

Problems of Islamic Bioethics and Biolaw

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S*unni* Islam (which includes 90% of the world's Muslims) has no supreme juridical-religious authority or teaching. The *Shari'a* (Islamic law) is the Law of divine origin which regulates all human acts on the basis of four sources, the first three being of divine origin:

- 1) The Koran, that is the direct and literal word of God;
- 2) The "traditions" (*hadith* pl. *ahadith*) of the Prophet Muhammad (died 632 AD) of varying normative value;
- 3) The uninterrupted and unanimous consent of the doctors of the Law (*Mufti*, *Ulama* and *Fuqaha*) and/or the faithful;
- 4) Reasoning by analogy.

In situations which are regulated neither by the Holy Sources nor by the *Shari'a*, the believer turns to the doctors of Islamic law who can only issue a legal opinion (*fatwa*). The value of documents issued by the major pan-Islamic organizations, which may be the object of dispute by other bodies or religious authorities, have substantially the value of *fatwas*.

I'll indicate some of the problems and/or features emerging from a reflection on the topics of bioethics developed to date in the Muslim world. These reflections are those of a wide number of subjects, but the parties most involved are physicians and Muslim doctors of the Law.

The reflections on bioethical issues in Muslim medical-juridical literature are based on the foundations of the Muslim faith and law, namely the Word of God (the Koran), the divine Law (*Shari'a*), and on the most important interpretations of the Holy Texts that developed over the centuries.

THE DEBATE ON DIFFERENT POSITIONS

At present, in order to formulate positions that are as representative as possible of the vast community of the faithful on new problems (i.e. those on which Tradition has not clearly expressed itself or on which it has made no pronouncements), dependence is often on responses from pan-Muslim congresses and conferences (e.g. the Muslim World League, the Organisation of the Islamic Conference) as well as the various national *fatwa* committees, etc. Their value, however, remains essentially that of a legal opinion (*fatwa*) which may be challenged by other juridical subjects.

Alongside these responses, documents issued by the biomedical bodies should also be taken into consideration: for example, those of the National Committees of Medical Ethics or Bioethics. Disagreement between medical positions and those of the religious authorities is not infrequent.

In recent decades, the authority of the doctors of Muslim law has found new grounds of application on bioethical issues. In this regard, the “true religion” intends to play a decisive role on the basis of its own moral primacy in the face of a West perceived as an ethically disoriented innovator.

To date in literature on the Muslim side, few attempts appear to have been made at a critical interpretation of the reflection produced by Muslims on the issues dealt with by bioethics in particular on their contrasting positions as well as their development. Despite the presence of a wide variety of opinions, Muslim authors tend not to give great importance to these differences. Moreover, the believer wants clear and exhaustive answers from the “true religion” rather than arbitrary philosophical reflections which would be plentiful in the West. It does not appear casual that this type of bioethics is inclined towards apology, i.e. the exaltation of the truth of the Koranic principles and of those of the Tradition, especially with reference to the chaotic situation in the West, which produces modernity but does not have the capacity to guide it ethically.

The apologetic approach can be explained by the fact that Islam is not a monotheism in the same way as the others but, as it is based on the last Revelation and on the “sayings” of the last Envoy of God (Muhammad), Islam is perceived as the perfect monotheism that definitively updates the other monotheistic Revelations (whilst respecting them). In bioethics, this ethical and juridical primacy finds an opportunity of redemption in the face of Western bio-technological dominance.

If this approach is morally legitimate, the scientific consequences cannot be ignored. Problems could be tackled in an abstract perspective whilst the contrasts between the different opinions tend to be underestimated.

A further tendency is associated with apologetics: the widespread indifference to the positions of Muslim countries on bioethical issues (e.g. abortion, contraception) by laws, regulations, etc., which frequently differ from one to another. This means disregarding

the fact that national laws, at least on bioethical issues, often reflect –at a more articulated and specialised level– the indications of religious authorities (individual or collective); in their turn these may differ from the positions of religious authorities in other countries. The discomfort in the face of this variety of positions on bioethical issues can be perceived as synonymous with “ethical relativism”, a position that is alleged to belittle the value of Islam.

This apologetic approach has, to date, hindered Islamic bioethics from expressing a significant inclination towards denouncing the serious shortcomings on the social, economic and civil level that exist, to the detriment of the protection of the patient. The relative lack of political freedom could contribute to creating bioethics that show little criticism of the official power.

The majority of scientific contributions on Muslim bioethics deal with individual issues (so-called “special bioethics”): contraception, abortion, transplants etc.; on the other hand, the approaches regarding “fundamental bioethics”, i.e. a reflection on the epistemology of bioethics, are disregarded. For this reason Islamic bioethics is not yet characterised as an independent and separate discipline compared to every other discipline, in particular with respect to Muslim law of which, for the time being, Muslim bioethics appears to be a derivation.

When there are no clear indications by Tradition, a considerable amount of different and contradictory responses may be seen; this may lead to the impression that there is a sort of Islamic ethical “pluralism”. In actual fact, any opinion regarding ethics should remain anchored to the Sacred Sources to be legitimised, otherwise they risk losing credit, even losing the possibility of being presented in public. It is, in actual fact, easy to attack or criticise similar positions putting them down as against Islam.

On this subject, a *hadith* of the Prophet considers the multiplicity of opinions existing in the community as a blessing desired by God, whilst a second *hadith* specifies that the Muslim community would never reach agreement on an error. There are, however, differences that must not modify the basics of the faith and of worship. Classic cases are represented by the multiple positions taken by Muslim jurists regarding the lawfulness of contraception, abortion before the infusion of the soul or, going on to contemporary issues, xenograft and explantation from a corpse. The term “pluralism” therefore appears unsuitable to describe the current situation whilst more appropriate are expressions such as “differences and variety of positions within the religious context” and other similar ones.

Islam does not require any ethical pluralism. The truth and the values are already present in the Sacred Sources and only have to be retrieved or the Sources have to be “interpreted” correctly. In addition, many authors underline how the *Shari’a* is not rigid at all, as diversified opinions emerge –allowing divine Law to adapt itself to highly varied situations– until they come into conflict with the spirit of the primary sources.

In Muslim countries, many professionals seek out the opinion of theologians or personally interpret the religious doctrines to find answers to the new bioethical issues. Howe-

ver, as the Sacred Sources do not mention modern technologies, the conclusions of these processes only represent personal interpretations which can be potentially different from one another¹.

In the Northern and Western world, i.e. in a pluralistic cultural and political context, the National Committees of Bioethics (and similar bodies) appear characterised by a multiplicity of ideological positions (e.g. secular, atheist, religious) with “world views” that are at times antithetic; this may be translated into contrasts on many problems²: when human life begins, experimentation on embryos, when human life ends, euthanasia, etc.

The National Committees of Bioethics and similar bodies existing in Muslim countries present widely varying specialisations and competences of the participants. In the cases where Islam is the official dominant religion, it is taken for granted that every member is a Muslim, although with varied accents and positions on individual issues. Experts from other religious minorities may sometimes be present. However, the possibility of ethical pluralism where the religious element represents only one of the points of ethical reference amongst many others (secular, atheist etc.) seems very far off at present³.

In the current debate, the attempts at an explicitly non-religious approach to bioethics in Muslim areas are rare. One example is given by the appreciation of secular bioethics⁴ to which reflection on bioethics in Turkey (a formerly secular republic) refers to a great extent.

In short, the radical variety of positions in the debate on bioethics in the northern and western world is not matched in the Muslim world. However, although in a more limited context as the debate must be based on the common Islamic matrix, in the Muslim world there remains a remarkable variety of positions, from both the diachronic and synchronic points of view. This concerns both the pronouncements on individual issues and particular problems, and the cultural approach upstream of these debates. One interesting example concerns the role of the infusion of the soul: depending on the importance given to this event, there are at least two anthropological models with major consequences on the bioethical positions concerning the start of life.

If infusion (which according to the prevailing tradition is alleged to take place about 120 days after fecundation or, according to a minority thesis, around the 40th day from fecundation) is acknowledged as having decisive importance in the formation of a new life, then life can be divided into two clearly distinct phases: without a soul and with a soul. The consequences can be very important on several levels, including the bioethical and criminal law levels. The abortion of a foetus without a soul should not be considered as equivalent to killing a human being (with a soul). In general, under Muslim law – de-

¹ HAMAMSY (EL) L., *Le Langage de la bioéthique et les cultures*, “Journal International de Bioéthique”, 2000, 11 (3-4-5), 159-164, 160-161.

² See ATIGHETCHI D., *Islamic Bioethics: Problems and Perspectives*, Dordrecht, Springer, 2007, 15.

³ *Ibidem*.

⁴ ARDA B. – SAHINGLU PELIN S., *Bioethics in a Secular Perspective*, “Eubios JAIB”, 1995 (5), 95-96.

pending on the schools of Muslim Law – the measures are very modest (or even non-existent) for the abortion of an inanimate foetus, whilst the measures are stricter for the abortion of an animated foetus. The consequences on the bioethical level of this anthropological model (i.e. foetus without a soul) can include, as well as accepting the voluntary interruption of pregnancy (we are not concerned by therapeutic abortion here), a particular tendency to accept experimentation on these inanimate embryos; the formation and use of embryonic stem cells; the manipulation of gametes and embryos for artificial techniques of procreation does not raise any problems; etc.

Vice versa, considering that the embryo or the foetus has a soul can offer them better protection compared to the actions listed above. A middle course is represented by the criterion of potential that protects the new inanimate creatures as they are destined by God to be animated at a later time; in view of this event, life remains sacred. Another historically present alternative (but of a minority in past centuries) is that of accepting ensoulment as a theological-speculative category but without giving any real importance to this idea in the concrete development of the foetus for the purpose of protecting the sacredness of life from the first moments.

It is clear how the criterion of animation, based on the historically dominant interpretation of the Sacred Texts of Islam, gives rise to different anthropological models with fundamental differences in the field of bioethics. As both the anthropological models (foetus with or without a soul) are based on the classic interpretation of the Sacred Sources, the many different consequences are also acceptable from the juridical-religious point of view. At the most, the idea that animation has a real or virtual importance on the new life will have to be verified.

The criterion that has just been analysed allows evaluating how the plurality of positions in Muslim bioethics lies not only at the level of specific reactions to particular situations produced by an identical cultural background. A common faith does not inhibit the possibility of acting in different ways according to different anthropological models, all of which are rooted in the same religion.

As already discussed elsewhere⁵, similar anthropological problems are posed for bioethics regarding the end of life in the Muslim context. For example, technological death can be perceived as unnatural and the result of extensive manipulation in the relationship with death, as is the case, for example, of the persistent vegetative state. In these cases, switching off life-supporting equipment, although shortening life, can be interpreted as an attempt to re-establish a more natural relationship with dying in the respect of nature and human dignity. Some authors maintain that passive euthanasia (not better defined) contributes to protecting the dignity of the life and death of the patient⁶.

⁵ Also see ATIGHETCHI D., *Islam ed eutanasia*, "Medicina e Morale", 2007, 1, 61-90.

⁶ MASOODI G.S., DHAR L., *Euthanasia at Western and Islamic Legal Systems: Trends and Developments*, *Islamic and Comparative Law Review*, 1995-1996, XV-XVI (1): pp. 1-36.

In the opinion of other Muslim experts, artificially prolonging the vegetative state of a patient who has permanently lost consciousness (PVS) is illicit as it is consciousness that makes an individual responsible, therefore human dignity would be violated as well as divine will⁷. Another expert states that Islam does not consider a person in a persistent vegetative state as a living being, although there are exceptions to this attitude⁸. The reason justifying this statement is that in Muslim culture there are characteristics that define the individual: decision-making capacity, conscience, cognitive capacity and the capacity of having a cognitive and emotional relationship with God⁹. The absence of these characteristics in the clinical conditions of a PVS means the absence of human nature.

In the reactions to these issues on the end of life, different anthropological assumptions, which are however rooted in the same religious faith, are taken as a base.

Similarly to the situation shown for the beginning of life, we could assess the prevailing assumption at present.

THE POLITICAL DIMENSION OF ISLAMIC BIOETHICS¹⁰

By political dimension of Muslim bioethics, we refer to all those positions on the individual topics of bioethics (e.g. contraception) influenced by the desire to protect and/or expand the Muslim community as a whole (i.e. on the demographic, religious, political, moral, scientific, economic and military level); positions which are often in competition with other religions. The political perspective represents one of the many keys of interpretation in the bioethical debate in Islam.

There are two positions in the Koran: 1) the equality of all human beings before God; 2) the fundamental juridical distinction between Muslims (faithful in the “true religion”), *dhimmis* (or “protected” i.e. Christians and Jews) and polytheists. Muslim medical ethics refers principally to the first position; Muslim law develops and elaborates the second position. The “political” approaches of Muslim bioethics refer in particular to this latter position. In actual fact, the two perspectives are always simultaneously present in the bioethical debate, although the first position (i.e. the egalitarian one) appears predominant.

Amongst the examples of the political approach, we could quote the positions against population control when these have the purpose of guaranteeing the expansion and strength of Islam; we could quote some jurists (Muslim scholars) who are in favour of donating organs only between Muslims or by non-Muslims to Muslims in order to reinforce the health of the *umma* (the Muslim community); jurists who prefer blood transfusions between Muslims, etc.; jurists who are in favour of abortion for seriously handicap-

⁷ ABDUL-RAUF M., *Contemporary Muslim Perspective*, in REICH W. (Ed.), *Encyclopaedia of Bioethics*, New York, Free Press, 1978: 894.

⁸ VOHRA S.S., *An American Muslim's Right to Die*, *The Journal of Legal Medicine*, 2006, 27: 341-359.

⁹ *Ibid.*, 350.

¹⁰ See ATIGHETCHI, *Islamic Bioethics: Problems and Perspectives*, *op. cit.*, 19-21.

ped fetuses not to weaken the health of the Muslim community; jurists in favour of the abortion of Muslim women raped by infidels for the purpose of not numerically reinforcing the latter; the tendency to reveal the identity of a person with AIDS in order to protect the healthy spouse, colleagues and the community as a whole etc.

In Muslim countries, interest in bioethical debates remains generally elitist; participation by civil society, even if extensive in the daily press (e.g. transplants and abortion), remains incapable of having a direct effect on the positions taken by governments and on national legislations¹¹.

The lack of “free” debate (according to the Western pluralistic view) does not compromise the possibility of passing updated legislation. However, these legislations, often seem to represent a set of decisions taken by the political and scientific leaders approved by the “official” religious authorities. One of the most obvious effects is that of the separation which can be seen between the local mentality and culture and the rules and regulations in force, which are increasingly modern and abreast with the orientations developed by international bodies.

THE PRINCIPLES OF BIOETHICS

Existing studies are frequently limited to tracing back to the Sacred Sources of Islam the principles of “Western” bioethics which are mainly taken from the “ethics of principles” or “*principalism*” of T.L. Beauchamp and J.F. Childress¹², but without reference to the ethical theories justifying them and that is, to the “utilitarianism of the rule” and the “deontological theory”. The principles in question are the principle of autonomy, beneficence, non-maleficence and justice.

It is fundamental to remember that these principles derive from a bioethical reflection with a philosophical and secular approach. In this context, human reason appears as the only instrument used that can distinguish good from evil. In many other international cultural contexts, such as the Muslim one, this limitation cannot be accepted.

In addition, in bioethics of Muslim origin, the four principles mentioned have yet to find an equilibrium with the general principles of Muslim law (e.g. necessity, public benefit and justice). This confrontation could challenge the importance of the four principles mentioned and the respective priorities.

By way of comparison, the different importance and significance that the principle of autonomy assumes in North American and European society compared to any Muslim society, especially when anchored to tradition, cannot be denied. In the former case, the priority given to the principle of autonomy (starting from the hierarchy of the principles

¹¹ Consider the case of referendums on abortion promoted by organisations of citizens, political parties etc. and held in many European countries.

¹² BEAUCHAMP T.L. – CHILDRESS J.F., *Principles of Biomedical Ethics*, New York, Oxford University Press, 1994.

of bioethics) is none other than the projection, into the bioethical context, of the importance of the liberal-individualistic matrix characterising the juridical-political culture of the Western world, despite the strong differentiations within it. Vice versa, in the Muslim context, the primacy appears reserved for the principle of public benefit (*maslaha*) and the principle of justice as the collective interest takes precedence over that of the individual. For example, the Code of Ethics of the Pakistan Medical Council (2001, art. 7) states: «If secular Western bioethics can be described as rights-based, with a strong emphasis on individual rights, Islamic bioethics is based on duties and obligations (e.g. to preserve life, seek treatment)... ». Furthermore, the family often remains the decisive subject for the patient's decisions in relations with the doctor; this can be a limit to the patient's autonomy.

However, if universal principles of bioethics exist, diversities arise in their interpretation and application, i.e. in the attempt to adapt them to local cultures and customs. This problem is similar to that which arose with the issue of human rights. Therefore, confrontation with the values, mentality, local customs and religions is decisive to establish the best criteria with which to treat a patient. Greater attention than that generally paid to the principles of bioethics should be devoted to these fundamental aspects in caring for a patient.

A twofold attitude which is very common in official documents concerning the principles of bioethics from the Muslim point of view is to be underlined. On the one hand, a claim is made for the universality of the principles which are alleged to have been formulated with the decisive contribution of the principles of Islamic medical ethics and, more in general, Islam (although these contributions are ignored or underestimated in the West). At the same time, there is a desire to claim and defend the specificity and peculiarity of Islam even in these spheres. The result is a precarious equilibrium. A recent example is given by "The Tehran Statement on Bioethics", which concluded the International Congress of Bioethics held from 26th to 28th March 2005 in Iran and organised by UNESCO.

According to the first two articles of the conclusive Statement:

«1) Bioethics, interdisciplinary in its nature, needs to be examined using a multidisciplinary and multicultural approach.

2) Bioethical discussion should be promoted with due consideration for different religions, moral values and cultures in addressing the fundamental questions of medical and life sciences».

The fourth point states, *inter alia*:

«UNESCO should be further encouraged to....provide universal principles on bioethics...In this respect, the Congress recommends the Member States of UNESCO to adopt the Declaration on Universal Norms on Bioethics».

CONCLUSION

It is impossible not to be impressed by the plurality of ethical and juridical positions within Islam on many issues and aspects of bioethics, both from the theoretical and practical points of view.

This fact is determined by a great number of factors, the main one being, perhaps, the absence of a supreme juridical-religious authority and of Teachings. Amongst the major religions, the Catholic hierarchical structure is an exception; in addition, the religious structure also seems to influence its doctrinal expressions and contents. The Muslim situation is similar to that of other faiths which do not have a central authority that interprets the sacred texts and concrete situations, issuing documents that express the “orthodox” position of the faith and are, as such, formally valid for all the faithful. In the contemporary context, characterised by a state of permanent scientific revolution, the religious authorities of all faiths have to express positions increasingly quickly as well as in depth on issues that are often new and not very well known. The religious systems without an authority to guard “orthodoxy” are more likely to express diversified positions internally, which in turn are influenced by a multitude of social, historical, psychological, religious and local political factors. A great faith (one billion and a half faithful) cannot – at any level and on any issue – fail to take into account these operating contexts which deliver religious messages and thanks to which these messages are enriched and differentiated.

However, in Muslim contexts, the great variety of positions and thought that has always characterised Islam ever since its origins – including at the ethical-juridical level – does not correspond to a situation of chaos. Indeed, Islam has one particularity: it is based on the direct and literal word of God (the Koran) and on divine Law (*Shari'a*). The situation can be represented in the terms of a solar system with in the centre a sun that shines for the whole system but an infinite number of planets and minor systems circle this sun, are born and die. This gives rise to a plural system (internally) but at the same time a very compact one (when seen externally).

