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A Third Definition of Death? An Investigation into the Implications of Advanced Medical
Technology on Death in the Islamic Tradition

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Muslims are not in agreement about when death is. Human judgment is inherently flawed, so Muslims defer to Islamic texts on issues of ethics. "Such then is the condition of us mortals," wrote Pliny the Elder in his *Natural History*. "To these and the like vicissitudes of fortune are we born; so much so, that we cannot be sure of any thing, no, not even that a person is dead."[1] Medical technology has advanced so fast, and the universe of Muslims and Islamic thought is so wide, that there is no agreed upon standard for death. Determining the time of death is of utmost importance from an Islamic legal perspective. The death of an individual triggers many different legal processes and creates an obligation for a community to bury the body. Physicians with ulterior motives, such as organ transplantation, have entered the discourse on the Islamic definition of death in lieu of Islamic scholars. A return to classical Islamic rulings on responsibility for murder reveal that Muslims have confronted complex issues of death before, and are directly analogous to current biomedical issues. Although there is no consensus definition of death in the Islamic tradition, adopting a third category of life and death based on accepted historical rulings wherein one is "alive but legally dead" shows promise as an Islamic definition in light of recent advances in medical technology.

As it pertains to the following discussion on biomedical ethics, it is significant to note that Islamic and Western ethics follow fundamentally different processes for deriving moral law. Western ethical codes, the three most popular being natural law, consequentialism, and deontology, tend to follow a set of principles derived from human reason. Ethical principles are

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[1] Pliny, Henry T. Riley, and John Bostock, "Natural History of Pliny: CHAP. 53. (52.)—Persons Who Have Come to Life Again After Being Laid Out for Burial," *Perseus.uchicago.edu*, n.d., accessed May 13, 2017.

meant to protect values, such as fairness in deontology, the so-called "basic goods" in natural law ethics, and pleasure in utilitarianism. For example, a utilitarian such as Peter Singer will assert that the moral action is the one that maximizes utility, i.e. maximizing pleasure and minimizing pain, because satisfaction is the ultimate aim of human action. Under a utilitarian ethical framework, utility is the value, and consequences are the principle. To a utilitarian, intentions are irrelevant, as it is the ultimate consequence of one's action that determines its morality. In applying the consequentialist framework to an ethical dilemma, the guiding principle of maximizing utility means there are no exceptions to the rule, with an agent being expected to take a principled approach to determining an action's morality. Western ethics makes philosophy into an ethical code, and ethicists debate the philosophical merits of values and principles.

On the other hand, Islamic law employs casuistry, the use of paradigm cases, to derive ethical norms which are then applied to new cases.[2] The Islamic cases are derived from the Qur'an and Sunnah, two sources that are meant to have divine backing. Historically, casuistry has been associated with sophistry, the use of clever yet unsound reasoning to determine the morality of an action. The Oxford English Dictionary defines sophistry as a direct synonym in its definition for casuistry.[3] But Islamic law is distinct from the sophistry characteristic of the Society of Jesus in the mid-sixteenth and seventeenth centuries, wherein priests used casuistic

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[2] Daniel Brown, "Islamic Ethics in Comparative Perspective," *The Muslim World; a Quarterly Review of History, Culture, Religions & the Christian Mission in Islamdom.* 89, no. 2 (1999): 181.

[3] "Casuistry - Definition of Casuistry in English | Oxford Dictionaries," *Oxford Dictionaries | English*, n.d., accessed May 14, 2017.

reasoning to punish the poor and benefit the rich.[4] Instead, Islam uses casuistry to derive the

underlying tenets of its moral code. The reasoning behind Islam's use of casuistry, according to

Dr. Daniel Brown, is that Islamic thinkers rely on "theological voluntarism," wherein God is the

absolute and only source of volition. Because God is the only source of volition, there is not a

need for ethical reflection in the form of forming human principles for ethics. Dr. Brown cites an

example of a scholar who said "for Muslims abortion is not an ethical question."[5] The scholar

says this because Muslims need not think about the morality of abortion as a Western ethicist

might, and may instead refer to the Qur'an and Sunnah to determine the morality of an action.

However, in belief that God makes commands with purpose, scholars extrapolate the logic of one

case from the Qur'an and Sunnah to a new one. Abu Hamid Al-Ghazali summarized the process

of discerning religious law, writing that a jurist first follows the Qur'an, then the Sunnah, and

then consensus of religious leaders and traditions of the companions of Muhammad.[6] By

building a rational framework for Islamic law, "jurists seem to suggest that the mind of God is

accessible through the application of reason." Thus, Islamic law's presumption of purposefulness

"leads both to a logical system of legal reasoning and also to the existence of certain

consequentialist principles, such as utility, necessity, and equity."[7] Ethical reasoning is directly

related to epistemology in Islamic thought. In determining the morality of an action, there are no

absolute guiding principles within Islam, but rather God's past commands and a logical

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[4] Blaise Pascal, *The Provincial Letters of Blaise Pascal : A New Translation, with Life of the Author*, 2010.

[5] Brown, "Islamic Ethics in Comparative Perspective," 185.

[6] Jonathan E. Brockopp, "Brain Death and Islamic Traditions," in *Islamic Ethics of Life : Abortion, War, and Euthanasia* (Columbia: University of South Carolina, 2015).

[7] Brown, "Islamic Ethics in Comparative Perspective," 191.

extension thereof are the sources of deriving ethical action.

Islamic bioethics at present has derived a general set of principles from Qur'an, Sunnah, and logical extensions thereof upon which to base ethical decision-making. Islamic principles of bioethics have been derived from Islamic principles of social ethics. In turn, these principles are derived through the overarching principle of *maslaha*, or the obligation to promote the public good.[8] The principle of public good in and of itself does not have evidentiary fortitude in Islamic legal-ethical thought. There are rules that fall under the umbrella of public good that are well-agreed upon in Islamic social ethics. The most important principle is that of "no harm, no harassment," analogous to the Western bioethical principles of beneficence and nonmaleficence.[9] Scholars writing on social transactions agree that Muhammad himself established the principle, and therefore are in agreement that it is a valid rule for ethical decision-making on actions that affect the social and political life of a community.[10] Al-Suyuti acknowledges that most juridical rubrics were founded on the "no harm, no harassment" principle, and that other, related principles exist, such as "Necessities make the forbidden permissible, as long as it does not lead to any detriment."[11] Furthermore, Islamic bioethical jurisprudence relates the obligation to not cause harm to the obligation to promote good, *istislah*. The no harm principle has been widely used in Islamic bioethics. Close to 90 percent of cases faced by healthcare providers make the no

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[8] Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (New York: Oxford University Press, USA, 2009), 47.

[9] Sachedina, *Islamic Biomedical Ethics*.

[10] Ibid., 66.

[11] Ibid., 67.

harm principle the core focus of their ethical deliberations.[12] Rulings against population control

through abortion, for example, make the case that the moral fabric of society could be harmed

through legalizing abortion.[13] Another rule exists in order to distinguish between an obligation to

promote good and prevent harm -- "preventing harm has a priority over promoting good," an

analogous concept to the Western principle of proportionality. Thus, Islamic legal thought has

established through the Qur'an and Sunnah some general guiding principles to apply to social

transactions, including bioethics.

The Qur'an talks extensively on death and God's role as the author thereof. God is

intimately involved with humanity, creating humanity from sperm, then causing their death and

burial, and then raising them on the Day of Judgment.[14] Thus, death becomes important in the

Islamic tradition as the intermediate stage of one's life before the Day of Resurrection but after

birth. In the chapter of the Qur'an *Ya-Sin*, the Qur'an describes how every individual will be

woken up from their graves by God and judged according to their actions on the Day of

Resurrection.[15] In Islam, death is very much explicitly the doing of God, and as such cannot be

observable. "One classical text invokes the consensus of the learned jurists in stating: 'the

learned say that death is not lack of palpitations, nor the ceasing of movement, but rather the

cutting of the connection of the soul and the body."[16] The Qur'an defines the soul and the body

as separate entities, specifically the word *nafs*. The Qur'an mentions death concurrently with the

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[12] Ibid., 75.

[13] Ibid.

[14] Qur'an 80:16-23 (AJ Arberry)

[15] Qur'an 36:51-58 (AJ Arberry)

[16] Brockopp, "Islamic Ethics of Life," 181.

word *nafs* in three places: "Every *nafs* shall taste of death; and we try you with evil and good for a testing, then unto us you shall be returned."[17] In the context of the verse, *nafs* refers to the thing which produces life and vitality: "the Qur'an, by introducing the term *nafs* in the context of imminent death, is speaking about some complex entity that provides an essential feature of personhood."[18] Thus, if life is a test in the Islamic tradition, death is the time that test has come to a close. The very issue is that death is supposed to occur in a way only observable to the angels and God himself. The way that the Qur'an speaks of death is imprecise and does not give a clear definition of when it actually occurs.

Determining the moment of death is significant in the Islamic tradition. Birgit Krawietz notes two principles relevant to the dead: sanctity (*hurma*) and dignity (*karama*). The two principles form negative prohibitions, for example on grave-digging and physically harming an innocent. Sanctity and dignity also form a positive command to bury the deceased within twenty-four hours and protect the grave long after the individual has died.[19] "The burial program is a collective duty of the community of believers. They may not culpably postpone or neglect the washing, shrouding, and preparing of the corpse for burial. Otherwise, they commit a sin altogether."[20] In other words, when one has died it is considered the duty of the Islamic community to ensure that respect is taken unto the dead body. Thus, determining the time of

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[17] Sachedina, *Islamic Biomedical Ethics*, 147; Qur'an 21:35-6; 29:57; 3:185 (AJ Arberry).

[18] Ibid., 148.

[19] Birgit Krawietz, in *Islamic Ethics of Life : Abortion, War, and Euthanasia*, ed. Jonathan E. Brockopp (Columbia: University of South Carolina, 2015), 196–98.

[20] Ibid.

death becomes an important first-step in respecting the dignity of the dead.

Furthermore, it is important to discern the time of death in Islam because it is explicitly prohibited in the Islamic tradition to kill someone, including oneself. The Western debate on euthanasia as mercy killing is completely outside the realm of Islamic ethics. Merciful intent, such as alleviating suffering, is not considered sufficient grounds for killing. Modern fatwas are almost unanimous prohibition on suicide, and authorities such as the Islamic Code of Medical Ethics equate suicide with euthanasia.[21] The Sunnah explicitly addresses suicide, with Muhammad instructing individuals not to desire death when faced with an infliction and, barring that, to pray to God to provide what is best for them.[22] The Western debate on euthanasia does become relevant, though, in determining when one is dead and when it is acceptable to cease treatment of an individual. Sources quote the Qur'an which says: "Do not kill yourselves (*anfusakum*), surely God is merciful to you."[23] This verse, using the reflexive verb *anfusakum*, refers to killing other Muslims. [24]Where every *nafs* shall taste death, Islam also prescribes that "you slay not the soul God has forbidden (*al-nafs allati harrama Allah*) except by right."[25] Thus, because Islam places high value on life and prohibits death, it is important to determine when it is ethical to kill an individual.

Lastly, it is important from a legal perspective to determine when one has died. The most obvious legal relationships that come into play at the time of death are that the marriage contract

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[21] Brockopp, "Islamic Ethics of Life," 183.

[22] Ibid., 188.

[23] Qur'an 4:29 (AJ Arberry)

[24] Sachedina, *Islamic Biomedical Ethics*, 148.

[25] Qur'an 6:151 (AJ Arberry)

is terminated and *idda* is initiated, inheritance must be distributed, and if one is fatally murdered then retaliation (*qisas*) is due.[26] If there is ambiguity as to whether a person has died or not, it causes distinct problems for the agent charged with carrying out the post-death duties. As will be discussed later, certain features traditionally regarded as signs of death can be nearly eternally postponed. A young widow might never be able to marry again, children might pass away before receiving their dower, and *qisas* might not be dealt because the murderer could pass away before the victim dies. Thus, from an Islamic legal perspective, it is of utmost important to have a clear definition of death.

Modern Western medicine has constructed many definitions of death in light of medical advances. The mainstream view of death is whole-brain death, wherein there is the "irreversible cessation of functioning of the entire brain, including the brainstem."[27] Whole-brain death is the most restrictive definition of death. There is increasing doubt about whether brain death is the time at which an individual has died. Damage to the higher brain, or Permanent Vegetative State (PVS), the irreparable and permanent loss of consciousness, is another standard by which death can be considered.[28] The scope of the philosophical debate on brain death and PVS is incredibly extensive, but the bottom line is that Western bioethicists are willing to confront that there are ontological and epistemological frames of defining death. Although the various justifications and philosophical debates for each definition are incredibly sophisticated across every Western

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[26] Sachedina, *Islamic Biomedical Ethics*, 198.

[27] David DeGrazia, "The Definition of Death," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2017 (Metaphysics Research Lab, Stanford University, 2017).

[28] Ibid.

ethical tradition, there has yet to be an ontological and epistemological consensus in the West

concerning what death actually is. Determining when death has occurred is an extraordinarily

sensitive and difficult undertaking.

Contemporary Islamic scholars have come up with an ontological definition of death but

not an epistemological one. In other words, they have determined that death is the

aforementioned cutting of the body and soul, but not when it has occurred. Islamic scholars have

avoided making a decisive decision on when one has died in light of modern medical advances,

and have often succumbed to political pressures in sanctioning definitions provided by medical

practitioners.[29] In the past, deciding on whether death occurred was quite simple. Signs of death,

amarat al-mawt, such as "glazing of the eyes, stopping of the breath, parting of the lips" were

among the criteria that authors employed in deciding whether one had died.[30] The issue with the

traditional signs of death used is that the definitions they used did not have basis in any religious

textual evidence. Instead, they decided upon signs derived from human experience and decided

that, since death is the final departure of the soul from the body, then death will correspond with

signs that indicate the soul has left the body.[31] Modern medicine complicates the traditional

approach to determining death. According to medical expert Dr. Greene-Chandos, modern

medical advances such as ventilators, blood-pressure augmentation, and hormones mean, barring

infection, that an individual's body could theoretically be kept physiologically functioning

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[29] Sachedina, *Islamic Biomedical Ethics*, 161–62.

[30] Krawietz, 199.

[31] Ibid.

virtually indefinitely.[32] Glazing of the eyes, stopping of the breath, parting of the lips, and even

cardiac arrest, therefore, may still occur while a person's other physiological functions are still

working.

That the Islamic framework is entirely unprepared for handling contemporary issues of

life is a dire situation. Islam places a high value on life, which makes the need for defining death

critical. Without a clear definition of death, scholars defer to practitioners, who themselves have

motives not based in Islamic thought. Deferring to practitioners is not consistent with Islamic

law's derivation from the Qur'an and Sunnah. As Sachedina writes in his extensive survey of

contemporary Islamic biomedical ethics:

> In none of the rulings examined for the study have any Muslim jurists tried to define or
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> determine the criteria for accepting the validity of brain death from an Islamic legal
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> perspective. They have depended on consulting physicians to provide expert opinions,
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> some of whom, however, seem motivated by an interest in harvesting organs for
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> transplantation. Hence, the debate in North America concerning the acceptance of 'higher
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> brain formulations of death' and the controversial aspects of providing medical care of
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> patients with advanced forms of dementia and PVS is absent in the Muslim juridical
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> literature dealing with the definition of death.[33]

Patients who enter the ICU and enter brain death or PVS are not insignificant in number.

In the United States, 25 percent of people die in an ICU. Furthermore, as recently as 1990, a

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[32] "How Long Will A Brain-Dead Person's Body Keep Working?," *Huffington Post*, January 3, 2014, sec. Healthy Living.

[33] Sachedina, *Islamic Biomedical Ethics*, 163.

review of San Francisco hospital records found that 90 percent of deaths occurred as a result of removing life support.[34] A definition that encompasses both an ontological and epistemological frame is what Islamic law needs in order to be a practical ethical framework in the context of death.

A third Islamic legal definition of life, between full life and full death, is not without precedent and allows the traditional cardiorespiratory definition of death to still be used. All four major schools of Islamic thought have written to some extent on responsibility for attack on an individual who is almost dead, and created categories to differentiate levels of responsibility.[35] The "expiring life," or "movement of the fatally wounded" (*harakat al-madhbuh*), "denotes somebody who has been fatally hurt, has not yet died, but can no longer speak, see, or move at will." This third legal definition comes up in discussions of responsibility for attack on an individual who is fatally wounded. The legal scholar Al-Ashqar proposes that an individual whose life is expiring might be considered "living but legally dead," i.e. dead from the perspective of removing life-support, but alive in respect to other rights. There is an accepted Islamic doctrine of death sickness, *marad al-mawt*, which forbids the dying from participating in legal transactions at the end of their life.[36] The legal approach of labelling individuals who are irretrievably brain dead as *madhbuh* is not entirely reconciled with its legal implications simply because it has not been extensively discussed. What is clear, though, is that acceptance of the *madhbuh* definition of death means a brain-dead or PVS individual can be removed from life

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[34] Elaine Chen, M.D., "The Complex Intersection of Critical and Palliative Care" (AHC Media, September 1, 2015).

[35] Krawietz, 206.

[36] Ibid., 207.

support and will only be fully dead once respiratory functions cease. A review of the

implications of utilizing the *madhbhuh* framework on realistic cases of PVS and brain death

would confirm the utility of such a definition.

Imagine a woman, Fatima, whose husband, Abdullah, suffers a critical injury to the head,

causing him to lose function entirely in his cerebral cortex and causing him to rely on artificial

nutrition. Fatima is told by a physician that Abdullah has suffered from PVS, where, barring

breakthrough advances in medical technology, he will likely never recover consciousness.

Fatima witnesses Abdullah open his eyes and move his arms and legs non-purposefully, two

common characteristics of PVS. Fatima puts aside her feelings of grief and acknowledges that

she is the individual responsible for making decisions on whether or not to continue Abdullah's

medical care. Fatima is an adherent Muslim, and consults a local scholar, Shaykh Noman, who

recently attended a conference on Islamic biomedical ethics and attended a presentation making

a case for using the standard of "legally dead yet alive," formally referred to as *harakat al-*

madhbhuh. Shaykh Noman explains to Fatima that, since Abdullah is fatally hurt and medical

treatment will be unable to restore his consciousness, Abdullah falls under the definition of an

individual whose life is expiring. Although the soul is still attached to the body, explains Shaykh

Noman, since medical care does not benefit him, it is ethical to forgo artificial nutrition and

allow his life to take its course. Shaykh Noman and Fatima's physician answer questions on

Abdullah's medical state and how this relates to her religious beliefs. Feeling like she is

adequately informed, and recognizing that he will not recover, Fatima gives permission to

Abdullah's medical providers to remove artificial nutrition and hydration. Abdullah peacefully

passes away from dehydration and electrolyte imbalance, and following his death, legal

pathways such as preparations for his burial, distribution of his inheritance, and Fatima's *iddah* period are triggered.

Next consider the very real case of a toddler in a vegetative state caused by the extreme abuse of her parents, legally identified as Baby M. Doctors have advised that all of Baby M's life support be withdrawn, but her Muslim parents have asked to keep their child alive on religious grounds, saying that the daughter's soul had not yet left the body.[37] For Baby M, "Doctors said it was unlikely she would ever regain consciousness or recover from her 'very severe' neurological problems."[38] Under an Islamic framework that defines death as when one is *madhbhuh*, it is very much clear what the status of the child is. Because the child has been wounded to such an extent that she cannot recover, and is now in a vegetative state, she is legally dead but still technically alive. Thus, Baby M's parent's claims do not hold in an Islamic epistemological framework that defines death as when one is *madhbhuh*.

In sum, creating a third category for death in the Islamic tradition would elucidate the legal status of individuals who have permanently lost consciousness but are still biologically functioning. The Islamic tradition recognizes that human understanding of death, being an inherently unobservable phenomenon, is flawed. In the Qur'an, God says outright: "They will question thee concerning the spirit. Say: 'The soul is of the affair of my Lord. And mankind have not been given of knowledge except a little.'"[39] Simultaneously, Muslims look to Islam for

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[37] Jen Gerson, "Charged with Abuse, Alberta Parents Cite Muslim Faith in Fight to Keep Girl on Life Support," *National Post*, September 11, 2012.

[38] Pamela Roth, "One of Two Edmonton Twin Girls Removed from Life Support," *Edmonton Sun*, February 21, 2013.

[39] Qur'an 17:36 (AJ Arberry)

guidance on issues of ethical importance. In the status quo, Islamic scholars tend to forgo a

nuanced definition of death that critically engages Islamic thought, instead adopting the

subjective opinions of practitioners who often have ulterior motives such as organ

transplantation. The level of sophistication on the topic of death reached by Western ethical

discourse is entirely absent from discourse on Islamic law. There is no need for Islamic scholars

to give up a theological definition of death as the separation of the soul from the body. But

making Islam relevant to contemporary issues of life and death means scholars must redefine

what it means to die.

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