Legal Reasoning of Muslim Jurists

- Explore a framework that recognizes the expertise of each discipline of knowledge and at the same time brings their deliverables to bear on providing answers that are grounded in Divine guidance to medical problems in a Muslim's life.
- We will study how Muslim jurists treated the legal obligation of a Muslim to seek out medical treatment in general.
- Muslim jurists' discourse on the obligation to seek medical treatment reveal a tension created by the virtue of trust in God, prophetic commands which exhort seeking out medical treatment, and the degree of certainty regarding the effectiveness of medical treatment.
- This tension generated a variety of positions on this question. Furthermore, the role of the opinion of a physician or a medical expert in determining what course a Muslim patient should adopt is identified as an important factor in the reasoning process.
Roadmap for this afternoon

- The Islamic Tradition.
- The four schools on the question of seeking medical treatment.
- Juristic reasoning takhrīj al-manāt, tanqīh al-manāt, and tahqīq al-manāt.
- Knowledge and certainty.
- The place of a jurist and the place of medical experts.

The Islamic Tradition

- In answering these questions, we will be examining the legal, theological, and ethical school of Sunni Muslims.
- This consists of:
  - Legal schools: Hanafi, Maliki, Shafi'i, and Hanbali.
  - Theological schools: Ash'ari, Maturidi, Athari.
- Of total 1.57 billion Muslims, 10-13% are Shia Muslims and 87-90% are Sunni Muslims.
The Juristic Discourse

- The stages of the juristic reasoning process consists of three stages:
  - *tahawīj al-manāt* - “isolating the legal basis governing a ruling in instances where such a rational was not clearly indicated.” (Zaman) “The mujtahid determining the underlying cause.” (Kashmiri)
  - *tathāqīf al-manāt* - “determining the specific rationale governing a particular ruling and isolating it from other circumstantial factors with no bearing on the ruling.” (Zaman) “Refining the underlying cause.” (Nyazee)
  - *tahāqīq al-manāt* - “The verification of the attributes of an established case in a new case offered for examination. This process does not need a jurist. For example, a beverage may be examined to see if it is an intoxicant. This may need a chemist or pharmacist not a jurist.” (Nyazee) “[This] is not restricted to the mujtahid.” (Kashmiri)

- This is a Shafi’i framework. Hanafi’s do use the same process but with different terminology.

The Juristic Discourse

- Abu Hurayra (Allah be pleased with him) said, “[Once] when we were with the Prophet (Allah bless him and grant him peace), all of the sudden a man came to him and said, “O Messenger of Allah, I have committed something that has ruined me!” [The Prophet] said, “What did you do?” He said, “I had intercourse with my wife while I was fasting.”

The Messenger of Allah (Allah bless him and grant him peace) asked, “Do you have a slave that you can free?” He said, “No.” “Are you able to fast two consecutive months?” “He said, “No.” “Are you capable of feeding sixty poor people?” He said, “No.” The man stayed with the Prophet for a while when the Prophet later came with a basket of dates and said, “Where is the person with the question?” The man said, “Here I am.” “Take this and give in charity.” The man said, “Should I give it to one who is poorer than I?” The Prophet then smiled until his molar teeth showed.” (Bukhari)
The Juristic Discourse

- Imam Abu Hanifah – The legal basis of the ruling is the breaking of the fast during Ramadan. So this expiation extends to breaking a fast due to any reason (eating, drinking, sexual intercourse).

- Imam Shafi’i – The legal basis of the ruling is sexual intercourse during the day. This expiation applies only to breaking a fast due to sexual intercourse.

The Juristic Discourse

- The Prophet said, “They have never allowed themselves to be treated by cauterization, nor divine the future by [observing] birds’ flight, nor have resorted to [the magician’s] charms. Rather, they have put their trust in God alone.”

- He also said, “Seek medical treatment. For, except for senility (haram), God has not created an illness except that He also created its cure”
Tawakkul

- *Tawakkul* or trust and reliance on God is defined as one having "confidence in God's providence and renouncing what people possess."
- Does taking means entail a violation of placing one's trust in God?
- Many ascetics have understood trust to entail that a person must not take any means to alter a condition they may be in because it is acting against the decree of God.
- Medical treatment (*al-tadāwi*), falling under the category of means and has created a tension between taking medical treatment and the virtue of relying on God.
- While all scholars agree that seeking medical treatment is a permissible act, different positions were taken on the issue of what is the preferred course of action a Muslim should adopt in light of the effectiveness of the treatment and the strength of person's trust in God.

The Juristic Discourse - Hanafi

- The position of the Hanafi school regarding whether someone who feels ill is morally obligated to seek medical treatment is that seeking medical treatment is not obligatory even if this non-action results in death.
- The rationale: “because there is no certainty that this treatment will cure him and it is possible that he will become well without treatment.”
- “If one knows by personal experience that a certain treatment will cure his sickness, then for this person the treatment becomes obligatory.”
The Juristic Discourse - Shafi‘i

- The default ruling in the Shafi‘i school on seeking medical treatment is that it is a recommended act and preferred over entrusting one’s affairs to God based on Prophet seeking medical treatment.
- Why is it not obligatory?
  - Jurists factored in the level of certainty that exists regarding the effectiveness of a particular treatment when determining if seeking medical treatment is obligatory or recommended.
  - Shafi‘i jurists state that if a physician informs one there is a high probability that using water will result in a person getting ill (al-ghabib husul al-maraq), then it will be forbidden for one to use water for ablution and one would have to perform dry ablution instead.

The Juristic Discourse - Mālikī

- The Mālikī school holds that seeking out medical treatment is permissible but it can, at times, also be obligatory.
- The treatment’s benefit should be known through the science of medicine.
- Mālikīs classify medical treatments into those whose effectiveness or benefit (al-naf) medical experts are certain of, those whose effectiveness are probable (maznūn), and those treatments whose effectiveness has not been established at all or has little evidence in support of (mawhūm).
The Juristic Discourse - Hanbali

- Ibn Muflih (d. 1362) states that, “seeking medical treatment is permissible, however not utilizing it is more meritorious. [Imam Ahmad] unequivocally stated this. In al-Mawardi’s transmission, [Imam Ahmad] said, “Treatment is a dispensation. Not seeking out treatment is a degree higher than it.”

- Hanbali jurists give preference to the reward for a person to patiently bear the harm caused by the illness and interpret the imperative of the Prophet to seek out medical treatment not as an obligation but as general advice (irshad) with no legal obligation being implied.

The Juristic Discourse

- These two statements created a tension that we observe in the deliberations of Sunni jurists.

Moral Status of Seeking Medical Treatment

- The Virtue of Trust (Ethics)
- Law
- Medical Science
<table>
<thead>
<tr>
<th>Legal Ruling</th>
<th>Hanafi</th>
<th>Shafi'i</th>
<th>Maliki</th>
<th>Hanbali</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Violate Trust</td>
<td>No</td>
<td>No, seeking treatment is an act of trust. God created the sickness and its cure.</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Details</th>
<th>Hanafi</th>
<th>Shafi'i</th>
<th>Maliki</th>
<th>Hanbali</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Obligation if effectiveness of treatment is certain.</td>
<td>Obligation if effectiveness of treatment is certain.</td>
<td>Obligation if effectiveness of treatment is certain.</td>
<td>Always preferable to place trust in God.</td>
</tr>
</tbody>
</table>

Legal Classification of Acts

<table>
<thead>
<tr>
<th>Category</th>
<th>Supporting evidence</th>
<th>Level of obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fard</td>
<td>Conclusive textual or contextual evidence from Qur'an, Sunnah, and/or hadith</td>
<td>1. To perform the action</td>
</tr>
<tr>
<td></td>
<td>that the action is obligatory</td>
<td>2. To believe that the action is obligatory</td>
</tr>
<tr>
<td>Harām</td>
<td>Conclusive textual or contextual evidence from Qur'an, Sunnah, and/or hadith</td>
<td>1. To avoid the action</td>
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<td></td>
<td>that the action is forbidden</td>
<td>2. To believe that the action is forbidden</td>
</tr>
<tr>
<td>Wājib</td>
<td>Conclusive textual or contextual evidence, but not both, from Qur'an, Sunnah, and/or</td>
<td>1. To perform action</td>
</tr>
<tr>
<td></td>
<td>hadith that the action is permissible in the hereafter</td>
<td>2. Not required to believe that the action is</td>
</tr>
<tr>
<td></td>
<td></td>
<td>obligatory</td>
</tr>
<tr>
<td>Madāhib Tahāfī</td>
<td>Conclusive textual or contextual evidence, but not both, from Qur'an, Sunnah, and/or</td>
<td>1. To avoid action</td>
</tr>
<tr>
<td></td>
<td>hadith that the action is permissible in the hereafter</td>
<td>2. Not required to believe that the action is</td>
</tr>
<tr>
<td></td>
<td></td>
<td>forbidden</td>
</tr>
<tr>
<td>Marsāib</td>
<td>Textual evidence from the Sunnah suggests that the action is rewarded</td>
<td>1. Encouraged to perform action</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Not required to believe that the action is</td>
</tr>
<tr>
<td></td>
<td></td>
<td>obligatory</td>
</tr>
<tr>
<td>Madāhib Tanshī</td>
<td>Textual evidence from the Sunnah suggests that the action is reprehensible</td>
<td>1. Discouraged to perform action</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Not required to believe that the action is</td>
</tr>
<tr>
<td></td>
<td></td>
<td>forbidden</td>
</tr>
<tr>
<td>Muddāh</td>
<td>Inconclusive evidence that the action is rewarded or punished</td>
<td>1. No obligation to perform or avoid action</td>
</tr>
</tbody>
</table>

* This classification system is based on a Hanafi-Malākī construct.
Certainties

• First Principles (al-`awwalīyyat)
• Internal sensations (mushahadāt)
• Empirical observations (mujarrabāt)
• Reports transmitted through multiple people (mutawatārat)
• Intuitive observations (hadasiyyāt)
• Observations made by the external senses (māhsusāt)

The Objectives of the Sharīʿah

• Sharīʿah (Sacred Law) - “the way or path to well-being or goodness, the life source for well-being and thriving existence, the fountain or source of nourishment, and the natural and innate ways and order created by God.”

• Five higher goods (maqāsid al-sharīʿah) which the Sharīʿah aims to secure and preserve: religion (dīn), life (nafs), intellect (ʿaql), lineage (nasal), and wealth (māl). These five goods constitute human well-being (maṣāliḥ al-ʿibād).
Conception of Harm (al-ḍarar)

- Lexically the term *maslahah* is a noun whose root verb denotes a thing being proper, sound, upright, good, just, and thriving, whereas the term *mafsadah* denotes its opposite, a thing being corrupt, bad, wrong, unrighteous, impaired, evil, waste and ruin.
- “The Sharī‘ah in its entirety is comprised of securing all types of goods (maṣālīḥ) ... and warding off all types of detriments (maḥṣūṣ).”
- In this sense, the term *maslahah* is employed by Islamic legal theorists to refer to the higher goods of religion (dīn), life (nafs), intellect (‘aql), lineage (nasal), and wealth (māl).
- While *mafsada* refers anything that is detrimental to achieving these goods.

Conception of Harm (al-ḍarar)

- In Ibn ‘Abd al-Salām’s scheme of *maṣālīḥ* and *maḥṣūṣ*, each is further classified into those *maṣālīḥ* and *maḥṣūṣ* that relate to human existence in this world as well as the hereafter (al-akhirah), the world after death.
- The goods of this world do not imply a secular conception of the human existence where God’s ordinances do not enter into. Rather, Sharī‘ah ordinances relate to the worldly and the hereafter dimensions of human existence.
- Worldly *maṣālīḥ* and *maḥṣūṣ* are discernible to reason,
- The *maṣālīḥ* and *maḥṣūṣ* that relate to the hereafter are known only through the prophets of God.
- Harm has been defined as “inflicting something detrimental (al-mafsada) to others” and “harm is [that which results in] detriment (al-mafsada).”
Epistemological Considerations

- **Knowledge** (*al-ilm*), in the Islamic tradition refers to propositional knowledge and has been defined as "a firm conviction (*al-itiqād al-jāsim*) that corresponds to the thing in itself (*al-matābiq ilā wāqi‘*).

- The term **al-zann** refers to a conviction that is probable or presumptive and has been defined as "a preponderant conviction (*al-itiqād al-rājih*) with the possibility of its contrary (*al-naqīd*) being true."

- **Al-zann** refers to a belief that is not held as firmly as in the case of knowledge which creates the possibility of the conviction not being true, i.e. not corresponding to the thing in itself.

Epistemological Considerations

- If we were to quantify this possibility, it would be a possibility of less than 50% or a highly probable (*ghalabat al-zann*) possibility of not being correct to merely probable possibility of not being correct.

- Doubt or uncertainty (*al-shakl*) refers to “the indecision between two contradictory propositions without determining one proposition over the other on the part of the person.”
Let’s think about the following statements

- Tylenol relieves my headaches.
- Fasting during the month of Ramadan is an obligation on every Muslim.
- A whole cannot be greater than the sum of its parts.
- A disobedient person will be rewarded by God.
- Abu Lahab can be in paradise.
- A body can be at motion and at rest in the same moment and in the same respect.
- God exists.
- Coffee is happiness!

Certain Knowledge

- Empirical propositions are known through sensory perception (*al-mabsūsāt*) by means of the external senses. This includes propositions such as ‘the snow is white’ and ‘the sun gives light.’
- The second type of empirical propositions, *al-mujarrabāt*, are empirical propositions that are known through experience (*al-tajribāt*) of the unchanging course of events in the natural world (*ittihad al-adhā*). Examples are propositions such as ‘fire burns’, ‘bread satiates’, ‘wine is an intoxicant’, and ‘scrammone is a laxative’.