

## Lifting the veil: a typological survey of the methodological features of Islamic ethical reasoning on biomedical issues

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**Abstract** We survey the meta-ethical tools and institutional processes that traditional Islamic ethicists apply when deliberating on bioethical issues. We present a typology of these methodological elements, giving particular attention to the meta-ethical techniques and devices that traditional Islamic ethicists employ in the absence of decisive or univocal authoritative texts or in the absence of established transmitted cases. In describing how traditional Islamic ethicists work, we demonstrate that these experts possess a variety of discursive tools. We find that the ethical *responsa*—i.e., the products of the application of the tools that we describe—are generally characterized by internal consistency. We also conclude that Islamic ethical reasoning on bioethical issues, while clearly scripture-based, is also characterized by strong consequentialist elements and possesses clear *principles-based* characteristics. The paper contributes to the study of bioethics by familiarizing non-specialists in Islamic ethics with the role, scope, and applicability of key Islamic ethical concepts, such as “aims” (*maqāṣid*), “universals” (*kulliyāt*), “interest” (*maṣlaḥa*), “maxims” (*qawā'id*), “controls” (*dawābit*), “differentiators” (*furūq*), “preponderization” (*tarjīh*), and “extension” (*tafīr*).

**Keywords** Islamic moral reasoning · Muslim bioethics · Islamic law

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## Introduction

Modern western bioethics is based on four major principles that guide the practices and the policies of medical professionals and institutions. These are the principles of autonomy, beneficence, non-maleficence, and justice [1]. It is these four guiding principles that generally guide normative ethical conduct and determine legitimacy in the secular western world. Islam, on the other hand, possesses its own distinct system of methods and principles that are designed to achieve ethical outcomes according to normative Islamic jurisprudence. Just as physicians and administrators rely on the aforementioned four principles to guide their practice and decision-making, so too do Islamic ethicists have at their disposal a unique structure that relies on both the Islamic tradition and reason in determining the best course of action for a given situation.

In this paper, we provide a typological survey of the methodological features of Islamic ethical reasoning as it relates to biomedical issues. It is important to keep in mind that the survey provided may also apply to other fields as well. We will explain the major roles that Islamic ethicists play in the field of bioethics, the basis upon which biomedical and bioethical decisions should be made in accordance with Islamic law, the methodology for making such decisions, and the specific methodological features that equip the Islamic ethicist for such a task.

### The basis for the decision: a typology of the sources of Islamic ethics

What constitutes a theory of ethics as Islamic is that the foundation upon which it is constructed, the process which is undertaken in progressing towards the end, and the means through which its goals are achieved are accomplished utilizing an Islamic methodology from the sources of Islamic ethics. We begin with a discussion of the sources of Islamic ethics, which in essence provide the foundation of all endeavors and operations termed “Islamic.” Islamic sources are classified into two broad categories: sources that are agreed upon by Islamic scholars and sources about which Islamic scholars differ in terms of their usage and relevance (authority) to the issue at hand. The sources that are agreed upon are four: the Qur’an, the Sunnah, scholarly consensus, and precedent-based reasoning. The commonly accepted but not unanimously agreed-upon sources around which scholarly dispute emerges are also four: presumption of continuity, the authority of social norms, consideration of public interests, and correcting unexpected consequences [2].

#### Agreed upon sources

The Qur’an is the first source and is considered immutable. It is the first reference point for the Muslim ethicist in deliberating over biomedical dilemmas. The Qur’an is not a law book but serves as a book of guidance for Muslims and as such, even if a particular issue is not directly mentioned in the Qur’an, Muslim scholars will consult the text first and search for general guidelines and concepts from which to

work from. Several issues related to the termination of life may serve as examples. Consider the ethics of abortion: although abortion is not specifically mentioned in the Qur'an, one comes across a verse which reads, "Take not life which God has made sacred..." (Qur'an 6:151). Does the reference to a "life" include an unborn fetus, and if this is the case, then at what point does life begin? In the case of the life-saving technology, is the removal of life support akin to taking life, and furthermore, is such a life no longer sacred because of the intervention of technology in prolonging life? Such questions regarding the meanings and scope of meanings of the verses in the Qur'an are found in the various commentaries, in which the ethicist-consult (*mufīṭī*) is well versed.

The Sunnah is the second major source for discovering Islamic ethics. The Sunnah is the words, actions, and tacit approval of the Prophet Muhammad. Unlike the Qur'an, the Sunnah is a body of literature that is contained in several books. Such actions, statements, and approvals of the Prophet Muhammad were recorded by his followers and transmitted to subsequent generations of scholars. Also, in contrast to the Qur'an, which is considered to have been transmitted without error in its entirety, each individual Prophetic tradition is rated with respect to its chain of transmission, with various ratings and grades of veracity. The Sunnah encompasses approximately twenty-three years of the mission and life of the Prophet Muhammad and contains extremely valuable insight on not only the decision making of the Prophet, but equally important, the Prophet's interpretation and application of the Qur'an. As is the case with the Qur'an, the Sunnah has voluminous commentaries which range in organization from juridical and ethical topics, much of which provides the foundation for the formulation of biomedical principles for the Muslim ethicist.

Scholarly consensus (*ijmā'*), the third major source, is the unanimous agreement by scholars on an issue occurring after the time of the Prophet Muhammad, for during his lifetime, the Prophet Muhammad was the highest authority figure. After the death of the Prophet Muhammad, his followers would consult with each other over communal and legal matters and they would attempt to reach a collective agreement about the problem. This practice was passed down from one generation of Muslim scholars and ethicists to the next. In this way, the scholars would pass on what was agreed upon by earlier scholars and, in some cases, reexamine the issue in light of the change in time and circumstances. This also allowed for an exchange of new ideas but with the continuity of past scholarship.

The consensus must take place among the scholars living at the time of the issue, not the scholars who arise afterwards. *Ijmā'* is also not restricted to the juridical realm but may also be extended to the ethical, linguistic, and customary arenas of a given society and time period. Thus, if Islamic scholars of a given era or country reach consensus on a particular bioethical question, then this is also considered *ijmā'* on that given question which means that such a consensus would become a precedent according to which future cases may be evaluated.

In precedence-based analogy, the fourth formal source (*uṣūl*) of Islamic law (*qiyās*), the Muslim ethicist-consult reasons an ethical judgment from a pre-existing, original precedent to a contemporary, new case. The Muslim ethicist only resorts to the use of precedence-based analogy in the event that the answer is not found in the

Qur'an or Sunnah, for if either the Qur'an or Sunnah explicitly elucidate an ethical position on an issue, then recourse to any other source is needless. In the case of resorting to the Qur'an and Sunnah, the task at hand involves either transmitting what the text states or interpreting the text. However, with *qiyās*, interpreting the text is not the task at hand. Instead, the Muslim ethicist-consult extends the ethical judgment from a case which the Qur'an or Sunnah or both mention, and identifies the common link between the original and current issue. The process involves extending the ethical value of the original case to the current one. Thus, in *qiyās*, the Muslim ethicist-consult is rationally extending the scope of the text, not the text itself.

### Disputed sources

There are four sources that Muslim scholars, particularly Sunni scholars, dispute about with reference to their authority and legitimacy of use in the face of other sources of evidence. These disputed sources are not primary sources but instead methodological tools which are used to deduce Islamic law. These tools are part of the larger corpus of Islamic methods of jurisprudence (*uṣūl al-fiqh*), which is an interpretative discipline of Islamic law, and used to train *muftīs*. These four sources are all secondary sources, meaning that recourse to these sources may only be sought on issues for which the primary sources provide no normative prescription. These sources are: the presumption of continuity (*istiṣhab*), the existence of social and occupational norms that furnish the basis for conduct (*'urf*), consideration of public interest (*maṣlahah*),<sup>1</sup> and correcting unexpected consequences (*i'tibār al-mā'alāt*). The latter of the four is divided into two types. The first is termed 'blocking the means' (*sadd al-dharā'i'*) and the second is equity (*istihsān*). These two admittedly are not exactly sources but, more precisely, tactics for handling an unexpected outcome when the use of the methodology brings about a deleterious or unethical consequence, thereby exasperating the original situation which required intervention in the first place [3, vol. 4, pp. 194–5]. Accordingly, the Muslim ethicist may resort to reaching a decision in the area of biomedical ethics solely on the grounds of consideration of public interest (*maṣlahah*), and consequently, legitimate a form of treatment on the grounds of social necessity or judge whether a patient in a vegetative state is alive or not on the grounds of presumption of continuity. It should be noted that in such examples, the use of these disputed sources is sanctioned only after examination of the primary, agreed upon sources is inconclusive.

### The decision makers: a typology of Islamic ethical personnel

In confronting biomedical dilemmas, there is no doubt that many minds contribute to the conceptualization and framing of the problem. Among the primary figures are physicians and nurses who are on the medical front lines. Other figures may include

<sup>1</sup> This source also functions as a methodological technique for reaching ethical conclusions. This aspect will be elaborated upon later in the paper.

chaplains, counselors, lawyers, and administrators. The plethora of minds and experiences coming together to tackle thorny issues in the field of bioethics requires orchestration—an arrangement proper to the composition of a given issue. What gives harmony, synchronization, and tune to the cacophony, however, is the active participation of Islamic experts who possess the training and experience in both Islamic ethical theory and real world experience. Experts playing these roles specialize in Islamic religious disciplines and their application to the field of bioethics. We will describe three essential categories of ethicists, as well as the principles and methodology they employ in order to reach conclusions regarding specific biomedical issues. Ethicists playing these three roles function as the conductors who fashion the ensemble of medical actors and other professionals who seek clarification on biomedical queries. These three roles are the ethicist-consult (known as a *mufīī*), the ethicist-professor (or *mudarris*), and the ethicist-author (or *muṣannif*). It is important to mention that although we have outlined a taxonomy of three separate archetypes, in the real world, they may not be mutually exclusive of each other and in many instances one individual may play one or more of these roles at different times or play all three roles simultaneously.

#### The ethicist-consult (*mufīī*)

The first category of essential roles in the biomedical field is the ethicist-consult, termed “*mufīī*.” The *mufīī*, as Hallaq states, is perhaps the most important of the three categories of roles because

... of his [or her] central role in the ... evolution of Islamic law and his [or her] important contribution to its continued flourishing and adaptability throughout the centuries. The *mufīī*, performing a central function, was a private specialist who was legally and morally responsible to the society in which he lived, not to the ruler and his interests. The *mufīī*'s business was to issue a *fatwa*, namely, a legal answer to a question he was asked to address.... Questions addressed to the *mufīī* were raised by members of the community as well as by judges who found some of the cases brought before their courts difficult to decide.... The *mufīī* stated what the law was with regard to a particular factual situation. As he was—because of his erudition—considered to have supreme legal authority, his opinion, though non-binding, nonetheless settled many disputes in the court of law.” [2, p. 9]

Although Hallaq is speaking about the past and contextualizes the *mufīī* in the courtroom, *mufīīs* certainly function today and their role is not restricted to the court arena. As Brockopp states, “a *mufīī* can offer moral guidance on issues too personal or too insignificant for the court...” [4, p. 9]. The *mufīī* is an expert at both the Islamic juridical and ethical dimensions of personal and interpersonal conduct. They receive highly specialized and rigorous training over a period of years in the Islamic canon along with research methodology and Islamic ethical teachings. A *mufīī* may specialize in a given field, such as business and finance law and ethics, or may be competent to research and provide consultation on multiple topics and

numerous subjects. The *mufī* may serve in an institution as a member of the board of trustees, as an advisory member of a council, or as a senior scholar whose writings influence the policy and direction of an institution or government agency. Institutions often have several *mufīs* serving as senior advisors. As it relates to the biomedical realm, the task of the *mufī* is to collaborate with medical professionals and administrators in order to comprehend better the issues at hand and to inform doctors, nurses, and other professionals of the Islamic concerns and details of Islamic ethics of conduct as it relates to biomedical issues.

#### The ethicist-professor (*mudarris*)

The second category of essential roles is the Muslim ethicist-professor known as the *mudarris*. The *mudarris* is a central figure in that he or she teaches and credentials the *mufī* in-training. The *mudarris*, in most cases being a *mufī* himself, spends his time training his apprentices not just in the skill of comprehending Islamic legal and ethical texts, but also in practicing and applying the knowledge he imparts. The *mudarris* first trains his students to implement the ethical principles in their own lives and then ensures their competence in instructing others ethically. At the end of the training, the *mudarris* grants the license in Islamic ethics to the apprentice and certifies his or her understanding and practice of what has been taught. Thus the *mudarris* is the fountainhead from which the *mufī* receives education and is the means for the *mufī*'s ethical maturation. The *mudarris* also must be involved with the contemporary research and discussions that plague the field of bioethics. The task of the *mudarris* is not merely to train students, but also to conduct trainings, workshops, and seminars on Islamic biomedical ethics for medical professionals, administrators, staff, and other interested parties. The *mudarris* is charged with raising awareness of the issues and concerns faced by Muslims in their encounter with bioethics. He or she also functions as an alternative voice in the midst of other voices expounding their own solutions to bioethical problems.

#### The ethicist-author (*muṣannif*)

The final category of essential roles is the ethicist-author, namely, the *muṣannif*. The *muṣannif* is the person who documents the existing legal/ethical problems in the society and writes about them, thereby crafting answers and passing them along to ethicist-professors to teach in the classroom to the *mufī* in-training. The ethicist-author is often on the front lines and has access to the current situation on the ground, and consequently, brings this to the attention of the ethicist-professor. Furthermore, in many instances, the ethicist-author is also an ethicist-consult, or *mufī*, himself and thus possesses the authority to compose a written manual on the subject, which guides and instructs both students and practitioners. The *muṣannif* is charged with engaging bioethical problems from the Islamic lens and problematizing them using terminology and concepts unique to the Islamic tradition. In doing so, the *muṣannif* must also understand and critique the various western theories, such as virtue, deontological, and teleological ethics. The ethicist-author should also

engage in dialogue with the various approaches to ethics, such as care-based ethics, communitarianism, liberal individualism, egalitarianism, and utilitarianism. The *muṣannif*, through his or her writings, should converse with all of these, and thereby create a dialectic whose goal is to seek truth—not to condemn for the sake of being victorious. It is through this activity that the *muṣannif* goes about developing, re-examining, enhancing, and critiquing a theory—or perhaps better stated, theories of Islamic bioethics.

### **Structured decision making: research methodology for the Islamic bioethicist**

When conducting research into biomedical issues, the Muslim ethicist follows four steps [5, p. 11]. The first involves accurately conceptualizing the problem at hand. This involves not only researching the problem in written works but also necessarily entails consulting with area specialists. The second step is to compile the facts from the Islamic sources related to the issue. This is actually a dual-layered activity, entailing examination of the agreed upon sources followed by consulting the previously mentioned disputed sources. Thus, the Muslim ethicist begins by consulting the Qur'an, prophetic narrations (Sunnah), scholarly consensus, and searches for previous precedents from which a possible analogy may be drawn. This also involves utilizing the various commentaries for further exegesis on the material in the Qur'an and Sunnah, the classical legal/ethical (*fiqh*) literature,<sup>2</sup> along with an examination of legal/ethical decisions (*fatāwā*) and recommendations from various *fiqh* councils and independent Muslim scholars and ethicists from various parts of the world. Then the Muslim ethicist may refer to the disputed Islamic sources, consult academic dissertations and books, and gain familiarity with conventional law and policy related to the topic in question. After these two steps, the Muslim ethicist may be able to reach a decision regarding the issue in question.

In the event that a conclusion cannot be reached, the Muslim ethicist resorts to the third step, which is to utilize specific Islamic methodological instruments that are utilized in fashioning and developing Islamic law (*fiqh*). These methodological instruments involve the application of certain concepts and principles which structure the decision making for the ethicist and provide consistency and coherence with the overall purpose of Islamic ethical theory. These instruments are of two broad categories: methodological techniques and methodological devices.

### **Islamic structured decision making: Islamic methodological techniques and devices**

#### Typology of Islamic methodological techniques

Differentiation (*furūq*) is a rational-linguistic technique that is utilized in order to accurately conceptualize the terminology employed when discussing bioethical situations. There are numerous Islamic juridical works, from each school of law,

<sup>2</sup> *Fiqh* is an Arabic term, commonly translated as Islamic jurisprudence or simply Islamic law.

composed specifically on this issue [6, 7]. Among the most prominent authors in this technique is the medieval Maliki jurist Qarafi, who compiled a four volume work listing 548 differentiations in Islamic legal and ethical topics, ranging from the difference between testimony and narration to the difference between praiseworthy envy (*ghibt*) and blameworthy envy (*hasad*) [7].

Proper decision making is directly linked to accurate conceptualization, and such conceptualization is dependent upon not only being able to understand the terms used but also in being able to differentiate between synonyms and terms with closely related meanings. Differentiation must occur both in the area of substantive on-the-ground decisions and policy-making and also in the realm of theoretical principles. The role of differentiation is that it enables the Muslim ethicists to avoid confusion between two or more related things. An example of the technique would be the explanation of the differences between the following concepts: refusal of care and withdrawal of care; allowing to die and killing; hardship and necessity that would bring about an Islamic dispensation and a hardship which would not; human rights and the rights of God, along with parental rights and children's rights; rulings that are conditionally based as opposed to rulings which are causally based; freedoms that are ethically encouraged, as opposed to those that are ethically discouraged; and rights of people and duties which do not have to be performed in certain circumstances. Essentially, this technique entirely involves in-depth understanding of concepts and principles directly impacting the biomedical field. Although a technique which is employed in Islamic ethical reasoning, non-Islamic sources, medical or otherwise, may indeed provide the content contributing to the discourse in *furūq*. The overall objective of differentiation is accurate conceptualization of the concepts and problem at hand. To accomplish this, multiple sources, Islamic and non-Islamic, may be employed in order to facilitate the task of differentiation.

Preponderization (*tarjih*) is giving preference to one source of evidence for an act over another source based upon the apparent authenticity and authority of the evidence preferred. It is only utilized when there are two conflicting positions or two or more legal/ethical opinions which are at odds due to conflicting interpretations of evidences of equal weight. In such a case the Muslim ethicist must employ the rules for selecting and preferring one view over another. An example of preponderization utilized by some ethicists in Turkey is termed the *aḥwaṭ* (more precautionary) position, in which one first selects the view that is most agreeable within the arena of disagreement. If such a stance cannot be made, one then gives preponderance to the majority view. If this is not possible, the ethicist gives preponderance to abstention for fear that promoting action on an ethically indeterminable issue will lead to committing an error, and thus one gives precedence to avoiding harm rather than accruing something the good of which is unknown.

The technique of preponderization was perhaps first examined by the fifth century Muslim jurist Juwayni, a teacher of the famous al-Ghazali. In his treatise devoted solely to the topic of preponderization, Juwayni writes:

the scholars of Islamic juridical methodology express that preponderization is enhancement of clarification one already possesses... preponderance is of two types or categories: preponderance towards [a conclusion or evidence] that

contains certainty and preponderance towards that which contains uncertainty (*zann*). As to the former, it involves arranging proofs with other proofs. We know that the Qur'an is given precedence over single, individual narrations about what the prophet Muhammad said or did; and single, individual narrations about what the prophet Muhammad said or did take precedence over precedence-based reasoning; furthermore, what is present and existent is given precedence over what is extended abstractly by analogy which is a source of hypothetical presumption.... Preponderization is in itself an undertaking that involves presumption by which there is no independent evidence. [8, p. 8]

Juwayni then explains the act of preponderization based upon uncertainty (*zann*): “this occurs when there are two (apparently) contradictory narrations from the prophet Muhammad, one of them providing extra clarity yet not allowing for any distinction to be determined. In such a case, one abandons both contradictory narrations and utilizes precedence-based analogy. One behaves as if no such narrations existed at all” [8, p. 10].

*Maṣlaḥah* in Islamic legal and ethical theory, a third methodological technique, has been translated as “public interests.” However, it is a term that correlates with and contains two western ethical principles known as beneficence and non-maleficence. Public interest was first expounded upon by al-Ghazali in his major work entitled *al-Mustasfa*. He defines it literally as accruing benefit (beneficence) and avoiding harm (non-maleficence). He then explains that this literal definition is not exactly what he specifically means. He says, “what we mean by interests (*maṣlaḥah*) are those interests that conform specifically to the objectives (*maqṣūd*) of Islamic law, which are five: the preservation of religion, life, the intellect, lineage, and property. Anything which safeguards and guarantees those five principles is an interest. And anything that is contrary to realizing these five is a harm and corruption, the removal of which is also an interest” [9, vol. 1, p. 636]. He outlines three levels of human needs which correlate to the five interests. They are known as primary needs (*darūriyat*), secondary needs (*hājjiyāt*), and tertiary needs (*tahsinīyāt*). Thus the preservation of the five interests ranks as a primary need. All ethical decisions must in some way refer to the preservation of at least one of them. The late Tunisian scholar Ibn ‘Ashur described these three categories in his *Maqāṣid al-Shari‘ah al-Islamiyyah*. He described primary needs as things which the community (*al-ummah*)—its individual members and collectively—must obtain in order to maintain civilization, without which the community would fall into chaos and lose its humanity [10, p. 76]. At the secondary needs level are ethical decisions which support the primary needs category, which Ibn ‘Ashur described as being those things which must be fulfilled in order for the community (*al-ummah*) to obtain its interests and to put its affairs in good order, where failure of fulfillment leads to disorder and hardship but without being an existential threat [10, p. 80]. Ibn ‘Ashur described tertiary or virtuous needs as things which perfect and embellish the community, raise the quality of life, and make it desirable [10, p. 81]. Al-Ghazali also acknowledges the existence of interests that are contrary to Islamic legal/ethical tradition and interests towards which Islam takes a neutral stance.

Related to the interests (*maṣlaḥah*) just mentioned, aims (*maqāṣid*) function as a gauge to determine the overall correctness and value of the decision.<sup>3</sup> A full examination of Islamic aims and their place within bioethics is beyond the scope of this paper. However, Islamic scholars identify five aims of Islamic law. These aims, in order of importance, are the preservation of the sanctity of life, the intellect, religion, family and community, and property. All conclusions reached by the Islamic ethicist must conform to the preservation of the sanctity of at least one of these. Many Islamic scholars reduce all five of these aims into one major principle from which all of Islamic ethical and legal doctrines derive: the principle of warding off all harm and when necessary, choosing the less between two evils.

The seventh century Shafi'i jurist Izz al-Din ibn Abdus-Salam dedicated at least two entire works—his opus *Masalih al-Anam fi Qawā'id al-Ahkam* and an abridgement known as *al-Qawā'id al-Sughra*—to this concept, or device. In his work *Mukhtasar al-Fawaid*, he states, “God has sent messengers and revealed books in order to establish interests that are worldly and other-worldly and to ward off worldly and other-worldly harm. Interests are pleasures or their causes and happiness and its causes. Harm is pain and its causes and sorrow (*ghamm*) and its causes. The Lawgiver has not made a distinction between a small amount of interests and harm” [11, pp. 108–9]. Furthermore, he elaborates on the concept of beauty and goodness (*ihsān*) and explains that goodness is owed to humanity and to oneself, and he explains the concept of bad. He explains how benevolence and non-maleficence both should be assessed in reference to one's primary and secondary needs. He provides a taxonomy of the means which bring about benevolence and non-maleficence and asserts a typology of ethical categories by which one may gauge the degree to which one accrues benefits or avoids harm. There are cases where beneficence and non-maleficence may be obligatory, recommended, deemed neutral, discouraged, or morally prohibited. In cases involving the presence of both beneficence and maleficence, he outlines ethical principles that can guide decision making and states how to make a choice.

The aims (*maqāṣid*) overlap with the interests (*maṣlaḥah*), as they both relate to one another and are known by understanding each other. There are also aims which relate to the divine and aims which relates to the person as a moral subject. As a methodological device, the Islamic ethicist always must ensure that the decisions that are being reached comply with the standard of aims, namely, beneficence and non-maleficence as it relates to upholding the preservation of the five interests in the areas of primary and secondary needs. It should be emphasized that experts noted that consideration of the aims of the Islamic ethical system, which are themselves established by authoritative revealed texts, cannot override those texts. So, for example, the consideration of the aim of the preservation of the sanctity of life cannot override the textually established criminal punishments—some of which

<sup>3</sup> There are many differences between *maṣlaḥah* (pl. *maṣaliḥ*) and *maqāṣid*. One is that *maṣaliḥ* tend to be an issue themselves whereas *maqāṣid* are general trends found in a wide range of disparate issues. A second is that *maṣaliḥ* are within the realm of *qiyās* whereas *maqāṣid* are outside it. A third (following the second) is that the *fuqaha*, as a group, tend to employ *maṣaliḥ* when constructing legal arguments, whereas using *maqāṣid* in the same way is much less accepted.

entail capital punishment—established by the Qur'an and which, in turn, established the very existence of the aims themselves.

Maxims (*qawā'id*) are universal propositions under which numerous particular examples of various types may be placed, despite their individual differences in subject matter. In essence, maxims function broadly to guide reasoning about a wide variety of cases. Controls (*dawābiṭ*), on the other hand, are universal propositions under which numerous particular examples of only one type may be placed, all related to the same subject matter. In essence, a control is narrow and restrictive in application. A maxim (*qawā'id*) may be invoked universally for all bioethical topics, whereas a control (*dawābiṭ*) may only be invoked for particular cases or categories within bioethics, such as end of life care, palliative care, and so forth.

Both devices were succinctly elucidated by the medieval jurist and ethicist Taj al-din al-Subki in his *al-Ashbah wa al-Naza'ir*. He states that, “there are rules which are not subject to restriction such as, ‘certainty is not removed by doubt,’ and there are rules which are subject to restriction, such as, ‘every expiation whose cause involved disobedience to God must be carried out immediately’” [12, p. 46].

There are hundreds of legal and ethical maxims and controls. However, currently, we lack specific controls for many contemporary bioethical categories. More work must be done in the area of controls for Islamic bioethics. The most commonly applied maxims are seven: (1) affairs are morally judged by their objectives; (2) avoid harm; (3) social norms and customs are binding; (4) difficulty gives rise to ease; (5) the combination of lawful and unlawful renders something unlawful; (6) adopt the lessor of two harms; (7) interests (*maṣlaḥah*) dictate the conduct towards the one entrusted in the care of another. Thus in all the cases of all seven of these maxims, as with others, topics from various related and non-related subject matters may all be united under each maxim. Therefore, topics related to prayer, fasting, the pilgrimage, marriage, divorce, and contemporary biomedical issues may all coalesce under any of the aforementioned maxims. Controls, however, would only gather many different case scenarios, yet all relating to the same subject matter, such as controls related to individual types of financial transactions, for example, “the compensation for damaging anything permissible to sell is its value.”

What prevents maxims and controls from being utilized as sources in and of themselves, such that a layperson with no knowledge of Islamic legal and ethical rulings could issue judgments? The fact is that each of the maxims contains numerous exceptions, and a novice's unawareness of these exceptions increases the likelihood of erroneous application. As such, the maxims and controls are instruments to guide one's precision and accuracy in reaching a conclusion, not overall determinants which serve as the sole foundation upon which a decision rests. However, there is an exception to be made. The fact is that there are some maxims that play a dual role, serving both as a maxim and as a methodological source. In such instances, the Islamic ethicist-consult may utilize the maxim as the sole source of evidence for deducing an ethical position, for in reality, the reference to the maxim actually draws upon an agreed upon or disputed source. An example of this is the maxim “do not harm.” This maxim is in reality a restatement of the Prophet Muhammad's words: “one should neither harm nor reciprocate harm,” “the evidence is upon the claimant and an oath is upon the one who denies,” and others

such as these. There is another exception for the utilization of maxims as the sole basis for ethical decision making and that is in “circumstances in which there exists no textual basis or precedent, yet a principle which encompasses the issue at hand exists” [12, p. 295].

### Group decision making (*Ijtihād*)

In reality, the aforementioned techniques and devices are all employed as a part of the overall process of *ijtihād*. The existence of various ethical councils throughout the Muslim world is a manifestation of the rise of another important feature of contemporary Islamic ethics: group *ijtihād*. *Ijtihād* is the effort made by the ethicist to discover the ethical value of a case. It is manifested today in the form of the Muslim ethical and juridical councils that exist globally. Among the major councils that review contemporary issues and formulate agreed upon decisions are the Islamic Research Council at al-Azhar University in Cairo (est. 1961), the Islamic Fiqh Council of the Muslim World League in Mecca, Saudi Arabia (est. 1978), the Islamic Fiqh Academy founded by the Organization of the Islamic Conference in Jeddah, Saudi Arabia (est. 1981) and the Islamic Organization for Medical Sciences (IOMS, est. 1984).<sup>4</sup> These councils have researched and discussed a wide range of bioethical issues and continue to examine current bioethical trends. It should be noted that the activities of these councils do not represent a contemporary form of expert consensus (*ijmā'*), since there is heated dispute within and amongst the councils.

### Conclusion

In elaborating a typology for Islamic ethical reasoning specifically as it relates to the bioethical context, we find that there are a number of sources and methodological techniques and devices at the disposal of the Islamic ethicists. The Islamic ethicist, when tackling a bioethical issue, must first be well-grounded in the agreed upon sources of Islam. This means that the primary actors fashioning Islamic ethics in the biomedical realm must be the ethical-consult, the ethical-professor, and the ethical-author. These three roles fashion and update the content of Islamic bioethics. This way, the ethicists who intervene and provide “Islamic” solutions to contemporary bioethical problems will do so authentically, because they will rely solely on the methodology, techniques, and devices provided by the Islamic tradition.

The techniques of differentiation help the scholar to understand and properly conceptualize the terms which frame the problem, and distinguish them from similar terms which may cause confusion and lack of clarity. The technique of keeping the decision within the purview of the interests of Islamic ethics steadies the decision-making act. The technique of preponderance arises in the event of a conflict of values and actions, an inevitability given the complexity of bioethical issues. Perfecting one’s technique involves mastering the use of the instruments of one’s

<sup>4</sup> Similar councils exist in the Indian sub-continent and in South East Asia.

trade and as such the Islamic ethicist is responsible for gaining proficiency in using the devices provided to him. The utility of the aims, principles, and controls aids the ethicist in providing rigor and methodological consistency.

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