.

Jafari, F. 2014. Transsexuality Under Surveillance in Iran: Clerical Control of Khomeini's Fatwas. *Journal of Middle East Women's Studies,* 10(2), 31–51.

Jansen, W. 2000. Sleeping in the Womb: Protracted Pregnancies in the Maghreb. *The Muslim World* 90(1/2), 218–37.

Kassamali, N. 2006. Genital Cutting: Africa and the Middle East. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III: Family, Body, Sexuality and Health.* Leiden and Boston: Brill.

Katz, M. H. 2002. *Body of Text: The Emergence of the Sunnī Law of Ritual Purity.* Albany: State University of New York Press.

Kaukab, S. 2016. Secret Marriages, Spiritual Abuse, and Our Scholars: An Introduction to 'Not All Marriages are Equal'. *Almuslimah*, March 13. Available at: http://www.altmuslimah.com/2016/03/secret-marriages-morality-scholars-introduction-not-marriages-equal-2/.

Kugle, S. S. al-H. 2010. *Homosexuality in Islam: Critical Reflections on Gay, Lesbian, and Transgender Muslims*. Oxford: Oneworld.

Lagrange, F. 2003. Sexualities and Queer Studies. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume I: Methodologies, Paradigms and Sources*. Leiden; Boston: Brill.

Mattson, I. 1999. *A Believing Slave is Better Than an Unbeliever: Status and Community in Early Islamic Society and Law*. University of Chicago doctoral dissertation.

Mattson, I. 2005a. Women, Gender and Family Law: Early Period 7th–late 18th centuries. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume II: Family, Law and Politics*. Leiden and Boston: Brill.

Mattson, I. 2005b. Adoption and Fosterage. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume II: Family, Law and Politics*. Leiden and Boston: Brill.

Mohajir, N. 2016. *Starting the Conversation*. [n.p.]: Heart Women and Girls. Available at: http://heartwomenandgirls.org/publications/.

Murata, S. 1992. *The Tao of Islam: A Sourcebook on Gender Relationships in Islamic Thought*. Albany, NY: State University of New York Press.

Quraishi, A. 2010. What is Sharia and Is It Creepy? *The Islamic Monthly*, Winter/Spring, 25. Available at: http://theislamicmonthly.com/what-is-sharia-and-is-it-creepy/.

Rauf, F. 2015. *Defining Islamic Statehood: Measuring and Indexing Contemporary Muslim States*. Basingstoke, UK: Palgrave Macmillan.

Rispler-Chaim, V. 1993. *Islamic Medical Ethics in the Twentieth Century*. Leiden: Brill.

Sachedina, A. 2009. *Islamic Biomedical Ethics*. New York: Oxford University Press.

Scalenghe, S. 2014. *Disability in the Ottoman Arab World, 1500–1800*. Cambridge: Cambridge University Press.

Semerdjian, E. 2008. *Off the Straight Path: Illicit Sex, Law and Community in Ottoman Aleppo*. Syracuse: Syracuse University Press.

Shaham, R. 2010. *The Expert Witness in Islamic Courts: Medicine and Crafts in the Service of the Law.* Chicago: The University of Chicago Press.

Shahidan, H. 2008. Contesting Discourses of Sexuality in Post-Revolutionary Iran. In: İlkkaracan, P. (ed.). *Deconstructing Sexuality in the Middle East: Challenges and Discourses.* Aldershot: Ashgate.

Shaikh, S. 2015. Islamic Law, Sufism and Gender: Rethinking the Terms of the Debate. In: Mir-Hosseini, Z., Al-Sharmani, M. and Rumminger, J. (ed.). *Men in Charge? Rethinking Authority in Muslim Legal Tradition.* London: Oneworld.

Stimler, M. S. 2006. Reproduction: Medicalization of — Arab States. In: Joseph, S. (ed.). *Encyclopedia of Women and Islamic Cultures, Volume III, Family, Body, Sexuality and Health.* Leiden: Brill.

Tucker, J. E. 1998. *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine.* Berkeley: University of California Press.

Wadud, A. 2006. *Inside the Gender Jihad: Women's Reform in Islam.* Oxford, UK: Oneworld.

Weiss, B. 1998. *The Spirit of Islamic Law.* Athens, GA: University of Georgia Press.

Wikan, U. 1982. *Behind the Veil in Arabia: Women in Oman.* Chicago: University of Chicago.

Winter, T. J. 2011. *The Human Person in Islam.* Paper presented at the 2nd Muslim–Catholic Forum, Baptism Site, Jordan, November 21–23, 2011. Amman: The Royal Aal al-Bayt Institute for Islamic Thought.

The Physician–Patient Relationship in an Islamic Context

Mohammad Ali Albar and Hassan Chamsi-Pasha

Summary

The physician–patient relationship constitutes one of the foundations of contemporary medical ethics. It is the cornerstone of the practice of medicine and essential for delivering high-quality healthcare. In the current era, financial targets, sophisticated diagnostics, media, and widespread access to the internet, all distract from the central, human interaction between a physician and patient. This chapter reviews some of the critical elements in a trusting relationship, such as obtaining informed consent; protecting confidentiality; respecting cultural norms and modesty; and breaking bad news. To establish a good therapeutic relationship, the physician's communication skills are very critical and aid in developing a culturally sensitive understanding of the patient's values and wishes. Formal training to develop communication skills and in breaking bad news is strongly encouraged.

Introduction

The physician–patient relationship (PPR) is a central concern of both medical ethics and practice, as it stresses how the interaction between the doctor and patient ought to be. The relationship begins with the first