

# **The Dilemmas of Islamic Bioethics in the Twenty-first Century: “Being a Stranger in a Strange land” (Or: Procrustes<sup>1</sup> “Islamized”)**

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## **Abstract**

The current discourse on bioethical questions often reveals a certain patchiness or seeming inability to answer contemporary bioethical problems within an Islamic epistemological paradigm. Attempting to analyze the causes of this phenomenon, the author describes the decontextualization of Islamic concepts from a background of secularized medical care and the ethics in the Islamic world—as well as the estrangement due to these questions of Islamic law from its holistic framework of application as a pervasive phenomenon, which brought about the dilemmas of bioethics in the twenty-first century. The author discusses chosen bioethical case studies in this light, with a focus on the concept of brain death. Doing so, the author takes into consideration the paradigmatic relationship between science, bioethical models, and the implications of the relevant different worldviews.

The author shows how constructed realities related to the life sciences have been imported from the secular setting into an

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already estranged Islamic context to be answered, and describes the evolving dilemmas that make Islamic bioethics appear like a stranger moving in a strange land.

## Introduction

Islamic bioethical views in a contemporary context seem to be caught in between two systems: the globally proliferated secular Western medical system that brought about most of the critical questions and ethical problems (stem cell research, brain death, organ transplantation, to name but a few), which need to be answered and which may also claim to have a universal ethical approach—and the Islamic legal system with its ethical concepts, which are themselves an expression of a particular worldview. At the interface of these different worldviews and systems, Muslim medics and scientists as well as scholars of *fiqh* are rather reacting and accommodating than proactively generating their own approach.<sup>2</sup> These reactions are a fertile ground for what I have come to call in this paper the “dilemmas of Islamic bioethics in the twentieth-first century.”

After necessary preliminary remarks on the relationship between Islam, science, and bioethics, the objectivity of science, and the implications of different worldviews (or ideologies) on the life sciences—I discuss bioethics and their different strata. I outline the special features of an Islamic model of bioethics and deliberate on the possibility of a universal model of bioethics.

I then attempt to clarify what I describe as the “imported dilemma,” meaning the decontextualization of bioethics—more particularly in the Islamic world, through its secularized (medical) institutions and its professional ethics, which are detached from Islamic culture. Research rationales, techniques, and questions often emerge from a secular, Western biomedical model and are then imported to an Islamic bioethical setting, where they may bring about ethical estrangement. I will discuss practical questions that have emerged from this decontextualization.

The section of this article on the “legal stranger” focuses on the treatment of these imported questions by contemporary *fuqahā'* (scholars of Islamic law), and the problems involved. The concept of brain death and the related Islamic legal discussion serve as a case study to analyze the characteristics of contemporary *fiqh* (Islamic law) in bioethical questions.

### *Science and Bioethics in Relation to Worldviews*

In contrast to the history of Islamic civilization, where the position of science seems never to have been seen as a challenge to the tenets of the Islamic faith, it is rather in the wake of modernity that questions of the neutrality or ideology of science have been raised with regard to the human sciences as well as the natural and life sciences. This question is particularly important with regard to positioning the new developments in biotechnology vis-à-vis Islam. It has been frequently mentioned in the academic discourses that science is done in a social construct, and that this has an impact on the research funding, the research questions, the evaluation of research outcomes and their usage—as well as scientific authority.<sup>3</sup>

The twentieth century has seen fervent discussions concerning the ideology that supports the sciences—including its historical and political background. Those who have lived in the present era have witnessed the dissemination of modern science in a capitalist secular garb; this has been experienced by many people as the consequence of a structural, intellectual, and institutional dependence rooted in colonialism, and this is a political reality that exists in large areas of the world—areas often labeled as a part of “the third world.”

The main arguments forwarded in the inner Islamic discourse with regard to the evaluation of science are either that science is ideologically bound and that there is “no divorce of science from values, and never has been,”<sup>4</sup> or that science is neutral and value free.<sup>5</sup>

Classical Muslim scholars have put forward several classifications of the sciences or knowledge (*ilm*). For the purpose of this paper, I consider the ideas of the eminent historian and polymath Ibn Khaldun (d. 808 AH /1406 CE), who explained the distinction between rational (*‘aqli*) sciences and transmitted (*naqli*) sciences: “Whereas the human being arrives at the *rational sciences* through his thinking and realization of reality, the *transmitted sciences* have been laid down by the Lawgiver (Allah) and are therefore not subject to human ratiocination.”<sup>6</sup> Ibn Khaldun describes the rational or natural sciences as shared among nations, while the transmitted sciences are specific for the Islamic *ummah*.<sup>7</sup> We may understand that Ibn Khaldun used the reference to the Islamic *ummah* as an example, implicitly stating that other nations may have their own specific transmitted sciences.<sup>8</sup>

Rational sciences—for example, mathematics, chemistry, physics, and engineering—fall under a type of knowledge that is basically universal. Its usage comes under the general permission of things, unless there is an

evidence in the Qur'an or Sunnah prohibiting them (*Al-aṣlu fī l-ashyā' al-ibāḥah mā lam yarid dalīl al-taḥrīm*). However, the way to interpret these findings, as well as the way to use this knowledge, is very much linked to an underlying worldview and may therefore be socially and politically constructed. While a Muslim will link the usage of knowledge of any kind to the Islamic evaluation by the legal rule (*al-ḥukm al-shar'ī*)—atheists, utilitarians, and others will link it to their particular concepts about and understandings of life. In other words, the ideologically bound evaluation, access, and way of usage of this universal type of science cannot be accepted based on a general assumption of its neutrality. It is at this stage that a type of ideologically bound and socially constructed knowledge comes to bear.

For the Islamic context, the transmitted sciences, the sciences of Qur'an and Hadith, *Fiqh*, and *Uṣūl al-Fiqh* (the theoretical foundations of Islamic law), are clearly an expression of the Islamic worldview. All the same, other worldviews have produced their very own scientific expressions. Most of what has been referenced today as human sciences is an expression of a Western capitalist culture and worldview—or, to a limited extent today, a Marxist weltanschauung. Here, it is the Hadith of the Prophet (pbuh), which needs to be the basis of evaluation: “Whoever introduces into our dīn (way of life) that which does not belong to it, will have it returned (i.e. it will not be accepted).”<sup>9</sup>

With regard to the life sciences, H. Tristram Engelhardt suggests that “symptoms, signs, pains, deformities, illnesses, diseases, even the body and well-being, appear within a nest of descriptive, evaluative, explanatory, and social expectations.”<sup>10</sup> A lot of related knowledge and its usage comes under a socially constructed interpretation and needs to be questioned and scrutinized from an Islamic point of view. Engelhardt describes how certain social phenomena were being seen as medical problems—subject to medical research and given medical treatment—for example, an intervention for female hysteria (“successfully treated” by a clitoridectomy), or a person’s homosexuality, which needs to be responded to in terms of medical treatment until the socially constructed context of interpretation changed.<sup>11</sup>

Different therapeutic models may have been generated and contextualized in divergent worldviews, and in turn, have generated their own professional and social ethics—ethics such as those of the practitioners of the Hippocratic tradition with its reliance on humors; traditional Chinese medicine with the principles of chi, yin, and yang; Ayurveda with its idea of three forces of kapha, pitta, and vata; or Rudolf Steiner’s anthroposophical medicine.<sup>12</sup> The Hippocratic Oath, which is still being used in the medi-

cal profession—and also an Islamized version for Muslim medics—has been attributed as “a kind of timeless, all-purpose ethic for physicians and other health professionals,” although it is “only one among many possible ethics for medicine.”<sup>13</sup>

Western medicine is often perceived as organized by a highly specialized, dehumanizing technologically based model. The hype for “alternative medicine” in the West—a diverse movement inspired by and parts of which are modeled on healing practices whose origin and home is outside of the West, practices such as acupuncture and homeopathy—may be explained as a reaction to a system that seems to have lost a commitment to the patient as a person. Tragically, these holistic alternatives have often been adapted into the existing system without changing its tenets or the mindset of the majority of its practitioners.

### *Different Worldviews and Their Implications*

As I have shown in the preceding section, the main differences between Western secular and Islamic bioethics are linked to their underlying worldviews. Capitalist concepts of life, which stand for an overemphasis on materialism, are apt to turn into both hedonism and exploitation. Happiness is defined as the accumulation of ever-increasing material assets and the satisfaction of artificial needs. Globalization is the latest version of the proliferation of this politico-economic model, which had already started in the wake of colonization.<sup>14</sup> Illness is perceived as a malfunction, and death as the major obstacle to enjoying the world’s material pleasures.<sup>15</sup> Commodification is a pervasive motif of this model with a major impact on bioethics—sometimes involving exorbitant fees for medical treatment and medication, procedures for maximizing health-care systems,<sup>16</sup> and the copyright and patenting of medication and genetic information—are all effects or side effects of the intellectual foundations of this system.<sup>17</sup>

The Islamic model, on the other hand, is based on the uncompromised concept of the oneness (*tawhīd*) of Allah, the Creator and Sustainer, and of His creation’s servitude to anything or anyone but Him. Whereas the beginning and end of life are at His discretion, the human being is asked to pursue the treatment of the ill. Illness and health have their own metaphysical functions. As a holistic lifestyle, many Islamic rules—such as those related to hygiene, moderation in food, the prohibition of harmful substances and sexual relations outside of wedlock—constitute a system to prevent illness. Happiness is defined as achieving the Creator’s reward; anything acceptable is directed toward Him. This worldly life is only a passage, a

test for the ultimate reward or punishment—hence, the need to abide by the Islamic legal rule.

### *Islam, Ethics and the Life Sciences*

The term *bioethics* is generally understood as a set of ethical considerations (philosophical, theological, social, and legal) with regard to the development or usage of techniques and cures in the field of medicine and the life sciences.<sup>18</sup> This “branch of applied ethics”<sup>19</sup> emerged as a distinct field of study in the 1960s in the United States. This development was triggered by novel moral questions, rapid advancement of the medical sciences, research, biotechnological innovations, and characteristics of American society as shaped by Anglo-European thought and traditions. Larger social events, like the civil rights movement, feminism, and the growing distrust in medical professional authority have played a pivotal role.<sup>20</sup>

With the immense advancements in the life sciences in the last decades, bioethics seems to have become as important and prominent as the hard core sciences. The emphasis on bioethics has given new importance to specialists in human sciences, mainly philosophy. In an attempt to bridge the gap between secularized research and the practice of the life sciences and the upcoming ethical dilemma—chairs and committees involving bioethicists have been created.<sup>21</sup>

While bioethics may be said to be as old as the life sciences themselves, the public and academic bioethical discourse worldwide is as diversified as the philosophical, ideological, and professional background of those who are involved.<sup>22</sup> Different strata of bioethics involve academic bioethics, public policy, law bioethics, and clinical ethics—and we also have to consider the individual, professional, and communal strata that contribute to the diversity.<sup>23</sup> Bioethics is concerned with key questions of human existence. Not surprisingly—standing at the interface of a multitude of cultural and religious perceptions on health, illness, life, reproduction, and death—it has a lot of potential for diversity, and it may be said to be as diverse as the metaethical systems it refers to.

In the Islamic context, the usage of the term *ethics* (*akhlāq*) and its scope and place within Islamic culture and civilization may require some explanation. Where are ethics to be placed in the history of Islamic thought, and what may be understood by Islamic bioethics? “Islamic ethics as a discipline or a subject does not exist at the present,” stated Abdul Haq Ansari in 1989.<sup>24</sup> It is correct that there is no—and never has been—an indepen-

dent branch of ethics among the Islamic sciences. Rather, ethical considerations have been treated as contextualized in treatises on philosophy, theology, law, Sufism, politics, economics, and the different professions. Different ethical traditions—such as the theological, philosophical (Neo-Platonic) and the Sufi tradition—have been named.<sup>25</sup> It seems that scholars of the past did not see any need for an independent branch or science of ethics because ethical values had been holistically incorporated in all the different strata of life and thought.<sup>26</sup> Based on the comprehensiveness of the Islamic legal rule on any activity of life, vital questions of medical treatment and the life sciences have from the earliest times been of interest to Islamic legal scholars (the *Fuqahā'*). The observer of the history of what we may refer to as medical ethics" in the Islamic context will find that rules, regulations, and general manners in the relationship between doctor and patient—for instance, are to be found within the legal compendia and the professional *adab* literature. In the same way, we may find professional ethics related to other professions. The term *adab*, as al-Jurjani (d. 474 AH/1081 CE) defined it, means "the knowledge of what saves one from all mistakes."<sup>27</sup> Therefore, *adab* literature often reads like a manual of refined professional behavior.

Islamic medical professional ethics, which we do understand as a branch of bioethics, is well documented. Under the title *Al-akhlāq al-ṭibbiyyah* or *Adab al-ṭabīb*, Islamic culture has produced a number of literary works.<sup>28</sup> Al-Rahawi's *Kitāb Adab al-Ṭabīb*, which dates to the third century, is considered the first Muslim treatise dedicated to medical ethics and covers a multitude of aspects with regard to the medical profession.<sup>29</sup>

*Adab* literature is an expression of professional ethics at a time when Islamic thought and civilization was firmly established in all branches of life and had already gone through a process of incorporation of the preceding cultures and their knowledge. The *Kitāb Adab al-Ṭabīb* is an important document testifying to this era, but does in no way stand alone. Contemporary contributions to Islamic professional medical ethics stand very much in this tradition and refer to it—without, however, discussing the paradigm shift from an Islamic to a secularized society that impacts on the practice of medicine.<sup>30</sup>

It is necessary to reflect on why classical Islamic literature does not offer a terminological equivalent to our modern term *bioethics*. Perhaps, because the larger framework enabled a holistic integration of bioethics, there was no necessity in discussing it separately. It may be sufficient to mention that related questions today are often treated under "contemporary issues in

*fiqh*” (*qaḍāyā fiqhiyyah mu‘āṣirah, al-fiqh al-mu‘āṣir*) to further illuminate the importance of *fiqh* for the field. The term *al-fiqh al-tibbī* (medical *fiqh*) seems still to be preferred over the ethical (*akhlāqī*) component.<sup>31</sup>

It seems that most of the contributions discuss a main difference between the different (that is, Western secular and Islamic) bioethical approaches as being a focus on individualism rather than on the community—and the emphasis on rights rather than duties and obligations, respectively. Although differences vis-à-vis individualism do exist, it does not seem to be the main cause accounting for the dilemmas of Islamic bioethics today.<sup>32</sup>

### *The Key to Understand Islamic Bioethics*

Is there a particularly Islamic bioethics then? This question may, without doubt, be answered in the affirmative. If we are to understand bioethics as those rules, regulations, and deliberations concerning the research and practical application of the life sciences, there is, naturally, a set of Islamic rules derived from the sources of Islamic law governing all these actions and in all of the described strata. As an Islamic model of bioethics, we may therefore describe the set of Islamic legal rules and their application in actions and questions related to the life sciences. On a metalevel, these actions are guided and decided on the basis of the sources of Shar‘iah.

It follows from the preceding deliberations that the Islamic model of bioethics is, first and foremost bound by the injunctions of Islamic law (*fiqh*). In contrast to the life sciences themselves, this bioethical model—as being made up of Islamic legal rules—is derived from the sources of revelation: the Qur’an and the Sunnah. In addition, revelation guides to *Ijmā‘* (consensus), *Qiyās* (analogy), and the secondary sources—subject to their acceptance or nonacceptance by the respective Uṣūlī scholars. Just like *fiqh* itself, these sources involve definitive (*qaṭ‘ī*) and nondefinitive (*ẓannī*) legal rules—the latter being subject to differences of specialist scholarly opinion and are guided by a number of legal principles (*qawā‘id fiqhiyyah*).

The famous discussion under the title of “*al-taḥṣīn wa l-taqbīḥ al-Ṣāqliyain*” (to declare something as good or bad by reason) illuminates an important link between ethical considerations and the law, which is of interest to our formulation of Islamic bioethics.<sup>33</sup>

With regard to ethics, we may conclude from the majority *Ash‘ariyyah* view that human beings are not able to define their ethics without any reference to the texts of revelation. Whatever we refer to as ethical or unethical on Islamic grounds needs to be backed up by evidence in the Islamic texts,



the Qur'an, and the Sunnah. It should also be pointed out that ethical values as such—like saying the truth, abiding by the given word, and helping those in need—are not self-subsistent because they are never separated from actions.

The discussion of a bifurcation between law and ethics, or the possibility of actions being legally correct but unacceptable ethically (which, in the Western context, gave rise to the formulation of natural law theories)—is rather characteristic of a non-Islamic background. On the basis of the preceding explanations, ethics and law cannot be separated—and there is no ethical evaluation of actions other than by law.<sup>34</sup>

It has been stated above that the ethical value itself needs to be evidenced in a text (*naṣṣ*)—that is, in the Qur'an or Sunnah—and that it needs to be contextualized by an action. This statement has two implications. First, according to the majority (*Ash'arī*) position which I am presenting here, human beings do not judge about the ethical or unethical factor in something based on their own mind. Rather, they are in need of revelation to guide them. Second, what may be referred to as ethical in other cultures is not necessarily ethical from an Islamic point of view, and even if there are a lot of similar ethical concepts to be found in a number of different cultures—especially those comprised of monotheistic religions as compared to the Islamic one—they can only have validity if they are evidenced on an Islamic basis in their own right.

### *Universal Model of Bioethics?*

Given the intimate relationship between law and ethics, can Muslims subscribe to a universal code of ethics? The claim for universality in ethics goes hand in hand with the postmodern call for ethical relativism. Models claiming universality can rather be seen to have originated in a very particular cultural setting and to have been disseminated with the political hegemony of a particular culture. Speaking today about universal bioethics is like speaking about the Western coinage of secular bioethics, which have been institutionalized and disseminated with the institution of medicine.<sup>35</sup>

In her narrative bioethical approach, Farhat Moazam describes how bioethics of an American color, particularly the Beauchamp-Childress approach, came to be taught in Pakistani medical institutions and other institutions around the world.<sup>36</sup> This model especially has been hailed as one allowing for intercultural or cross-cultural validity.<sup>37</sup> The principles of autonomy, nonmaleficence, beneficence, and justice, however, are so gen-

erally formulated that they are still in need of a metaethical system to refer to for clarification.<sup>38</sup> To suppose that Islamic, Roman Catholic, feminist, Hindu, and secular capitalist interpretations of these four principles can possibly be the same is unrealistic and negates the fundamental differences between the different approaches. The question of whether or not patients have the autonomy to determine whether or not their organs may be donated after death—or, the definition of the beginning or end of life, and about the commodification of embryonic stem cells—will find very different answers within these different backgrounds. What is deemed to be ethical or unethical may differ tremendously from culture to culture, from background to background. In a secular capitalist environment, the recommendation to abort a Mongoloid fetus, even in a very late phase of pregnancy, may seem “ethically justifiable” because it “alleviates the mother (and society) of the unbearable burden to take care of this child.” Abortion on the grounds of this psychological pressure is still commonplace in many industrialized countries. From an Islamic perspective, abortion in such a late phase would be justifiable only if the mother’s life is materially and feasibly endangered, not on grounds of any fetal malformation.<sup>39</sup> Can there be a universal approach reconciling both views?

The idea of a plural or pluralist society generating a bioethical model acceptable to all is misleading in that the existence of diverse groups under the tenets of one (here: secular) society does not affect the (here: secular) norms by which they interact. Engelhardt emphasizes the importance of generating a secular bioethical model so as to find a common denominator—a shared framework of interaction, a moral lingua franca, allowing the secular framework to bind the larger community in the sense of a “procedural morality binding moral strangers.”<sup>40</sup> The attempt of creating such a universal in the sense of a secular model of bioethics is in itself utilitarian in nature. The Western coinage of bioethics, albeit the claim to universality, has often been criticized.<sup>41</sup>

On this basis, the blind subscription to an ethical catalogue set up on any other than an Islamic basis is not recommended, and its contents would need to be subjected to scrutiny in detail. On a metaethical basis—that is, reflecting the nature, origin, and source of ethics—and from an Islamic perspective, we must clearly state that ethics originate in the Creator’s communication to humankind. Even if the human mind is able to develop basic ethical concepts based on the inclinations of the natural state it was created in, this human being cannot be left alone in defining what is ethical or good and what is unethical or bad.

In the contemporary context and in the absence of clear ethical guidelines, the term *bioethics* seems to stand rather for an attempt to devise metaethics. The establishment of ethics committees, the introduction of ethics courses in the life sciences, and the participation of the humanities (particularly philosophy) may account for a desire to arrive at a collectively acceptable common ethical denominator.<sup>42</sup> These attempts may also be seen as an indicator that the most fundamental questions of life and death have not found clarification in the Western secular setting yet.<sup>43</sup> The plethora of various, often competing ethical models and methods<sup>44</sup> may be referred to in order to support this idea.

Contextualized Islamic bioethics—that is, Islamic evaluations of questions related to the life sciences within an Islamic reference system—where science takes place in and is shaped within the framework of an Islamic society, with its own foundations and systems—would not be subject to the existing dilemmas. However, in the contemporary context, there is a holistic application of the Islamic way of life. In the wake of secularization, Islam has become a matter of ritual—while the political, economic, and educational systems in the Islamic world are generally imported and alien to Islamic concepts. Regarding the essential questions of human life, this seems to be particularly true for the medical care and the life sciences. It is therefore correct to consider the dilemmas of Islamic bioethics as an archetype for the overall dilemmas of the Islamic world today. The public discourse in the Islamic world is still characterized by the paradigm of reacting, either positively or negatively, to what has been developed in a different framework, instead of implementing an innate Islamic model.

The dilemma of Islamic bioethics in the twenty-first century emerges from this unlucky constellation and may be described on two levels: First, Islamic bioethics—contextualized in an Islamic value framework—are expected to find answers and solve problems that result from the biomedical setting of a different worldview; in other words, it has to deal with decontextualized, imported questions, and the answers will necessarily appear estranged and patchy. Second, being intimately linked<sup>45</sup> to Islamic law, it shares the overall dilemma of *fiqh* and *fuqahā'* in a de-Islamized world.

### *Decontextualization 1.0—The Imported Dilemma*

I have mentioned above that one of the dilemmas of Islamic bioethics is that bioethical problems are imported; that is, they have come about in the context of a different worldview than the Islamic one and have then been imported into the Islamic world or the Islamic paradigm via the prolifera-

tion of a non-Islamic, secular capitalist model of science. A minor dilemma to be discussed in this context is the one faced by Muslim individuals and communities in a majority non-Islamic setting.

Bioethics permeates several strata—an individual stratum and a professional, communal, and a public health care stratum. These strata in any setting may function to a large extent as coherent and functioning together or as somewhat diverse—with the result of an either smaller or greater potential for conflict. In the light of my preceding analysis, one can expect even more conflicts at the structural level—an increase of the present conflict between the implanted academic, medical systems and their ethics in the Islamic world, the personal and communal ethics of Muslim society and the broader public ethics.

Depending on different relationships between various players, there can be various interfaces of Islam, Muslims, and Islamic bioethics and the prevailing secular, Western model of science. Muslims more and more often find themselves in the setting of a non-Muslim majority society, where there may be an obvious need to clarify the own cultural or religious point of view with a focus on expressing their views of the contrasts and similarities between the two settings. In the words of H. Tristram Engelhardt, this case makes the individual ethics of a patient (or a doctor) appear to be as a community of “moral strangers” in opposition to the larger society. The other setting, paradoxically, would be the setting of scientific work or health care in the contemporary Islamic countries. There also exists a difference between negotiating one’s personal behavior as a Muslim in a non-Islamic setting and declaring standards other than those developed on an Islamic basis as Islamic or Islamically acceptable. This requires some clarification.

In regard to the level of the individual, Engelhardt has said that “a patient is a stranger in a strange land”<sup>45</sup>—being confronted with the dynamics, procedures, and language of health care professionals in the setting of a hospital, without being able to understand the way in which the world he or she has been transferred to works. This is true for almost every patient in any unfamiliar cultural setting. If cultural or religious differences between the individual and the majority society come into play—with patients belonging to a Muslim (or other) minority in a Western setting (or any other combination), they may also find themselves as “moral strangers.” With the aim of facilitating clinical procedures and providing manuals or primers on Islamic bioethics for clinicians, there are attempts to offer explanations of basic Islamic teachings and Muslims’ cultural sensitivities to the

non-Islamic setting—usually also alluding to the differences in individual practices, and the impact on the patients' cultural and educational backgrounds.<sup>46</sup> These, however, are not my main focus here. It is to be expected that Muslim patients in a non-Islamic clinical setting—that is, a clinical setting in a majority non-Islamic country, with non-Muslim staff—will have a need to have their views on life, death, hygiene, food requirements, general etiquette, and medical treatment communicated.

What may be called a dilemma in this respect, however, is that even a Muslim in an Islamic majority country with Muslim medical staff may consider himself be like a moral stranger. This is due to the fact that modern medicine has entered the Islamic world in secular garb, more often than not run by medical professionals who have themselves been educated in the West (which, here, may also stand for areas of the world normally referred to as “the East”: former Soviet or Chinese communist secularism), with its own secular professional ethic. The usage of the former colonial language in health care (for instance, English in the Subcontinent, French in North Africa) indicates and at the same time perpetuates the cultural estrangement in this field.<sup>47</sup> Typically, the knowledge and awareness of the Muslim doctor or researcher on the exigencies of his own *din* may be limited, while he may see his own people rather through the secularized lens, and their religious convictions rather as an impediment to his work.<sup>48</sup>

This phenomenon has its roots in colonialism and post-colonialism—with the accompanying notorious problems of educating the local elite in the colonial mother countries, and other challenges such as brain drain. The mindset of imitation in paradigms and practice is unbroken and expands somewhat naturally to the medical and bioethical field. Ibn Khaldun described a pervasive phenomenon that is feasible in all walks of life in the Islamic world today when he said that the conquered will always follow his conqueror in lifestyle, habit and sentiment because he sees in him the image of perfection he strives at. A psychological disposition tells him that, being conquered himself, he cannot be perfect by definition.<sup>49</sup>

While the field of Muslim patient exigencies in a non-Islamic setting seems to be well covered,<sup>50</sup> little reflection seems to have been made on the larger bioethical framework and its paradigms in a majority Muslim setting.<sup>51</sup>

Attempts such as the Kuwait Declaration, or the declarations of professional medical ethics by Muslim medical associations (mainly in North America) generally do not go beyond the professional stratum. The contributions made to the first and second Islamic International Medical Confer-

ence in Kuwait in 1981 and 1982 reveal the rich historical heritage of Muslim contributions to diverse fields of medicine—especially their relation to the Greek medical heritage and the role of Islamic medicine in the Western Renaissance—also show the rootedness of Muslim professional medical ethics. However, reflections of the general paradigm change and questions of how Islamic medical ethics relate in an imported un-Islamic setting in the Islamic world, were generally not made.<sup>52</sup>

This stratum of public health policy is vital to set the societal framework for the life sciences and bioethics. It is here that the main dilemma of Islamic bioethics is revealed—that is, the lack of an Islamic polity and policies. The health care system in the Islamic world used to be embedded in the Islamic worldview until the advent of colonialism. Questions of the doctors' and pharmacists' liabilities and accountability were regulated by the *hisbah*,<sup>53</sup> which may here be referred to a public administration. Public health regulations organized hospitals and research on the basis of an Islamic way of life. This entire complex has been taken over by secular institutions, in which Islamic mechanisms of policy making are not enacted.

What has been described as a “normative plurality” (*Moosa*) in Islam with regard to the different nondefinitive legal rules (ranging from permission to prohibition), which a question may take, would be solved on a communal level by the institution of *tabannī* (the binding adaptation of one *ijtihād* or legal derivation on a particular question); this aspect of policy making, where the Islamic authorities lift the difference of opinion for the sake of communal unity (*amr al-imām yarfa'u al-khilāf*) is frequently overseen in discussions on Islamic bioethics.

The following cases will show that there are different degrees of strength with which the dilemma of imported questions is revealed; for example, on a very obvious scale, there is the notorious example of using non-permissible substances, generally pork or alcohol, in medication or treatment. Porcine material is widely used in the Western industrialized countries, not only in food stuff—but also in medication—due to the lack of religious or cultural inhibitions or even a cultural affinity and its the resulting availability and low price. The resemblance to human cell structure and their porcine equivalent organs is also mentioned as a rationalization for using porcine material. Skin transplants, heart valves (in xenotransplantation), porcine-based insulin and heparin are some examples of this. Comparable to its usage in foods, gelatin is widely used as filling material in tablets or capsules. Actually, these usages are culturally conditioned rather than indispensable; alternatives may be found—like bovine or human source insulin, bovine heparin, and gelatin.<sup>54</sup>

Due to the prohibition of pork and because of its being considered impure in Islam, it is very unlikely that these usages would have come about in an Islamic setting: Muslim doctors and scientists would have looked for other available sources. However, Muslims in majority non-Muslim countries are regularly exposed to these therapeutic means. The Islamic legal rule here may differ, depending on whether or not alternative therapies are available. The rule of *ḍarūrah* (utter necessity) may apply in certain cases where alternatives are not at hand.<sup>55</sup>

The case is different, however, when we talk about importing these treatments and medication into the Islamic countries. Here, it is the responsibility of those in charge of the Muslims' affairs within the area of public policy (*siyāsah sharʿiyyah*) to curb importation of non-*ḥalāl* medication and provide a homegrown production or a search for alternatives. This aspect in Islamic bioethics is the preliminary condition for laying down Islamic health-care guidelines.

It is most intriguing to reflect in which ways medical treatment would have developed on the basis of the Islamic worldview, had not the developmental process been interrupted. It may well be that tissue engineering—the engineering of human tissues and organs from the patient's own cells—could have started earlier. This is probably the same for procedure-minimizing, minimal invasive therapies, and a strengthening of preventive cures. Given the Islamic prohibition on holding back knowledge (*tahrīm kitmān al-ʿilm*) the imposition of patenting with all its negative consequences of costs and availability of medication to the masses would be unknown—with the expectable results on the improvement of world health. And research budget would have been allocated differently.

At first sight, it what would seem that fertilization techniques are not as problematic because the relevant procedures may easily be fitted into an Islamic context. Most Islamic scholars have ruled that IVF techniques are permissible in Islamic law, provided that both male and female donors are alive and married at the time of insemination, and no third party (as a surrogate mother, egg or sperm donor) is involved.<sup>56</sup> It is rather the setting of these procedures that may prove problematic: for example, the surrounding questions of what happens to surplus fertilized cells/embryos, donated eggs, and sperm. Will they be discarded, “be left to die,” or stored—if so, for which purpose?

Praised by one faction as a source of future remedies for juvenile diabetes, Alzheimer's, spinal cord injuries, and other problems, and criticized by conservatives and pro-life activists mainly because of the source of the

material—stem cell research is one of the most controversially discussed areas of genetic engineering.<sup>57</sup> From an Islamic point of view, one of the main concerns lies in the origin of the stem cell material. There are various sources for human stem cells and the most obvious being bone marrow.<sup>58</sup> Recent research has shown that even adult cells may be re-triggered into pluripotent forms. The main argument for the usage of human embryonic stem cells (HESC) has always been the pluripotency of these cells and research advantages as compared to adult stem cells.

As noticeable as is other related legal questions, the contemporary Islamic discourse tends to give a (legal) view of a current contemporary research or scientific practice without scrutinizing the logic of its existence. A number of legal verdicts (*fatwās*) do allow the usage of surplus embryos for stem cell research, but *fatwās* do not permit the creation of embryos for the purpose of stem cell research.<sup>59</sup> The formal line of argumentation consists in stating that those fertilized cells cannot be considered as human life before the decisive in-breathing of the soul (*rūḥ*) has taken place. Also, without an artificial aid or implantation into a woman's womb, they would not survive. Characteristically, the existence of alternative sources for stem cells—that is, the usage of adult stem cells taken from bone marrow or those available in the umbilical cord, which would ordinarily lead to support for a ban on the use of embryonic stem cell lines—are not considered in most legal verdicts. They also do not expound on the permissibility of producing surplus embryos for IVF either, but rather accept this as a given reality, following the utilitarian rationale to use what is available.<sup>60</sup>

The reason for this surplus is procedural as well as economic; it is to ensure the success of the therapy, more than one trial may be needed—in other words, it is rooted in a particular scientific culture. Whereas the ethics of using this surplus is commonly discussed—the ethical framework, which brought them about generally is not. In the Islamic context, human dignity can be claimed for any part of the human body; whereas the general overtone of commodification in secular capitalism would rather lead to neglecting it.

At an even more visible level stands the complex of anti-ageing research. Anti-ageing research is either directed at improving the quality of life at an older age, preventing or facilitating the side effects of ageing—or it stands for the attempt at bringing about eternal life in human beings. Whereas the first may be Islamically acceptable, subject to the case at hand, the second is in clear contradiction to the injunctions of Islamic texts (and common sense) and seems to be rather a continuation of alchemy, the search for the philosopher's stone or a scientific translation of the quest for



the Holy Grail. The end of any life on earth is a certainty that which the Qur'an testifies to: "Every soul shall taste death" (*Surat Āl Imrān*: 185), and "And if their term (*ajal*) has expired, they can neither postpone nor precipitate it for any period of time." (*Surat Al-A'rāf*: 34).

### *Decontextualization 1.1—The Legal Stranger*

In view of my previous description of the interconnectedness between Islamic bioethics and Islamic law, it is to be expected that the dilemmas of Islamic bioethics in the twenty-first century are to a large extent congruent with the dilemmas faced by Islamic law and those representing it.

With the beginning secularization of the Islamic world and the disappearance of the Islamic way of life, the position of fiqh and the *fuqahā'* have changed as well. While the scope of fiqh activity came to be restricted to *'ibādah* (worship) and laws of personal status (marriage and divorce), the fringe existence on the borders of society had an impact on the scholars' mindset too. With the science of fiqh and *uṣūl al-fiqh* becoming the least prestigious of all, scholars either remained in isolation from society and turned toward the stale transmission of whatever their predecessors had left—or, driven by the urge of regaining terrain for themselves or their science, opted for the pragmatic approach of becoming relevant to a secular society. "Shar'iah goes banking" is an epithet for trying to overcome the bias between Islamic law and reality—by "adapting" Islamic concepts in the end. Apparently, only few scholars have analyzed these biases and their effect on an Islamic intellectual foundation.

Ebrahim Moosa describes that one of the salient features of contemporary Islamic law is its predictability in the sense that "libertine jurists would try to make permissive the changing social context, while traditionalists would resist the pace of change and declare many moral acts prohibited."<sup>61</sup> While the legal argumentation focuses on "necessity" (*darūrah*) and "public benefit" (*maṣlaḥah*) on one side, the exigencies of a literal or implicit meaning of a text are emphasized on the other.<sup>62</sup>

The work of contemporary fuqahā' often resembles a remake of Procrustes' story, trying to adapt Islamic rules to a bed constructed of non-Islamic reality and concepts. Rather dramatically, the Islamic legal rule is either stretched beyond the meaning of the texts, or cut back—isolated from its own background, to fit into a too narrow space. Agents of stretching and cutting may easily be identified in a decontextualised overusage of references to the theory of *maqāṣid* (the objectives of Islamic law), *maṣāliḥ mursalah* (benefits undefined by Islamic texts, generally but somehow un-

luckily translated as “public interest”) and the rule of *ḍarūrah* (necessity). The major crux of this methodology—the definition and identification of benefits and harms in a non-Islamic setting—is generally overlooked. Who has questioned Procrustes’ action? Why not provide the matching bed for the respective person?

Stating that one of the dilemmas of Islamic bioethics in this era is its having to relate to imported questions does not necessarily imply a premodernity vs a postmodernity conflict.<sup>63</sup> It is not the dilemma of a pre-modern legal and ethical system trying to cope with a postmodern technology<sup>64</sup>—where the postmodernism, which is presumably destined to stay, expects that necessary changes be made to the pre-modern epistemology. As the preceding differentiation between the different forms of science has shown, technology does not challenge the Islamic worldview or necessitate a new epistemology. The real change is that within the last century or so the application of this worldview has been decreased to a minimum in most countries of the Islamic world—with today’s Islamic concepts being applied in the limited realm of personal worship, marriage, divorce, and inheritance in most countries of the Islamic world, and in some places even less, and there has been a respective impact on the Muslim mindset. Technology, in terms of medical treatment as well as the advances made by biotechnology, can be incorporated by the demands of Islamic law. However, the relativism of post-modernism, on a par with the culturally bound ethics which claim universality, cannot. In other words, the dilemma is not that Islam is not able to cope with technological innovations and developments, because they will be incorporated into a permissible usage in accordance with the objectives of the Islamic world view. The dilemma is rather the attempt to reconcile Islamic teachings with a non-Islamic (bio)ethical system.

Some contemporary treatises on Islamic bioethics emphasize the necessity to formulate Islamic rules on bioethical matters in a way apt to serve a formal rationality used for complying with transnational or national organizations.<sup>65</sup> To me, this seems to be more part of the dilemma than a solution to it.

### *Brain Death as a Case Study*

There is probably no topic as suitable to underscore the effects of the different worldviews—the Islamic and the secular capitalist—as death. Whereas Islam considers death as an inevitable marking of passage to the afterlife, secular thought comes to see it more and more like a malfunction that may one day “be subjugated through biomedical research and technology.”<sup>66</sup>

Death is increasingly seen as an “obstacle to the enjoyment of the expanding material pleasures of the world.”<sup>67</sup> The view on anti-ageing research illuminates this difference.<sup>68</sup>

How to define death? Traditionally, medical science relied on cardio-pulmonary analysis to ascertain death—that is, the absence of heartbeat and pulse. With the advent of two major health care developments in the 1960s, “the development of intensive care units, with artificial airways and mechanical ventilators to treat irreversible apnea, thus interrupting the natural evolution from brain failure to cardiac arrest, and the emergence of organ donation arising from the new discipline of transplant surgery,” the socio-medically constructed definition of death came to be changed.<sup>69</sup> Loss of personality in a brain dead person and the inability to respond, have been taken as an indicator of the death of this person.<sup>70</sup> Differentiation is made between the whole-brain definition of death, with a complete and irreversible loss of brain function, where the person would not be able to sustain necessary functions without support—and a higher-brain definition of death, with an irreversible loss of the higher brain functions, absence of consciousness and the inability to relate to other people, but a possibility of spontaneous breathing. Patients have been reported to “return to life” from this later stage (by spontaneous breathing),<sup>71</sup> and even the continuation of pregnancies in a brain-dead person is possible.<sup>72</sup>

The concept of brain death, though initially vehemently discussed for ethical reasons, came to be accepted by the medical profession, and under slightly divergent conditions, by most legislative systems worldwide, including the countries in the Islamic world. Generally, the confirmation of more than one medical doctor as to the irreversibility of the person’s state is demanded.<sup>73</sup> It was a significant departure from the traditional way of defining death.<sup>74</sup>

Why should it be so important to agree on the death of a person whose brain function is irreversibly lost, without waiting for the natural consecutive failure of the heart and other life functions? The reason is a constructed necessity: the exigencies of a highly developed organ transplant machinery. Accordingly, critics of the concept of brain death describe it as a social construct created for utilitarian purposes to permit transplantation.<sup>75</sup>

Without wanting to belittle the advancements of medical treatment in this respect, I need to state that the exigencies of a highly technological, organ transplant-minded medical system in need of harvesting organs has given rise to the formulation of the concept of brain death and the ethical discussion on it. There is a consensus that the donation itself must not

cause the death of the donor—commonly referred to as the “dead donor” rule.<sup>76</sup> Except for the brain, every solid organ may today be replaced (or supported by technology).<sup>77</sup> The main problem of organ transplantation, however, is the paucity of donors.<sup>78</sup> In addition, organ transplantation is more successful if the organs are sufficiently provided with oxygen (“ventilated”); this is the case with “brain dead” persons.

Organ transplantation started in the 1950s, with the first kidney transplant in 1954.<sup>79</sup> This form of medical care, embedded in its specific professional ethics, has been exported to the Islamic world, and its own mechanisms with it. Muslim scholars and bioethicists have been exposed to the question of organ transplants and brain death, and answered these with a plethora of divergent *ijtihādāt*;<sup>80</sup> in the reflection on the rationale, mechanism, and the link between organ transplantation and brain death, it needs to be said that the economic factor, is hardly questioned.

The necessity to declare brain death as death is therefore a result of a particular system, with a particular underlying rationale, which have been exported to be answered on an Islamic basis. The knowledge we gain is limited by the framework we apply, the construction of organ transplantation, and the need for donors as a necessity have paved the way for the answers.

Before going into the details of Muslim scholars’ analysis and its characteristics, I would like to offer some deliberations on the underlying rationale of organ transplantation and brain death.

It is worthwhile to reflect on why Muslim medics, with the immense contributions they have made to the development of medicine, did not venture into the field of organ transplantation. I maintain that given the innovativeness of Muslim scientists, the technical requirements could have been developed.

Given that lifestyle and preventive measures have an impact on overall health, organ malfunction may not have been as prominent in an Islamic society. The inviolability (*ḥurmah*) of the human body, particularly after death, and the right of the human to a fast burial, have been too strong in Muslim society than as to venture in this field. Although some Muslim medics ventured into dissections, they were not officially supported.<sup>81</sup> The main reason for the lacking development of organ transplantation, however, seems to be that the human body is not seen as a commodity, but an *amānah* (an entrusted good). Tissue engineering, the engineering of organs from the patient’s own cells, may have been developed earlier without the availability of donor organ material. Preventive measures would have been

more important. The opposite is the case in the secular capitalist system of Western provenience.

Medical thinking within secular thought may be inclined to see the human body as a commodity. The Islamic framework does not support this idea. In a system that separates this life from the Hereafter, any device that may prolong this-worldly life is welcome. Commodification of the human body and utilitarianism do definitely account for these developments. The economic factor must not be underestimated either, taking into account the profits involved in a procedure-maximizing health care system, and the costs involved for keeping brain dead persons on life support devices. Another important aspect is the question of lifestyle; the emphasis made of preventive cure by lifestyle is still small, and Western lifestyle, the consumption of *muḥarramāt* (Islamically prohibited food and substances), particularly, takes a high toll.

Medical thinking takes place in a set framework—a social, philosophical, or historical construct. If organ transplantation is considered the only cure to organ malfunction, questions are asked and solutions sought after within the confines of this thinking. It would indeed need a revolution to start asking question outside of this system.

Within this imported health care system, declaring brain death as death has been constructed as an inherent necessity. Accommodating it accounts for modernism, while opposing it stands for “hindering science and medical care.” The dilemma has been imported into the Islamic world, to the Muslim legal scholars, without these reflections, and with the anticipated outcome.

In the Islamic context, death is defined as the time when the soul (*al-rūḥ*) leaves the body. The exact time and way of the soul leaving the body is not known, and just like the definition of the soul (*al-rūḥ*) has caused much discussion and controversy. Muslim scholars have therefore not precisely defined life and death; they have rather seen one as the opposite and the absence of the other: death is the absence of life, just as life is the absence of death. The dividing line between both is the absence or presence of the soul. If the soul is present, the person is alive; if it is absent, the person is dead. Because the location of the soul has given rise to many discussions in the history of Islamic thought, I shall not repeat it here.<sup>82</sup> Muslim scholars have, however, laid down some indicators of death; some of which have been derived from the Qur’an and Sunnah, such as the lack of movement and speech, the glazed look (“If the soul leaves the body, the eyes follow it”<sup>83</sup>); others are taken from the description of reality—like relaxation of

the limbs, opening of the lips, sinking in of the nose, the change in skin color, temperature, and the change of smell.<sup>84</sup>

From the Shar‘iah perspective, a number of legal effects result from the death of a person; among them: the beginning of the spouse’s waiting period (*‘iddah*), the ceasing of legal responsibility (*taklīf*), the demand to cover any debts, the distribution of the dead person’s wealth, placing the person in the direction of *qiblah*, the body’s preparation for burial and prayer, and the condoling of family.<sup>85</sup>

The *fiqhī* views on the acceptance or nonacceptance of brain death are diverse—among the accepting voices are Muḥammad Naim Yasin and Muhammad Sulayman al-Ashqar.<sup>86</sup> Yasin argues that contrary to the beginning of human life, there is no categorical textual command on the end of human life. It is therefore under the scope of *ijtihād*. For this reason, he refers the decision on whether life has ended or not to “the specialists” of the medical profession.<sup>87</sup> Yasin then draws an analogy to cases in criminal law, where jurists are to differentiate between various phases leading to the death of a victim. Who is considered the murderer of a person who has been stabbed by two people, and which attack brought about death? His point relates to a discussion of the phase of death (*marḥalat al-mawt*)—as well as in absence of absolute certainty, the overweighing probability of death.<sup>88</sup> Signs of pulse, heartbeat or any other functional organ are not conclusive on the presence of the soul; this, he stipulates, is linked to the brain.<sup>89</sup> Ashqar concludes from his evaluations of precedent cases of injured persons that a person with pulse or heartbeat is not necessarily considered a living person for the purpose of the law. A seriously wounded person nearing death is viewed as either dead or in the phase of death. The verification of a person’s status as being either dead or alive, in the end, has to be left to specialist physicians. On this basis, a brain-dead person should be given the legal rule of the deceased (*ḥukm al-mayyit*), and this person’s organs may be used. Interestingly, and this is where the paradox emerges, Ashqar does not allow a brain-dead person’s estate to be divided; the wife of such a person cannot be declared a widow until a conventional cardiopulmonary assertion of death has been made.<sup>90</sup> This legal evaluation reveals the entire dilemma of Islamic bioethics today: presenting a legal patchwork that declares the same person as dead for one purpose (of organ harvesting), and not dead for another.

As a representative of the voices rejecting the definition of brain death as death, I refer the reader to Tawfiq al-Wa’i. In his detailed submission to the *Fiqh* Academy discussion on brain death, he expounds on the integrity

of the body independent of the soul.<sup>91</sup> All life in the human body needs to be recognized as part of the divine miracle and mystery of life, there is no indicator that gives the brain more emphasis than other organs.<sup>92</sup> He goes back to breathing as being an indicator of human life, the indicator established by the Hanafi, Shafi'i and Hanbali schools.<sup>93</sup> The absence of sense perception and articulation, he argues, cannot be considered a factor in support of brain death, as these phenomena may be present in children all the same. Another supporting argument against the acceptance of brain death is the allocation of the legal capacity of acquisition (*ahliyyat al-wujūb*) for this decision even in persons (children and the mentally disabled) who do not have a legal capacity of action (*ahliyyat al-adā'*).<sup>94</sup> Al-Wa'i emphasizes the view of the classical *fuqhahā'* that "certainty cannot be removed by doubt" (*al-yaqīn lā yazūlu bi l-shakk*). It follows that, as long as the body shows signs of life (heartbeat, pulse, breathing), respect for human dignity demands that such persons be protected. Based on the principle of *istiṣhāb* (the presumption of continuity), he argues that the person has to be considered alive as long as there are no clear-cut proofs of a change having occurred.<sup>95</sup> The acceptance of brain death would have manifold legal consequences—such as those related to contracts, bequest, inheritance, trusteeships, marriage, debts, maintenance, when to start funeral rituals; for example, if brain death were to be synonymous with death, many of these questions would lead to challenges.

Other scholars have come to the same conclusion, among them Muhammad Mukhtar al-Salami, the Mufti of Tunis. He maintains that it is impossible to provide an absolute definition of death because (scientific) knowledge is constantly developing.<sup>96</sup> There always remains a possibility that a damaged brain stem may be repaired and cured in the future.<sup>97</sup> 'Abd al-Basit, finally, clearly draws the link to the rationale of brain death, stating that the goal of those advocating brain death as an indication of death is to benefit from the organs of a potential donor and this concept therefore borders on an "extreme danger."<sup>98</sup> He also criticizes the reference to *maṣlahah mursalah* (a secondary source of law controversially discussed by the scholars of *uṣūl al-fiqh*; it supposedly refers to interests that are not testified to by the texts of the *Shar'iah*) in this respect, because only benefits in accordance with the revealed law are acceptable. He clearly warns against the following of passions and desires in this respect.<sup>99</sup> After debating extensively, the Islamic Fiqh Academy issued the resolution that "a person is considered to be legally dead, and all the rules of the *Shar'iah* can be applied, when one of the following signs is established: 1. Com-

plete stoppage of the heart and breathing, and the doctors decide that it is irreversible. 2. Complete stoppage of all the vital brain functions and the specialist doctors rule that it is irreversible, and the brain has started to degenerate.”<sup>100</sup> Other institutions, like the Muslim Council of Britain, support brain stem death, and the next of kin may give permission for organs to be used for transplantation purposes.<sup>101</sup> Most countries with a majority Muslim population now accept the brain-death criterion. For example, in Saudi Arabia, the brain-death criterion is used to justify the use of about half of all kidneys derived from cadavers for transplantation.<sup>102</sup>

In his discussion of Wa’i, Moosa alludes to the problem of different underlying systems and the anomalies and paradoxes emerging from disregarding these; “If brain death were to be accepted, then it logically would have a domino effect on the rituals of death as well as an impact on sociological practices such as the status of existing marriages and succession between the parties. . . . For understandable reasons, many reform-minded jurists who are eager to introduce legal change, fail to reflect on the impact that their new assumptions and norms would have on other aspects of the law.”<sup>103</sup>

These scholarly discussions involve a number of other legal considerations (for example, the differentiation between stable and unstable life, an analogy from the “the last movements of an animal that has already been slaughtered and is physically dead” [*ḥarakat al-madhbūḥ*]), and many others that have not found due discussion here.<sup>104</sup> My purpose was rather to demonstrate the shortcomings in the mechanism of dealing with bioethical questions—a situation that I think, indicates a major dilemma.

The questions of brain death and the switching off the life-support machine are usually combined, although they ought to be separated. It is the secular setting again that allows the machine to appear to decide over the life and death of the person—as a causal link of “machine on, patient alive; machine off, patient dies.” Islamic thought sees the causality of life and death as being the command of the Creator, while ‘life-supporting measures’ account for a medical treatment that may or may not bring about a situation of healing or otherwise in a circumstantial way; these measures are not a cause-effect-link. Equaling brain death with death is not a necessary requirement to switch off the machines. If it comes to no effect in terms of betterment, the usage of life-support devices would be the decision of those providing medical treatment, —that is, they may be either continued or discontinued. Should the life span (*ajal*) have ended at this point of time, the discontinuation of treatment will cause the person to die.



However, it may also happen that the person starts to breath out of his own efforts.

## Conclusions

Islamic bioethics are defined by the Islamic legal rule, and there is no divorce of (bio)ethics from fiqh. I conclude that, though scientific knowledge may be divided into value-bound and value-free, there is no universal or value free bioethical system, because there is no universal or value free usage and interpretation of science.

Within the described Islamic model of science and medicine, the development of Islamic bioethics would be naturally linked to the development of the sciences and contextualized in an Islamic value system. In the contemporary context and with the absence of the Islamic systems, difficulties or inconsistencies in applying the Islamic bioethical model arise because science is not Islamically contextualized. The same may be said on a more general level of Islamic law.

I have shown how constructed realities related to the life sciences have been imported into the Islamic context, and the dilemmas in terms of inconsistencies evolving from this, on an intellectual, practical and legal level.

The dilemmas of bioethics in the twenty-first century are therefore effects of the decontextualization of science, particularly the life sciences, from the Islamic way of life, and the decontextualization of Islamic law from its necessary framework of application.

Islamic law and Islamic (bio)ethics today, therefore, are moving like a stranger in a strange land.

## Endnotes

1. “In Greek mythology Procrustes (Προχρούστης) or “the stretcher [who hammers out the metal]”, also known as Prokoptas or Damastes (Δαμαστής) “subduer”, was a rogue smith and bandit from Attica who physically attacked people, stretching them, or cutting off their legs so as to make them fit an iron bed’s size. In general, when something is Procrustean different lengths or sizes or properties are fitted to an arbitrary standard.” *Wikipedia*.
2. “The classical juridical heritage, as I have demonstrated in this study, instead of functioning as a template for further moral reflection about critical human conditions and vulnerability in the context of modern healthcare institutions, has simply been retrieved to advance or obstruct legitimate advancements in biomedicine.” Abdalaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (New York: Oxford University Press, 2009), 222.

3. John Bryant, Linda Baggott la Velle, and John Searle, *Introduction to Bioethics* (Hoboken, NJ: John Wiley & Sons, 2005), 9 ff.
4. Ziauddin Sardar, *Explorations in Islamic Science* (London: Mansell, 1989), 5.
5. Pervez Hoodbhoy, *Islam and Science: Religious Orthodoxy and the Battle for Rationality* (London: Zed Books, 1991), passim.
6. Ibn Khaldun, *Al-Muqaddimah*, Book 6, Chapter 4, Fī Aṣnāf al-‘Ulūm (Beirut, Lebanon: Dār Ibn Ḥazm, 2003), 333.
7. Ibid.
8. Muḥammad ‘Alī al-Ḥasan, *Al-‘Alāqāt al-Duwalīyyah fī l-Qur’ān wa l-Sunnah*, (Amman, Jordan: Maktabat al-Nahḍah al-Islamiyyah, 1982), 294.
9. Transmitted by Bukhari, hadith no. 2499, and Muslim, hadith no. 3242, Sakhr Software-Al-Hadith Al-Sharif (www.sakhr.com).
10. H. Tristram Engelhardt, *The Foundations of Bioethics*, 2nd ed. (New York: Oxford University Press, 1996), 218.
11. Ibid, 192 ff.
12. Mohammad Tariqur Rahman, et al, “Therapeutic Interventions: an Islamic Perspective.” *Journal of the Islamic Medical Association of North America*, 40 (2008), 60–68.
13. Robert M. Veatch, *Transplantation Ethics* (Washington, DC: Georgetown University Press, 2000), 30.
14. Atighetchi alludes to the generalized homogenization of the health care system that is without precedent in history. Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* (Dordrecht, The Netherlands: Springer, 2007), 22.
15. Sachedina: *Islamic Biomedical Ethics*, 165.
16. George Annas underscores the influence of the American legal system, as well as the market on bioethics. George Annas, “The Dominance of American Law (and Market Values) over American Bioethics,” in *Meta Medical Ethics, The Philosophical Foundations of Bioethics* (Boston Studies in the Philosophy of Science), ed. Michael Grodin. (Dordrecht, the Netherlands: Kluwer, 1995), 83–91.
17. The intention here is not to belittle the scientific and technical achievements made under the tenets of this system. It is, however, vital to understand the different approaches of both models and value systems and recognize their possible impacts on the sciences and bioethics to avoid remaining in the predominant paradigm and to look for and understand the Islamic approach to find solutions to our current dilemmas.
18. “In addition to its initial focus on ethical issues relevant to clinical care, bioethics concerns the moral, legal, political, and social issues raised by medicine, biomedical research, and life science technologies.” Peter A. Singer and A. M. Viens, eds., *The Cambridge Textbook of Bioethics* (Cambridge, UK: Cambridge University Press, 2008), 1.  
The online version of the *Encyclopaedia Britannica* defines *bioethics* as a “branch of applied ethics that studies the philosophical, social, and legal is-

- sues arising in medicine and the life sciences.” “Bioethics,” [www.britannica.com](http://www.britannica.com).
19. Ibid.
  20. Farhat Moazam, *Bioethics and Organ Transplantation in a Muslim Society: A Study in Culture, Ethnography, and Religion* (Bloomington, IN: Indiana University Press, 2006), 75.
  21. George Annas, “The Dominance of American Law (and Market Values) over American Bioethics,” 88.
  22. Singer and Viens, eds., *Cambridge Textbook of Bioethics*, 1.
  23. Ibid.
  24. Abdul Haq Ansari, “Islamic Ethics: Concept and Prospect,” *American Journal of Islamic Social Sciences* 6, no.1 (1989): 81–91.
  25. Majid Fakhry, *Ethical Theories in Islam* (Leiden, The Netherlands: Brill, 1994).
  26. The recent endeavor for the initiation of ethics as an independent discipline may be taken as an indicator for the loss of the holistic evaluation and application of Islamic thought.
  27. Iṣḥāq b. ‘Alī al-Rahāwī, *Adab al-Ṭabīb*, ed. Dr. Murayzin Sa‘īd ‘Assīrī (Al-Riyadh, Saudi Arabia: Markaz al-Malik Fayṣal lil-buḥūth wa l-dirasāt al-islāmiyyah, 1993), 23.
  28. Fazlur Rahman, *Health and Medicine in the Islamic Tradition: Change and Identity* (New York: Crossroad, 1989) 91 ff.
  29. Iṣḥāq b. ‘Alī al-Tahāwī, *Adab al-Ṭabīb*.
  30. See, for instance, the research papers presented at the Second International Islamic Medical Congress, Kuwait 1982. Aḥmad Raja‘ī al-Jundī, ed., *Abḥāth wa A‘māl al-Mu‘tamar al-‘Ālamī al-Thānī ‘an al-Ṭibb al-Islāmī* (Kuwait, Mu‘assasat al-Kuwait li l-Taḡaddum al-‘Ilmī, 1982).
  31. See also Sachedina, *Islamic Biomedical Ethics*, 17 ff.
  32. “If secular Western bioethics can be described as rights based, with a strong emphasis on individual rights, Islamic bioethics is based on duties and obligations (e.g., to preserve life, seek treatment), although rights (of God, the community, and the individual) do feature in bioethics, as does a call to virtue (ihsan).” Abdallah S. Daar, Tarif Bakdash, and Ahmed B. Khitamy, “Islamic Bioethics,” in *The Cambridge Textbook of Bioethics*, ed. Peter A. Singer and A. M. Viens (Cambridge, UK: Cambridge University Press, 2008) 408–415. “The modern idea of the autonomous self envisions social actors as self-contained matrixes of desires who direct their own interests. In Islamic communitarian ethics autonomy is far from being recognized as one of the major bioethical principles.” Sachedina, *Islamic Biomedical Ethics*, 13.
  33. For reasons of space constraints, the discussion can only be referred to. Please see for details: ‘Ayāḍ b. ‘Abdillāh Shahrānī, *Al-Taḥsīn wa l-Taḡbīh al-‘Aqliyayn wa Atharuhumā fi Masā’il Uṣūl al-Fiqh*, (Al-Riyadh, Saudi Arabia), 350 ff.

34. Contrary to my view is the implication of Mohammed Ali Shomali, "Islamic Bioethics: A General Scheme," *Journal of Medical Ethics and History of Medicine* (Teheran) 1, no. 1 (2008): 1–8. This complex question is in need of more analysis, and Fazlur Rahman presents a critique of the constructed bifurcation in "Law and Ethics in Islam," in *Ethics in Islam*, ed. Richard Hovannisian (Lancaster, CA: Undena Publications, 1984), 3–17.
35. Moazam, *Bioethics and Organ Transplantation in a Muslim Society*, 2. See also Atighetchi, *Islamic Biomedical Ethics*, 15.
36. Ibid.
37. S. Aksoy. and A Elmali, "The Core Concepts of the Four Principles of Bioethics as Found in Islamic Tradition," *Medicine and Law* 21, no. 2 (2002): 211–24.  
Atighetchi alludes to the dissemination of this model in Athighetchi, *Islamic Bioethics*, 21.
38. Tom L. Beauchamp, and James F Childress, *Principles of Biomedical Ethics* (Oxford, Oxford University Press, 2001).
39. There are contemporary *fiqhī* discussions on the permissibility of abortion of a severely handicapped foetus prior to ensoulment, though. The exact time of ensoulment is controversial; some scholars date it at 40 days, others at 120 days after fertilization of the egg cell. However, to my knowledge, there is no view allowing abortion on these grounds in the last trimester of pregnancy. See Athighetchi, *Islamic Bioethics*, 91 ff.
40. Engelhardt, *The Foundations of Bioethics*, 9.
41. "Anthropologists and social scientists have been critical of modern bioethics on the grounds that it is based on Western moral philosophy and Western biomedical perspectives. An additional criticism is that bioethics is located within a theoretical framework that emphasizes the application of scientifically rigorous medical care to people who are sufficiently autonomous to make self-interested decisions about themselves in a context of minimal social connectedness. . . ." S. R. Benatar, "Global and Cross-cultural Issues," in Singer and Viens, eds., *Cambridge Textbook of Bioethics*, 344.
42. R. S. Downie and Jane Macnaughton, *Bioethics and the Humanities: Attitudes and Perceptions* (Oxfordshire, UK: Routledge-Cavendish, 2007).
43. "The failure of the modern philosophical project to discover a canonical content-full morality constitutes the fundamental catastrophe of contemporary secular culture and frames the context of contemporary bioethics." Engelhardt, *The Foundations of Bioethics*, 8
44. James Childress, "Methods in Bioethics," in *Oxford Handbook of Bioethics*. ed. Bonnie Steinbock (Oxford: Oxford University Press, 2007), 15–45.
45. Engelhardt, *The Foundations of Bioethics*, 295.
46. See Daar, Bakdash, and Khitam; "Islamic Bioethics."
47. Moazam: *Bioethics and Organ Transplantation in a Muslim Society*, 222.
48. Moazam, referring to her experience in Pakistan, states: "Their (Muslim doctors) knowledge of Muslim discourse on bioethics and organ transplantation

- thus appeared selective and limited to what supported their daily tasks as nephrologists and transplant surgeons” (*Bioethics and Organ Transplantation in a Muslim Society*, 6).
49. Ibn Khaldun, *Al-Muqaddimah*, ed., Darwīsh al-Juwaydī (Beirut, Lebanon: Al-Maktabah al-‘Aṣriyyah, 1996), 137.  
“Al-‘Āmmatu ‘alā dīn al-malik” (Common people abide by their king’s religion) needs to be understood from this perspective as well, in the sense of people living in and interacting in a framework set by people in power.
  50. See Daar, Bakdash, and Khitamy; “Islamic Bioethics.”
  51. Sachedina’s *Islamic Biomedical Ethics* may be mentioned as an exception to this.
  52. For an English version of the contributions, see Al-Raja’i, Jundi, ed, “Proceedings of the First International Conference on Islamic Medicine: Celebrating the Advent of the Fifteenth Hijri Century,” *Bulletin of Islamic Medicine* (Kuwait) 1, no. 2, Kuwait, (January 1981). The proceedings of the medical conference in Kuwait in 1982 treat medical ethics in several contributions, while somehow the remaining contributions are quite general. The “Islamic Chart of the medical profession”, however, clarifies details on medical ethics (Al-Raja’i, *Al-Ṭibb al-islāmī*, 680) and concludes with the Islamic medical oath. (Al-Raja’i, *Al-Ṭibb al-islāmī*, 700), the Islamized version of the Hippocratic Oath.
  53. Fazlur Rahman, *Health and Medicine in the Islamic Tradition*, 62 ff.; see also Majallat Majma’ al-Fiqh al-Islāmī (MMFI), *Al-Dawrah al-Thāminah li-Mu’tamar Majma’ al-Fiqh al-Islāmī*, Al-‘Adad al-Thāmin (no.8), Al-Juz’ al-Thālith (part 3) (MMFI 3:2), 1994/1415: 113.
  54. On the usage of porcine products in medication and their alternatives, see Muhammad ‘Ali al-Bar, “Al-Tadāwī bi l-Muḥarramāt,” *MMFI* 3 (1994): 305–61.
  55. *Ibid.*
  56. Atighetchi, *Islamic Biomedical Ethics*, 140 ff.; also see *MMFI*: 3:1, 425 ff.; for the committee’s decision, see 515 f.
  57. Christopher Thomas Scott, *Stem Cell Now. A Brief Introduction to the Coming Medical Revolution* (New York: Plume, 2008), 123 ff.
  58. *Ibid.*, 65 ff.
  59. Atighetchi, *Islamic Biomedical Ethics*, 248 ff.
  60. See the diverging views of Shahid Athar and al-Qaradawi on this issue. Dina Rashed, “Cloning is Not Playing God,” [www.islamonline.net](http://www.islamonline.net), [presently not accessible, last accessed in 2001]. Qaradawi, [www.Islam-online.net/fatwa](http://www.Islam-online.net/fatwa) application [presently not accessible; last accessed in 2001] Compare Sachedina’s discussion on the aspect of human dignity in tissues and “frozen embryos.” (Sachedina, *Islamic Biomedical Ethics*, 210 ff.)
  61. Ebrahim Moosa, “Languages of Change in Islamic Law: Redefining Death in Modernity,” in *Perspectives on Islamic Law, Justice and Society*, ed. R. S. Khare (Lanham, MD: Rowan and Littlefield, 1999), 161–97.

62. Ibid.
63. Ibid., 182.
64. Moosa expresses this idea: "Instead of engaging reality and reformulating a contemporary legal theory, most Muslim jurists today still employ the pre-modern legal theory as a framework. The upshot of such legal activity is anachronism and pragmatism: anachronism as a result of changed realities and pragmatism due to a lack of theoretical coherence. Challenged by novel and complex ethical problems, modern legal opinions reflect paradoxes, inconsistencies, and a patchwork of ad hoc reformulations of legal theory without any reasonable coherence." Ibid., 162.
65. "Developments in modern Islamic jurisprudence have reached a critical stage. On the one hand, Muslim nation-states that espouse the application of Islamic law in a modern and bureaucratized state require general norms, rules, and principles to make Islamic law work. If this process continues, the trajectory for the development of a formal rationality in Islamic law may well materialize. For these reasons, intergovernmental institutions like the OIC and its Academy of Jurisprudence are increasingly under pressure to provide laws applicable in a rational and transnational political order." (Ibid., 191) Compare Sachedina, *Islamic Biomedical Ethics*, 224: "Without this epistemic shift in Islamic juridical inquiry, Muslim concerns based on their cultural and religious values will always remain marginal to international organizations like WHO or UNESCO."
66. Sachedina, *Islamic Biomedical Ethics*, 165.
67. Ibid.
68. Ibid.
69. Sam S. Shemie et al., "Brain Death," in *The Cambridge Textbook of Bioethics*, ed. Singer and Viens, 85–91.
70. Ibid., 87.
71. Ibid.
72. Ibid., 86.
73. Nadā Al-Daqar, *Mawt al-Dimāgh bayna l-ṭibb wa l-Islām* (Damascus, Syria: Dār al-Fikr, 1997), 224.
74. Sam S. Shemie et al., "Brain Death," in *The Cambridge Textbook of Bioethics*, ed. Singer and Viens, 86.
75. Ibid., 86.
76. Ibid., 85 ff.
77. Ibid., 86.
78. Some countries, like Singapore, have declared every citizen as a donor after death by default, with the possibility to opt out. ([www.moh.gov.sg/mohcorp/legislations.aspx?id=1672](http://www.moh.gov.sg/mohcorp/legislations.aspx?id=1672), retrieved April 2010.)
79. Linda Wright, et al, "Organ Transplantation," in *The Cambridge Textbook of Bioethics*, 145–52.
80. See Sachedina, *Islamic Biomedical Ethics*, 161 ff. for a summary on Islamic legal views on organ transplantation.

81. Ibrahim b. Murad, *Buḥūth fī Tārīkh al-Ṭibb wa l-Ṣaydalāh ‘inda l-‘Arab*, Dār al-Gharb al-Islāmiyyah, 20 ff.
82. Al-Daqar, *Mawt al-Dimāgh*, 100 ff.
83. *Ṣaḥīḥ Muslim*, Kitāb al-Janā’iz, hadith no.1528. Al-Hadith al-Sharif, Sakhr Software.
84. Al-Daqar, *Mawt al-Dimāgh*, 139 ff.
85. *Ibid.*, 142 ff.
86. Moosa, “Languages of Change in Islamic Law,” 172 ff.; *MMFI* 3, no. 2: 635–660, 661–671.
87. Moosa, “Languages of Change in Islamic Law,” 172; *MMFI* 3, no. 2: 635. Delegating the end of life definition to medical professionals is a recurrent motif; see Sachedina, *Islamic Biomedical Ethics*, 163.
88. Moosa, “Languages of Change in Islamic Law,” 174; *MMFI* 3, no. 2: 645.
89. Moosa, “Languages of Change in Islamic Law,” 175; *MMFI*: 657.
90. Moosa, “Languages of Change in Islamic Law,” 176 ff., *MMFI* 3, no. 2: 670–71.
91. Moosa, “Languages of Change in Islamic Law,” 178, *MMFI*, 3, no. 2: 701.
92. *MMFI* 3, no. 2: 705.
93. *Ibid.*
94. Moosa, “Languages of Change in Islamic Law,” 180; *MMFI* 3, no. 2: 718.
95. *MMFI* 3, no. 2: 710.
96. *MMFI* 3, no.2: 687, Moosa, “Languages of Change in Islamic Law,” 181.
97. *Ibid.*
98. *Ibid.*
99. *MMFI* 3, no. 2: 684, Moosa, “Languages of Change in Islamic Law,” 181.
100. Moosa, “Languages of Change in Islamic Law,” 181 ff; *MMFI* 3, no.2: 684.
101. Abdi Omar Shuriye, *Islamic Ethical Values on Bioengineering Practices: Issues in Genetic Engineering* (Kuala Lumpur, Malaysia: Research Centre, International Islamic University Malaysia, 2006), 58.
102. Daar, Bakdash, and Khitamy; “Islamic Bioethics,” 412.
103. Moosa, “Languages of Change in Islamic Law,” 190 ff.
104. For detailed discussions, please refer to Sachedina, *Islamic Biomedical Ethics*, p.160 ff.; Al-Daqar, *Mawt al-Dimāgh*, passim; Moosa, “Languages of Change in Islamic Law,” passim; *MMFI* 3, no.2.