

# Medical Ethics in Religious Traditions: A Study of Judaism, Catholicism, and Islam

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### Abstract:

Multiculturalism and its associated plurality of value systems is rapidly becoming the norm in modern medical practice. Given this increasing diversity, greater emphasis upon cultural and ethical competence in physician training is necessary in order to provide culturally sensitive and ethically sound care. Religious values shape ethical codes and are expressed in the cultural norms of subcommunities in a society. Thus, an understanding of religious values that may influence the clinical encounter is important. This paper provides an overview of the ethical constructs of the sacred law traditions of Judaism, Catholicism, and Islam and will outline approaches taken by each faith regarding medical ethics. It is hoped that the insights gained will aid both clinicians and ethicists to better understand these religious paradigms of medical ethics and thereby positively affect patient care through increased tolerance and understanding.

**Key words:** bioethics, Islamic medical ethics, Jewish medical ethics, Catholic medical ethics, Shar'iah, Halacha, Canon Law

Modern medical practice is becoming increasingly multicultural and diverse. Today's clinician encounters patients from a variety of socioeconomic, cultural, and religious backgrounds within the course of a day and must negotiate multiple different barriers in order to provide sensitive care. At times, value and cultural differences between the practitioner and the patient can lead to ethical conflict, and in order to find an amicable solution, each party needs to under-

stand the moral codes and ethical constructs that form each other's opinion. Culture greatly influences healthcare values, beliefs and behavior, and religious beliefs are manifested in the culture of ethnic groups and communities through the setting of mores and ethical values.<sup>1</sup> Furthermore, religion can be conceptualized as a cultural repertoire, or in other words, a "dynamic tool-kit," by which members of a faith adapt and negotiate their identity within multicultural societies.<sup>2</sup> As a result, in order to understand culture and value systems one must also examine the religious basis of cultural expression and ethical codes.

This paper introduces the reader to the ethical foundations of Judaism, Catholicism, and Islam by examining the sacred law structure of each faith. This topic is integral to medical ethics discourse as increasing attention is given to the cross cultural and religious perspectives on current biomedical controversies such as end-of-life care, death criteria, and

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organ transplantation. This paper will serve as a primer for ethicists and clinicians who seek further cultural competency and tolerance in working with patients who adhere to any of these three faiths. The analysis will begin by introducing the reader to each faith tradition and its basic tenets. Then it will proceed to a discussion of each faith's approach to ethics and law and conclude with some comments particular to the clinical realm.

## Judaism

Judaism is one of the great monotheistic traditions and the oldest of the three Abrahamic faiths. Judaism refers to the religious system set forth by Hebrew Scriptures of Ancient Israel (also known in Christianity as the Old Testament), supplemented by the rabbinic formulations and commentaries of the first six centuries of the Common Era (such as the *Mishna*). Together, the Scripture and the rabbinic writings are called "the Torah", the former part transmitted in writing and the latter initially in the oral form and later written down by rabbinic sages.<sup>3</sup>

The term *Torah* is used variably within Judaism. *Torah* comes from a Hebrew root meaning teaching or law, and in strict sense refers to the Five Books of Prophet Mūsā (Moses ﷺ): Genesis, Exodus, Leviticus, Numbers, and Deuteronomy (also known as the Hebrew Bible or the *Pentateuch*). However, Jews also use the term *Torah* to refer to the entire corpus of authoritative Jewish religious teachings.<sup>4</sup> For the purposes of this paper the term *Torah* will have a textual meaning denoting the Hebrew Scripture taken together with the rabbinic writings. The religious texts of Judaism will be explained further below.

There are four basic theological principles that shape the Jewish world view. The first is that God ﷻ created the universe with a plan that is revealed in the Torah. Thus by studying the Torah one can come closer to God ﷻ and understand His plan. The second principle is that the perfection of creation is manifested by the repeating patterns of human affairs and realized in the rule of exact justice. The third holds that the disruption of perfect order is due to mankind's rebellion and sin. From this principle follows the corollary that the only thing that God ﷻ cannot coerce is the human capacity to form intention and thereby lovingly submit to God ﷻ or ungratefully defy Him. The final principle holds that God ﷻ will ultimately restore creation to the perfec-

tion entailed within His plan.<sup>3</sup>

### *The Three Main Movements within Judaism*

Before discussing the sacred texts on Judaism and their principles within ethical deliberation, it is important to note that there are three primary streams within Jewish religious practice marked by their differential interpretation of the religious texts. These are the Orthodox, Conservative, and Reform. The Orthodox movement is the oldest and most diverse form of Judaism. The Modern and Ultra Orthodox as well as Chasidim fall under this category.<sup>5</sup> This group follows a strict and literal interpretation of the *Torah* as they believe it is the exact word of God ﷻ and believe that God's laws are immutable.<sup>6</sup> The Reform Movement views Judaism as an evolving culture and holds the *Torah* to be God's will as written by humans. They believe that Jewish laws and rules aim to guide mankind rather than to govern. However, the moral and ethical code as contained within the *Torah* is believed to be timeless. The other laws are held to have applied only to a specific period in history. Thus it is for the individual to decide which laws are to be observed and how. Conservative Jews' beliefs lie inbetween the Reform and Orthodox, as the group developed during the mid-19<sup>th</sup> century as a response to the Reform movement.<sup>5</sup> To them the Torah is God's will written by divinely inspired humans and represents a covenant between God ﷻ and mankind. This group adheres to some traditional laws but gives rabbis significant latitude in terms of interpretation.<sup>6</sup>

The Jewish faith is estimated to have 13 million adherents in the world, out of which more than 5.5 million reside in the United States.<sup>7</sup> According to the National Jewish Population Survey of 2000-2001, 10 percent of American Jews consider themselves to belong to the Orthodox movement, 26 percent are Conservative, and 35 percent are Reform. The rest classify themselves as "just Jewish" or fall into smaller categories.<sup>8</sup>

### *Jewish Medical Ethics and Law*

Jewish medical ethics as a cohesive field did not exist until modern times. Discussions of medical ethics were found scattered in works of Jewish law, professional manuals, and commentaries on religious texts. However, with advances in medical technology, unique challenges were placed upon the Jewish community to consolidate existing works on

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medical ethics and produce new ones that remained grounded in the religious tradition. Hence, patients and physicians alike can find works that aid them in discovering a Jewish perspective on various medical issues ranging from abortion to organ transplantation. These works are grounded in the rich tradition of Jewish law.

In Judaism, bioethical inquiry is a subset of *Halacha* (Jewish sacred law). As such it draws its principles from sacred texts and their commentaries, and utilizes an elaborate system of *Halachic* reasoning.<sup>9</sup> Among the three streams of Judaism, it is not the system of law (*Halacha*) that differs but rather the degree of observance to it.<sup>10</sup> *Halacha* derives its meaning from the Hebrew root *halach*, which means “going” or the “[correct] way” and is the corpus of Jewish sacred law, custom, and tradition.<sup>11</sup> For Orthodox Jews the *Halacha* represents a comprehensive guide to human life, regulating all aspects of behavior through assigning moral values to actions (imperative, commendable, neutral, odious, and proscribed) as well as determining sacred law. This meaning generally holds for Conservative Jews as well. Even though Jews belonging to the Reform movement, as well as secular Jews, may not accept all traditional Jewish sacred laws; many welcome these views when facing difficult decisions. Thus a rudimentary understanding of *Halachic* reasoning and sources of Jewish law is integral to a discussion of Jewish medical ethics.

There are three sources of Jewish legal and ethical thinking: the Hebrew Scriptures of Ancient Israel, the *Talmud*, and the Responsa literature. The Hebrew Scriptures (Old Testament) is the holy book of Judaism of which the *Pentateuch* holds the status of the highest source of law.<sup>9</sup> Simultaneous to the written text was a memorized oral tradition of interpretations and commentaries composed by rabbinic sages during the first six centuries of the Common Era. This oral commentary originated in divine revelation but added the human element of interpretation and application through the sages. Eventually the tradition was written down around 200 C.E. as the *Mishna*.<sup>3</sup> The *Mishna* was amplified through commentaries that came to be known as the *Gemara* (There are two: a Palestinian and a Babylonian). Together the *Mishna* and *Gemara* are known as the *Talmud*, which is the second source of law, but whose influence on Jewish sacred law and moral codes is even greater than that of the Hebrew Scriptures.<sup>9</sup>

The *Talmud* is not just a book of rulings; it is a transcript of legal debates through the centuries and contains a multiplicity of positions on any particular subject matter. It is especially important in that it sheds light into the process and structure of *Halachic* reasoning, one that involves reasoned analysis, logic, and analogy. The third source of legal authority is the Responsa literature.<sup>12</sup> These works are collections of opinions on contemporary matters as interpreted through the Hebrew Scripture and the *Talmud*. This literature spans centuries of thought and contains opinions of scholars from all over the world. In addition to these three main sources there are codifications of Jewish law, which attempt to summarize the primary teachings and make them more accessible. One of the most notable is the *Mishne Torah*, written by a noted 12<sup>th</sup>-century physician and scholar, Maimonides.<sup>12</sup>

Moving from the sources to law involves *Halachic* reasoning. The *Halacha* is hierarchical and precedent-based, hence the process always involves formal argument. While the subtleties of this process are beyond the scope of this paper, the basic method involves using inductive and deductive logic. In brief, the primary data on a subject matter is extracted from the *Talmud*, likely in the form of rulings in particular cases or arguments about the validity of a ruling. Next, a hypothesis is formulated as to the general principle that explains the collections of rulings. Lastly, through deductive logic, the principle is applied to new circumstances that are not covered explicitly by earlier rulings.<sup>9</sup> This process bears striking resemblance to the formal source of Islamic law known as *qiyās*, which will be explained later in the this paper. Usually this process is undertaken by a rabbi when a questioner asks about “the” Jewish stance on a particular matter. In practice, since there are multiple codifications and manuals of Jewish law, a rabbi might consult a particular manual rather than labor through intensive *Halachic* reasoning. Years of study and application of *Halacha* led to the development of general ethical principles and rules from deriving law, thereby allowing for accessibility.<sup>9,12</sup> Furthermore, *Halachic* reasoning has allowed Jewish law to be dynamic, as it addresses issues on the basis of circumstance and precedent, allowing for enduring applicability. The multiplicity of opinions within *Halacha* has allowed for flexibility as a questioner may choose to follow different authorities over time or with changing circumstances.

### ***Flexibility in the Medical Context***

Jewish ethics and law, as with all moral codes, does allow for deviation from the normal regulations in cases of dire need and emergency. This is due to the three main principles in Jewish medical ethics: human life has infinite value; aging, illness, and death are a natural part of life; and improvement of the patient's quality of life is a constant commitment.<sup>12</sup> Furthermore, based on the verse "Take ye therefore good heed unto yourselves" (Deuteronomy 4:15), the Talmud states that "that which is (physically/medically) dangerous is worse than that which is (ritually) forbidden."<sup>13,14</sup> These principles not only allow for deviation from Jewish law in cases of extreme need, but make discarding of other laws a religious duty and a *mitzvah* (good deed). However, this does not mean that all Jewish laws and customs are suspended for purposes of medical treatment. Rather, the precept is that if situations necessitate forgoing certain rules and regulations for a higher purpose, e.g. that of saving life or improving quality of life or avoiding harm, then one is allowed to do so. As Rosner states "in order to save a life, all Jewish religious laws are automatically suspended; the only exceptions are those prohibiting idolatry, murder, and forbidden sexual relations."<sup>15</sup> While emergency situations are facilitated, clinicians should note that by respecting Jewish custom in other situations, they would strengthen the patient-doctor relationship and make Jewish patients more at ease in the hospital.

### **Catholicism**

Catholicism is a word derived from the Greek *katholikos*, meaning universal or general, and has two meanings in Christendom. The first is general reference to Christians who believe that they are part of an Apostolic Succession linked to the early church of the Christian apostles. The more specific meaning refers to the doctrines of, and adherence to, the One Holy Catholic and Apostolic Church under the Papacy.<sup>16,17</sup> This latter meaning refers to the segment of Christendom commonly called the Catholic Church and the one that will be utilized in this paper. The main distinguishing characteristic of this group within Christianity is their acceptance of, and communion with, the Pope, holding him to be the Vicar of Christ on earth. This communion represents 24 churches and is the largest Christian denomination. As all Christian sects, this holds itself to have access

to the Holy Spirit, which is God's communication of the Divine Self to mankind. This access was made possible due to the "human" form of God ﷺ in Jesus Christ ﷺ. From this follows the doctrine of the trinity, that God ﷺ is at once "the Father in Heaven," "the Son" in the form of Jesus Christ ﷺ, and the Holy Spirit. The basic creed is laid out in the Apostolic Tradition of Hippolytus, which sets out three questions that require affirmation by those who desire to be baptized. The tradition asks:

1. Do you believe in God the Father Almighty?
2. Do you believe in Christ Jesus the Son of God, born by the Holy Spirit of the Virgin Mary, who was crucified under Pontius Pilate and died and rose again on the third day, alive from the dead and ascended into heaven and sat on the right hand of the Father who will come to judge the living and dead?
3. Do you believe in the Holy Spirit and the holy (Catholic) church and the resurrection of the flesh?<sup>3</sup>

### ***The Structure and Organization of the Catholic Church***

As stated previously, the Catholic Church is a federation of 24 churches who place authority within the Pope in matters of faith and morality. The Pope (also known as the Supreme Pontiff or Roman Pontiff) is the head of the largest of the 24 churches, the Latin Church (also known as the Roman Catholic Church) and is a quasi-absolute monarch who rules from an independent state in Rome called Vatican City (also known as the Holy See). He is elected by an elite group of clergymen known as Cardinals, who in turn receive their position through appointment by a Pope. There is also a papal court known as the *Curia*, which governs all matters of the Church. The Pope's authority stems from the belief that he is the lineal successor to St. Peter (one of Jesus's Apostles, ﷺ) and thereby is Jesus's representative on earth. In addition, Popes may exercise the doctrine of Papal Infallibility that allows them to define Catholic teachings in all spheres of life. The other 23 churches are collectively known as the "Eastern Catholic Churches." They have limited autonomy but are responsible to the *Curia* and thus in full communion with the Catholic Church without being Roman Catholic.<sup>17</sup> Within the Catholic Church there exists an organized system of clergy of patriarchs, bishops, priests, and deacons who minister to the needs of the church and its adherents.

There are more than 2 billion Christians in the

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world, making them the largest faith community. Approximately 1.1 billion of these are Catholics.<sup>18</sup> Sixty-five million Catholics live in the United States, comprising almost 24% of the population.<sup>19,20</sup> Even though there exists a wide variance of practice and interpretation among Catholics, their large number makes the religion a dominant cultural force within the world.

### ***Catholic Medical Ethics and Canon Law***

The Catholic faith has a long tradition of bioethical deliberation and Catholic medical ethics comprises a complex set of positions based on scripture, writings of the Catholic Church, papal encyclicals, and reflections by theologians and philosophers.<sup>21</sup> Catholics hold that the Church's teachings have a divine essence as Jesus صلى الله عليه وسلم remains with His Church in spirit; it is his "bride." Furthermore they believe that the Holy Spirit aids the Church in understanding God's Revelation. According to the Second Vatican Council, only the Church through the Pope and its clergy can authentically interpret the Scriptures<sup>a</sup> (Gospels, Apostolic writings, and tradition).<sup>22,23</sup> The council also stated that in matters of faith and morals the clergy and Pope together carry the authority of Christ and should be regarded as infallible. However, while they can interpret the texts, they cannot override the Scripture. Along this line the Second Vatican Council states:

(the Pope and bishops together) is not superior to the word of God, but is its servant...in the supremely wise arrangement of God, sacred tradition, sacred Scripture and the magisterium (the Pope and clergy in the teaching capacity) are so connected and associated that one of them cannot stand without the others...they all contribute effectively to the salvation of souls.<sup>22</sup>

Hence the Church has almost supreme authority in the explanation of God's revelation and in setting the moral code of the Catholic community. Similar to Judaism and Islam, Catholicism also has a developed legal system. At the time of the Papal States, this system was backed by a state authority; however, in modern times the legal authority of the Church remains only in Vatican City and in the hearts of the

Catholic community. The Catholic Church's legal injunctions are known as Canon Law.

Canon Law refers to the body of laws and regulations developed or adopted by Church for the governing of the Catholic organizations and the faith community at large. Canon Law is also known as ecclesiastical law, however the two terms differ in that the former includes legislation borrowed from Roman law as well as those made by the Church, while the latter encompasses only those laws authored by the Church.<sup>24</sup> The sources of Canon law, from where the laws originate and are given their judicial force, are natural divine law<sup>b</sup> and positive divine law (Revelation). Both are contained in the Scriptures and in Tradition. Importantly, the New Testament of Jesus Christ صلى الله عليه وسلم is considered to abrogate most of the laws based in the Old Testament save the Ten Commandments and certain matrimonial regulations.<sup>24</sup>

The author of Canon Law is the Church, which, as described above, holds supreme authority in matters of faith and morals and is charged with setting up a society running according to divine (Canon) law. The bishops and Pope taken together are the active sources of Canon Law as they decree regulations through ecumenical councils. The Pope is the most fruitful source of Canon Law as he holds the power to set laws and abrogate laws made by predecessors or by ecumenical councils.<sup>24</sup>

Lastly, similar to the concept of *'urf* in Islamic jurisprudence, custom is considered a source of law within Catholicism. Custom does not make people their own lawgivers, rather it means that "a practice followed by the greater part of community, and which is reasonable and fulfils the legal requirements for prescription and is observed as obligatory, acquires the force of law by at least the tacit consent of the legislator."<sup>24</sup> Custom is given wide latitude as a legal source as the Code of Canon Law of 1983 in Canon 27 states "Custom is the best interpreter of laws." However, Canons 23-26 qualify this by stating that as a general rule custom that is contrary to divine law cannot acquire force of law. Yet in special circumstances custom that is contrary or apart from Canon Law can acquire force of law when observed by a community "capable at least of receiving law," and has been "lawfully observed for a period of thirty continuous and complete years" or "approved specifically by the competent legislator."<sup>25</sup> The legislator referred to here is a clergy member (a bishop)

given local authority through the Church structure. Custom took on greater importance in the early periods of Christianity when Canon law was not codified and communication within the faith community was difficult. The situation in the modern era is different and assigns custom lesser importance. Nonetheless, custom is the means by which secular law gains tacit approval through the Church and how local practices and interpretation can shape Canon Law. Given the relegation of Canon law to the spiritual, rather than the stately domain, sub-communities within Catholicism may have wide variance in application of Canon law. Within the last century the Catholic Church has undertaken efforts to codify Canon law and to circulate it widely in order to standardize practices within the faith community. The first code of Canon law was published in 1917 and a revised code was produced in 1983. In addition to these codes, collections of Canon Law produced by ecumenical councils and supplemented with Papal decrees are gathered in decretals and the Pope can author Canon law in encyclicals. All of these texts provide windows into Catholic morality and regulations.

### ***Flexibility in the Medical Context***

There are two basic values within Catholic bioethics. The first is that human dignity and life should be maintained as far as possible. This value arises from the belief that humans are created in God's image and are simply stewards of the divine trusts of life and body. Hence the value of human life is beyond human evaluation and authority. The second basic value emphasizes the interconnectedness of each individual and enjoins Catholics to promote a just social order, thereby cautioning against utilitarian estimation.<sup>10,22</sup> From this emphasis on life the Catholic stances against abortion and euthanasia are easily understood. Yet Catholicism does offer flexibility for contextual analysis due to the variance in custom and personal adherence. Further, within the actions of Jesus صلی اللہ علیہ وسلم we find precedent for breaking with old customs and even religious code to tender to the ill.<sup>26</sup> The Golden Rule seems appropriate for the clinical encounter. It maintains that as long as the patient does not feel their rights infringed upon, and one is acting in accordance to the standards of practice, the interaction is justified. As the Bible states "For the whole law is fulfilled in one statement, namely, 'you shall love your neighbor as your-

self (Galatians 5:14).'" <sup>27</sup>

### **Islam**

The Arabic word "Islam" carries meanings of "submission (to God)" and "to enter into the peace (of God)." Thus Islam is more properly defined as an action rather than a fixed entity. The term, however, has come to represent the major monotheistic tradition of faith and practice that holds Muhammad ibn Abdullah صلی اللہ علیہ وسلم of 7<sup>th</sup> century Mecca to be the final prophet from a long lineage of Prophets including Nūh صلی اللہ علیہ وسلم (Noah), Ibrāhīm صلی اللہ علیہ وسلم (Abraham), Mūsā صلی اللہ علیہ وسلم (Moses) and `Īsa صلی اللہ علیہ وسلم (Jesus). Hence "Islam" represents the cumulative tradition spanning 14 centuries, which the Muslims, those who carry out the action of submitting to God حَدَّ, developed and adapted in diverse ways to varied times, places and contexts. Yet, despite the diversity of time and place, the Muslims of the world refer to a singular universe of meaning elaborated and rooted in a certain number of fundamental principles. In succinct form, the root meanings of the word "Islam" imply Muslims believe that by sincerely and totally submitting to God حَدَّ inwardly and in external action, one can find and attain true peace within one's self and manifest it outwardly in this life, and will find everlasting peace in the hereafter. From this follows the five pillars of Islam, which represent the obligatory external manifestations of faith, the multiple branches of a Muslim's internal faith (*Īmān*), and the other major teachings of Islam. One particular tradition, a *Hadith* (sayings, actions, or happenings of the Prophet Muhammad صلی اللہ علیہ وسلم) illustrates these explicitly:

`Abdullah ibn `Umar said: My father, `Umar ibn al-Khaṭṭāb, told me: One day we were sitting in the company of Allah's Apostle (Prophet Muhammad صلی اللہ علیہ وسلم) when there appeared before us a man dressed in pure white clothes, his hair extraordinarily black. There were no signs of travel on him... at last he sat with the Apostle صلی اللہ علیہ وسلم...and said: Muhammad, inform me about *Al-Islām*. The Messenger of Allah صلی اللہ علیہ وسلم said: *Al-Islām* implies that you testify that there is no god but Allah and that Muhammad is the messenger of Allah, and you establish prayer, pay *Zakā* (alms given to specific categories of persons), observe the fast of Ramadan, and perform pilgrimage to the (House) if you are solvent

enough (to bear the expense of) the journey [The Five Pillars of Islam]. He (the inquirer) said: You have told the truth...He (the inquirer) said: Inform me about *Īmān* (faith). He (the Prophet) replied: That you affirm your faith in Allah, in His angels, in His Books, in His Apostles, in the Day of Judgment, and you affirm your faith in the Divine Decree about good and evil [The Six Essentials of Islamic Faith, *Īmān Mufaṣṣil*]. He (the inquirer) said: You have told the truth... He (the inquirer) said: Then tell me about *Iḥsān* (perfection or excellence). He said: It is to worship Allah as though you are seeing Him, and while you see Him not yet truly He sees you. He (the narrator, `Umar ibn al-Khaṭṭāb) said: Then he (the inquirer) went on his way but I stayed with [the Prophet] ﷺ for a long while. He then, said to me: Umar, do you know who this inquirer was? I replied: Allah and His Apostle know best. [The Prophet] remarked: He was *Jibrīl* (the angel). He came to you in order to instruct you in matters of religion.<sup>28</sup>

This tradition outlines the essential tenets of Muslim faith and practice. Islam is the second largest religion in the world with more than 1.25 billion adherents. The current Muslim population within the United States numbers between 6 and 7 million and is one of the fastest growing religious traditions in America.<sup>2,29</sup>

### **Islamic Medical Ethics and Law**

Islamic medical ethics as a cohesive discipline is still in its formative stages. That is not to say that material on medical ethics is scarce; rather, it is scattered throughout various different Islamic sciences such as *Fiqh* (jurisprudential understanding), *Tafsir* (Qur'anic exegesis), and *Kalam* (scholastic theology).<sup>30</sup> It is only in modern times that a consolidation of these materials has taken place to allow for deeper study. Within Islamic medical ethics literature there are two dominant genres. The first is *Adab* literature, which is related to character ethics, both in the professional and personal realms. The other genre is more concerned with Islamic ethics as rooted in Islamic sacred law or *Shari`a*. These writings aim at expounding the moral values attached and the permissibility of using certain medical technologies and interventions based on Islamic legal and

ethical principles. Indeed, as is the case with the Jewish *Halacha*, the *Shari`a* encompasses all aspects of life and thus its scholars use *Shari`a*-based principles and formal techniques to find Islamic perspectives on all spheres of human activity from modes of banking to government. For the purposes of this paper the latter genre of Islamic medical ethics will be analyzed.

The Arabic term *Shari`a* literally means “the way to the water” and has two dimensions.<sup>30</sup> The first is the corpus of legal rulings, precedents and statutes (*fiqh*), and the second is the moral code of Islam. Just as the root meaning of the *Shari`a* points one to water, the source of all life, in Islamic teaching the *Shari`a* is the source of Muslim existence as it represents “the correct path of action as determined by God.” A popular representation of *Shari`a* is that of “a highway along which to travel in order to lead the moral life.”<sup>31</sup>

While some countries recognize Islam as the religion of the state, no country considers the *Shari`a* as the only source of law, rather only portions of a specific country's legislation, e.g. the penal code, may be from the *Shari`a*. The absence of a state authority enforcing the *Shari`a* in totality has relegated the *Shari`a* to a more theoretical sphere better thought of as “the collective ethical subconscious” of the Muslim community.<sup>32</sup> Starting with this definition, one can easily see how any discussion of Islamic medical ethics must include discussion of the *Shari`a*. Muslim patients may refer to the *Shari`a* when discussing treatment options or they may seek assistance from an expert in Islamic law when having to make a difficult decision during the course of care. Similarly, ethicists in the Muslim world may refer to the *Shari`a* when debating issues involving abortion, end-of-life care, and other biomedical issues.

Integral to a discussion of *Shari`a* is an understanding of the meaning of the term *Fiqh*. *Fiqh* often translated as jurisprudence or law, has a much broader meaning. *Fiqh* spans both theology and jurisprudence and the “objects of *fiqh*-understanding are either religion or sources of law and statutes”.<sup>33</sup> In other words, *fiqh* can represent the formulated legal ruling on a subject matter and/or the moral value assigned to a particular action. The theoretical corpus of all *fiqh*-laws is the *Shari`a*.

Before moving to the sources of Islamic *fiqh*-law, two broad tendencies that shape Islamic ethical reflection should be stated. The first is a tendency

toward theological voluntarism; that God ﷻ alone defines the standard of right and wrong. The corollary to this belief is “that good deeds are good only because God ﷻ commands them, and evil is evil because God ﷻ forbids it.”<sup>34</sup> This assumption would lead to a heavy dependence upon revelation and seemingly no role for human deduction. However, the second tendency counter balances the first. It holds that God’s commands are purposeful and as such His will extends to all areas of life and every field of action. Since God’s will is purposeful, “human reason in dependence upon revelation can discern rules and apply them.”<sup>34</sup> These two tendencies or assumptions gave birth to the richness of Islamic legal thought and ethical reflection and influenced the development of *uṣūl al-fiqh*. *Uṣūl al-fiqh* is the science that identifies the sources of *fiqh*-law and also lays down rules for weighing these sources against each other in cases of conflict.

#### **Sources of Islamic Sacred Law: Usul ul-Fiqh**

The sources of Islamic *fiqh*-law can be divided into material sources and formal sources. The former include the Qur’an and the *Sunna*. The Qur’an is the Muslim holy book and held to be the literal word of God ﷻ transmitted through the angel Jibrīl to the Prophet Muhammad ﷺ over a period of 23 years. The Qur’an contains 6326 verses, of which some 500 are directly concerned with legal rulings, most of which pertain to worship and religious duties. The Qur’an, as Burton states, “is a source of knowledge in the way that the entire corpus of legal precedent is for the common law tradition: not as much as an index of possible rulings (rather) as a quarry in which the astute inquirer can hope to find the building blocks for a morally valid, and therefore, true system of ethics.”<sup>35</sup> The *Sunnah* is the second source of binding law and encompasses collections of sayings, actions and silent affirmations of the Prophet Muhammad ﷺ. For Muslims, the Prophet Muhammad ﷺ represents the ideal model of human behavior and multiple Qur’anic injunctions order believers to emulate and obey him. However, the *Sunna*, is not just a mere catalog of moral behavior, it is a collection of data that requires assessment and application. Since the Prophet Muhammad ﷺ represents a life lived totally in accord with the moral/legal code of Islam, he is the normative case<sup>c</sup> as well as the explainer of the code.<sup>33</sup> The *Sunna* has been compiled in book form in collections of *Hadith*.

The formal sources are the product of juristic endeavors to find the *fiqh*-law. These are *ijmā’* and *qiyās*. *Ijmā’* refers to consensus agreement about the moral and/or legal assessment of an act or practice. Its scope can include how a particular *hadith* or Qur’anic injunction should be applied and interpreted, as well a record of agreement on an issue that may not be explicitly covered by the two material sources. Thus, *ijmā’* can be seen as a material source itself. As for the question the consensus of whom, differences exist within the different schools of law.<sup>d</sup> The dominant opinion is that “*ijmā’* is the agreement of Muslim learned persons at a time, after the death of the Prophet ﷺ on a ‘legal’ matter.”<sup>33,36,37</sup>

*Qiyās* literally means “to compare or to measure”, and in practice is juristic reasoning by analogy.<sup>38</sup> In application it stands for applying a certain ruling from an established case if the predisposing conditions, which led to the ruling in the first case, apply to a second case. Thus the process of applying *qiyās* through inductive and deductive reasoning is strikingly similar to *halachic* reasoning in Judaism. These four sources in descending order of importance, albeit with slight modifications in scope, the Qur’an, *Sunna*, *Ijmā’*, and *Qiyās*, are agreed upon by the four major schools of law in Sunni Islam.<sup>38</sup> The four schools Hanafi, Shāfi’i, Māliki, and Ḥanbali are named after famed jurists who developed systems for weighing evidences in the *Shari’ah* and promulgated their views.

Aside from these four main sources of law there exist other formal sources accorded differential importance within the schools (although they are secondary to the four mentioned above). These are *istiḥsān*, which is the principle where equitable considerations may override strict *qiyās*; *maslaḥa*, which is the consideration of public welfare or interest; *urf*, which is customary practice; and *istiḥāb*, which is the presumption in the laws of evidence that a given state of affairs known to be true in the past still continues to exist until the contrary is proved. It is also important to note that the Shiite sects of Islam, which represent between 10-15% of the Muslim population, have a similar system of *uṣūl al-fiqh*. For example, the Ja’fari school of law of Shiite Islam also maintains the Qur’an, *Sunna*, *Ijmā’* as sources of law but adds *‘aql*, or human intellect, as the fourth source instead of *qiyās*.<sup>38</sup>

While this system may seem complicated and labor-intensive, in practice the sources are seen as

living harmoniously with one another and thus a jurist may consult an important handbook of law as readily as the *hadith* literature in his quest to find the moral value and/or ruling on an action. The entire process of determining the *fiqh*-law is called '*ijtihad*, from the root word *j-h-d* meaning to endeavor or to strive. The result of this process can yield three types of rulings: judicial fact or law (*ḥukm al-qāḍī*), a determination of validity (*ḥukm waḍ'ī*), and a determination of moral status (*ḥukm taklīfī*).<sup>33</sup> This last category is what makes the *Shari'a* both a moral and legal code. The moral status of an action is divided into five different categories with obligations in this world and a consequence (reward or punishment) in the hereafter: obligatory actions, which are rewarded if performed and punished if neglected; recommended actions, which are rewarded when performed but have no consequence if neglected; permissible actions with no reward or punishment; disliked actions that are of no consequence when committed but rewarded if avoided; and prohibited actions, which are punished if performed and rewarded if avoided.

In the modern era, *fatāwā* (sing. *fatwā*) serves as a window into the Islamic ethical code and utilizes the machinations of *uṣūl al-fiqh*. A *fatwā* is a legal opinion rendered by an expert in response to a question concerning some specific matter. It has two essential aspects: first it is founded on the juridical sources and principles of the *Shari'a*; second it is formulated with consideration of the context that motivated the questioner to seek the opinion.<sup>39</sup> The expert who renders this opinion is classically the *Mufti*.<sup>e</sup> A *Mufti* is someone who is specialized in the *Shari'a* and *fiqh* sciences and has been conferred this title through study and examination. The *fatwā*, or legal opinion of the *Mufti*, functions as a quasi-religious document upon which the questioner can base action. In the absence of modern case law from a fully functional Islamic juridical system, the *fatāwā* are given increased importance within Muslim communities and are a widely used source for comparative legal studies. Furthermore, since there can be multiple and different *fatāwā* on a single subject, the researcher can pursue several different angles to a subject and may even be able to perform a historical survey on the matter.<sup>40</sup> For the one who is seeking the *fatwā*, the multiplicity of opinions allows one to explore and make a personal choice as to which *fatwā* has the stronger argument and sets the seeker's

heart at ease. Today, one can find numerous collections of *fatāwā* in books, newspapers, and even on the Internet. These collections may serve as compendiums of a specific scholar's opinions, pertain to a specific subject, or be organized according to a specific time period or place.

### ***Flexibility in the Medical Context***

Islamic ethics and law allows for deviation from the normal regulations in cases of dire need and emergency. Indeed, there exists a well-known principle of the *Shari'a*, "*al-darūrāt tubīḥ al-maḥẓūrāt*" that necessity makes for allowing the prohibited.<sup>38,40</sup> It should be noted that a hierarchy of needs has been defined within Islamic law, with *darūrāt*, referred to here are things without which life would not be possible. Lesser needs are termed as conveniences (*ḥājiyyāt*), refinements (*taḥsīniyyāt*), or perfections (*takmīliyyāt*).<sup>39</sup> Permission to forgo Islamic law exists for the extraordinary situation and lasts as long as the necessity is present. When other options avail themselves they must be taken. Hence emergency situations and circumstances where there is no available recourse are facilitated. However, even when operating under this premise proper, communication between the health-care provider and the patient is essential in order to build trust and provide comfort.

### **Summary and Final Remarks**

A certain level of cultural awareness is necessary to deliver culturally sensitive medical care. Religious codes manifest themselves within the culture through informing the community's value system. Since societies are becoming increasingly multicultural, a plurality of value systems are brought together in the medical arena. Cultural and religious differences therefore can lead to bioethical conflicts in the clinical realm and in order to bridge these differences each party must understand the ethical constructs that inform each other's opinions. Thus, not only is cultural competence necessary, but competence in dealing with divergent ethical codes is necessary as well. The field of medical ethics is a growing one and increasing importance has been placed upon it in medical school curricula and physician training programs. It is hoped that within these educational programs diverse systems of, and approaches to, medical ethics are presented in order to facilitate greater competence in the clinical realm.

It is in this light that the traditional religious approaches of Judaism, Catholicism, and Islam have been presented.

The approach of each faith to medical ethics is strikingly similar. They all relate ethics to sacred law utilizing the religious texts to provide the general principles and moral code that is to be observed. Each faith then uses the machinations of the sacred law to further extrapolate the principles to the modern context, creating rules and codes governing the etiquette of the clinical encounter and the permissible and impermissible therapeutics. While the details of the medical ethics within each faith are different, there are large areas of overlap within the rulings and even within process of law-making. Illustrating this is the fact that the formal source of Islamic law known as *qiyās* (analogy) in use is akin to the Jewish process of *Halachic* reasoning. Similarly, the importance of custom (*urf*) as a source of law in Islam is echoed in Catholic Canon law's giving custom limited authority to create law.

By presenting the religious approaches to medical ethics this paper aims to further cultural competence providing the clinician with the tools to understand the values systems of patients adhering to each of these faiths. Thereby, this paper lays the foundation for moving beyond stereotyped and generic clinical interaction to one marked by experiential learning and mutual respect. Furthermore, this paper serves as a primer for the ethicist to compare the divergent approaches to medical ethics. It is encouraging that there have already been multiple papers examining the relationship between the "Four Principles" of secular medical ethics as described by Beauchamp and Childress and specific religious approaches to medical ethics and that there are an increasing number of works comparing different religious approaches themselves.<sup>10,32,41,42</sup> Such work is key in creating greater tolerance and respect within ethical discourse.

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### Author's Notes

a. Catholicism's Holy Book is the Bible and this is the "Scripture" referred to here. It is important to note that Catholicism also holds that along side from this divinely inspired book there is an oral tradition, called Tradition, handed down to the to the Apostles either orally by Jesus Christ or by the inspiration of the Holy Ghost and transmitted by the Apostles to the Church. The Tradition therefore also is a source of law as both natural and positive divine law are contained within it. This belief is part of the difference between Catholics and Protestants. Also of note is that there are differences between the number of books within each division's Bible. The Catholics include within the Old Testament the *Apocrypha*, while Protestants reject these.

b. Natural divine law is the rule of conduct that is prescribed to mankind by the Creator manifested through the medium of reason. Hence it encompasses innate qualities and instincts endowed by the Creator, which allows one to differentiate between good and evil actions. Thus it is not taught per se rather it is innately felt. It is distinguished from divine positive law in that divine positive law does not arise from the nature of things but rather from the arbitrary will of God ﷻ and this law is known through revelation.<sup>23</sup>

c. In Islamic theology all of the Prophets are consid-

ered protected by God ﷻ from sin. They were fully human and subject to the same tendencies as all other humans but they lived their life in total accordance to the commandments of God ﷻ. Their "errors" in judgement are considered to be divinely decreed for the purposes of teaching the rest of mankind. Thus they serve as examples of perfect human conduct. There is no concept of original sin in Islam.

d. *Ijma* (consensus agreement) is considered a source of Islamic law by the four major Sunni schools of law- Ḥanafī, Shāfi`i, Mālikī and Ḥanbalī. The Ḥanafī and Ḥanbalī pose no restrictions on consensus in terms of time and place. The Mālikīs prefer to restrict consensus to the agreement of the immediate companions of the Prophet ﷺ and generation immediately following them, while the Shāfi`i require the consensus of the entire Muslim community.

e. The title of Mufti is conferred to graduates of traditional Islamic law schools or theological seminaries within various parts of the Islamic world, e.g. Pakistan. However, within the Arab world this title is variably used and instead the less standardized honorary title of Shaykh maybe used. This leads to some difficulty when trying to assess the qualifications of the person who issues the *fatwā*. In certain countries the state may endorse specific scholars' opinions, e.g. Shaykh ibn Baz in Saudi Arabia. In other countries prominent graduates of certain universities in a government's employ may be endorsed, i.e. Shaykh Muhammad Sayyid Tantawi of Al-Azhar University in Egypt.