Chapter II

Islamic Medical Ethics and Casuistry

"Trust in God but tether your camel first" - Muhammad

Islam is a major world religion with over one billion Muslims worldwide. Although Islam began in Arabia, eighty percent of Muslims are not Arabs. There are major cultural differences between Muslims in Arabia, Persia, Pakistan, India, Indonesia, Africa, Europe and America. Nonetheless, although Muslims are diverse in many ways, Islam provides a shared way of life that transcends other major cultural differences. We will first aim for a basic understanding of the origin of Islam, and the basic elements of the Islamic way of life: the Five Pillars of Islam (the declaration of faith, daily prayer, charity, the yearly fast of Ramadan, and the Hajj, which is a once in a lifetime pilgrimage to Mecca). We will also explore the significance of the Pillars to medical ethics and the nature of Sharia and casuistry as a method of moral reasoning that shapes medical ethics. In addition, the appendixes discuss the nature of Jihad, sometimes called the sixth pillar of Islam, and the important Sunni-Shi'a historical split and significant contemporary political divide in the larger Islamic tradition.

5. The Messenger: The Life of Muhammad

Islam was founded by the prophet Muhammad and its core theology involves acceptance of the oneness, unity, and authority of God. Muhammad's revelation, the Qur'an, was an explicit response to and total rejection of polytheism, tribalism, and idolatry. The most central element of Islam is an unconditional belief in one God. Islam is often translated as submission or peace. For believers, the total submission of one's will to the will of God brings an inner peace that flows from faith. But what is God's will? Islam is distinct from other forms of monotheism in its belief in Muhammad as the last prophet of God. For Muslims, Muhammad is the messenger of God and his life is an example of perfect virtue.

Muhammad was born around 570 CE in the Arabian Peninsula. His father died before his birth and he became an orphan at six years old when his mother also died. He was subsequently raised by his Grandfather and then his Uncle Abu Talib. Muhammad also spent much of his youth living with a nomadic Bedouin tribe and tending animals. It is perhaps in this period that he first developed an ear for the rich tradition of oral history and mythology that sustained the intellectual and spiritual needs of the Bedouin tribes.

Although he was an orphan, his family was part of the dominant Quarish tribe of the city of Mecca. His uncle, Abu Talib, was very influential in the tribe and he cared for Muhhamad and protected him. The Quarish served as the guardians of the holy site of the Kabba in Mecca. The Kabba is said to have been built by the Biblical Abraham near the place of the sacrifice (where God tested Abraham by asking him to sacrifice his son Isaac) (Qur'an 3:97). The Kabba is now the most holy site in Islam, but prior to Muhammad and the rise of Islam, it was a shrine that held over 360 idols representing the many gods of the many tribes that visited Mecca. In addition, Mecca was geographically important because it was the site of a spring which served as a shared source of water for travelers. The spring and the city served as a neutral place of peace where all tribal conflict was set aside. Mecca, as a source of water and peace, became a central resting spot on the trade routes of the Arabian Peninsula. The traders at rest would of course exchange goods, but they would also share stories of distant places, different cultures, and different theologies. In addition to the wealth of the economic market, Mecca was also a rich cultural market place of ideas. Mecca was both an economic and cultural oasis.

Muhammad thus grew up in a rich and comparatively diverse cultural context. He was well versed in the Bedouin oral tradition but, in the marketplace of Mecca, he also learned a great deal of other cultures, especially the monotheistic traditions of Judaism and Christianity. By the time he was 25, Muhammad had earned a reputation as an honest trader (his nickname was "the trustworthy") and he had won the admiration of an older (40 year old) wealthy business woman named Khadija. He married her and traveled as far as Syria working her trading caravans. During this time we assume that he was able absorb much of the theology of the Torah and Gospels that provides the background for the revelations of the Qur'an.

Fifteen years later, in 610 CE, while meditating in the hills outside of Mecca, Muhammad had his first revelation. According to Muhammad, he was visited by the angel Gabriel and was directed to "recite" and the Qur'an was delivered through him. The Qur'an is understood to be the direct word of God, from Gabriel. Muhammad is nothing more than the messenger of God. He is in no way divine but is the last of the prophets sent by God to guide mankind on the path of truth and righteousness. The prophets before him, including Adam, Noah, Abraham, Moses, and Jesus, are all also recognized by Islam. Jesus alone is mentioned by name 25 times in the Qur'an and referred to many more times. Although Muslims accept Jesus as a prophet and extraordinarily special messenger of God, born of the Virgin Mary, and able to cure the sick and raise the dead, like Muhammad, Jesus is still considered to be a man and distinct from God. In many cases the Qur'an presupposes familiarity with the stories of the Old Testament and the Christian Gospels, and comments and elaborates on them without repeating them. Judaism and Christianity are thus also considered religions of the Book of God, by Muhammad, and the three religions share much of the same history of

prophets and, most importantly, the core monotheism, which is the most essential aspect of Islam. The relationship between Judaism, Christianity and Islam began as one of commonality and Islamic tolerance of the other earlier monotheistic religion. Christians, Jews, and Muslims were all People of the Book and descended from Abraham. Although there was tension and conflict from the start with the Jewish tribes and with the Christian Byzantine Empire, it is only after first the Christian crusades and more recently the Palestinian-Israeli conflict that the seemingly fundamental opposition between the "West" and Islam has taken its current regrettable shape.

Muhammad's wife Khadija was the first to learn of and to accept her husband's report of his revelation. Muhammad was cautious at first, and his caution was increased when three years passed before his revelations resumed. With time, however, he slowly but steadily shared his experience and revelations with the people of Mecca. Between 610 and 622 CE, his revelations and confidence increased and a small community of followers began to take shape. The core of his teaching, however, was hostile to the polytheism and idolatry that constituted the spiritual tradition of Mecca and the Arabian Peninsula. Needless to say, this attack on the traditions and heritage of the people including his own tribe was not popular. Nonetheless, he had the protection of his uncle and his wealthy wife to sustain him. This changed however in 622 CE when both his uncle and wife died. Muhammad was forced to flee Mecca. Fortunately, however, Muhammad had a reputation for fairness and honesty (he was often called the trustworthy one), and he was invited to move to the city of Yahtrib and mediate their tribal conflicts. Yahtrib was renamed Medina, the city of the prophet. With a small community of about 70 followers, Muhammad emigrated to Yathrib/Medina. This migration is called the Hijra and it marks the start of the Islamic calendar and the formation of the Islamic Community or "Umma." Followers of Islam are called Muslims, and all Muslims, as followers of the one God, are one People and one Community or Umma.

Between 622 CE and 630 CE, Muhammad authority grew and so did the Umma. In a series of conflicts with Mecca, his followers fought with great bravery and conviction in defending the community and the new religion of Islam. Their success against the powerful tribes of Mecca impressed the nomadic Bedouin tribes and his followers grew in a rapid and steady fashion until Mecca finally fell and Muhammad returned triumphant in 630. On his return to Mecca, despite having been run out of his own city, he did not seek the blood revenge that was common practice, and instead allowed all to submit to the authority of the Muslim community. Muhammad invited all Meccans to embrace Islam and join the community of believers, but he did not require conversion to Islam.

Muhammad did, however, destroy the idols of the Kabba (perhaps, according to some stories, with the exception of Jesus and Mary), and demanded the end of all idolatry and polytheism. Two years later, in 632 CE, Muhammad died. The Umma, however, continued to grow and spread across Arabia and into Egypt and Iraq; driving Byzantium back to Europe and conquering Constantinople; spreading across Persia and India to the east and across North Africa and through Spain in the West. In a short 200 years the Islamic empire stretched from India to Spain. The Islamic Empire eventually fell to the Mongols, but with time the Mongols integrated with the Arabian population, and the rulers converted to Islam and indeed led an Islamic revival. With the emergence of the Ottoman Empire, Islam continued its growth and it now spread to Indonesia and through much of Africa.

From its roots in Arabia, Islam is now a global religion of more than one billion believers. Indeed today, less than twenty percent of Muslims are Arabs. The reasons for its overwhelming success are a complex combination of military conquest and voluntary conversion. We leave aside this fascinating historical narrative and now return to our main interest in Islamic ethics in particular.[1]

6. The Five Pillars of Islam

Islam is a way of life and the core of this way of life is captured by the Five Pillars of Islam which encapsulate the basic responsibilities of a Muslim. They are:

1. declaration of **faith** in God and his messenger Muhammad
2. daily **prayer**
3. a commitment to **charity**
4. once a year **Ramadan fast**
5. once in a lifetime **Hajj pilgrimage** to Mecca

The **Declaration of Faith (or Shahada)** states "There is no God but Allah and Muhammad is his messenger." The declaration is deceptively simple, for it is far reaching and comprehensive in its import. In the simplest possible terms, "there is no God but Allah" declares the essence of Islamic theology, which is monotheism, the absolute oneness and unity of God. In the time of Muhammad, the declaration of faith is a repudiation of polytheism with its tribal gods and idols. Monotheism is a unifying force: if there is one God, we are people of one God and thus part of a human community that is prior to and superior to tribal allegiances. Islam is supposed to transcend all sectarian and tribal differences and define the core of one's existence. Morally, the declaration of faith is also deceptively simple. The declaration includes "and Muhammad is God's messenger" which is a commitment to the authority of, first, the Koran as the direct revelation of the word of the one God, and, second, it recognizes the special status of Muhammad as God's chosen one, and thus as a model human being and ethical ideal to be emulated in one's own life. If one lives in the footsteps of Muhammad, one lives in a way clearly favored by God. This is the theological basis of the authority of the "Hadith," which are the non-Qur'anic sayings of Muhammad and the use of his life as a model of ethical behavior. The Qur'an and Hadith, as we see below, are the source of Islamic law and ethics (the Sharia). The centrality of an attitude of submission to God is clearly an important difference from western secular ethics focused on autonomy. For a Muslim, one's will is subordinate to the Divine Will and matters of life and death are ultimately in the hands of God. As we shall see, however, submission to God does not imply a fatalistic or passive attitude.

The second pillar of Islam is **Prayer (or Salat)**. A Muslim is supposed to pray five times a day. The favored times are dawn, noon, midday, sunset, evening. The prayer is ritualized and directed towards the Kabba in Mecca. (Interestingly, Muslim's first prayed toward Jerusalem but Muhammad switched the direction of prayer to Mecca after the flight to Medina in 622.) Although it is preferable to worship together in a mosque, a Muslim may pray almost anywhere, such as in fields, offices, factories, universities, and hospitals. In Muslim cities, a "call to prayer" (now from loudspeakers)

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[1] For more information on the life of Muhammad and the basic elements of Islamic thought, see Malise Ruthven *Islam: A Very Short Introduction* (Oxford 1997). Also see the *Empire of Faith* video series and www.Islam101.com.

is a familiar part of life, and reinforces the common experience of the Islamic community (the Umma) who all face Mecca together and pray together. Of course, praying in the West and in non-Muslim communities may be more challenging. If for some good reason one cannot pray in the ritualized prescribed matter on a particular occasion, the Qur'an says: "Under unusual circumstances, you may pray while walking or riding. Once you are safe, you shall commemorate God as He taught you what you never knew" (Q 2:239). Prayer is a deep commitment and deeply cleansing; it keeps once close to God, but "remembrance of God is the most important objective" (Q 29:45).

The corridor of a hospital in particular is not the best place for kneeling in devout prayer. But many hospitals in the west do not have prayer rooms. Praying in a chapel often comes with its own set of problems -- forbidden pictures and statues of living beings, pews facing in the opposite direction of Mecca, and worshippers wearing shoes on the floor where Muslims kneel to pray. To alleviate these problems and welcome Muslim patients and families, hospitals can easily provide a *prayer room*, with prayer rugs for 10 to 15 people. Ideally the prayer room will include a special niche in/on the prayer room wall, which indicates the direction of Mecca and displays Islamic sayings and symbols. In addition, if necessary, a conference room can be reserved for the larger Friday afternoon prayers.

The third pillar of Islam is **Charity (or Zakat)**. A donation of 2.5% of capital assets is supposed to be given to the Muslim community. In addition, sadaqa-h, translated as "voluntary charity," in accordance with one's ability is also encouraged. Voluntary charity should be done in secret and not done for public praise. A Muslim should live a simple life and not one of lavish material excess. Indeed, an attitude of Charity should characterize all of one's deeds. The attitude of Charity also provides a clear basis for the principle of beneficence and compassion in clinical medical ethics. Indeed, the Qur'an states: "if one saved a life, it would be as if one saved the life of the whole people" (Q 5:32) and, in the Hadith, Muhammad directs us to "seek a remedy for any disease." Indeed principles of justice and charity are widely help by Muslims to require the community to provide universal access to at least basic health care services.

The fourth pillar of Islam is **Fasting (Sawm)** during the month of Ramadan. The Fast involves abstaining from food, drink, and sexual relations during daylight hours, for the month of Ramadan. Each night the fast is broken, and it is traditional for individuals to gather together each night with others for a shared celebratory dinner. Fasting is supposed to teach self-restraint and instill an appreciation of the simple needs of food and water. Importantly, one is not required to fast if it would be imprudent or unwise. For reasons of health, or other good reasons, one may break the fast, but one should make it up day for day at some later date if possible. The medical indicated taking of drugs, even IV drugs, does not break the fast, but IV nutrition and hydration does break the fast. Nonetheless, one should break the fast if doing so is medically indicated.

The fifth pillar of Islam is the **Hajj: the Pilgrimage to Mecca and the Ka'ba.** The Hajj is a once in a lifetime obligation only for those who are physically and financially able to do so. Over two million people go to Mecca each year from every corner of the globe. The yearly experience of people from all over the world coming together in Mecca has kept it the "melting pot" of Islam and the place where ideas, discovery, and invention are exchanged from the far corners of the Muslim world. The Hajj brings the people of Islam together just as it brought the Arab people and traders from afar together in the

time of Muhammad. The importance of the Hajj cannot be overestimated and for persons facing terminal illness, the Hajj maybe an important final act that completes their life.

An important characteristic of each the Five Pillars of Islam is the degree of flexibility and pragmatism that is built into them: One is to pray five times a day, but if one cannot the important thing is to keep God before one's mind. Everyone should contribute economically to the community, but the duty of charity is a personal commitment and we each must determine how to make charity an important part of our lives. Fasting is required, unless it would be a real burden, undue hardship, or medically risky. The point of fasting is to learn self-restraint and appreciating the condition of those who need food; it is not for simple self denial and suffering. On Ramadan, the Qur'an explicitly states "he who is ill or on a journey, shall fast a similar number of days later on. *God desires your well-being, not your discomfort*." (Qur'an 2:185, emphasis added) Similarly, the Hajj is something that one should do, *if one has the ability and means*. Although certain Islamic traditions are more austere and uncompromising, it is an important characteristic of Islamic ethics that it has a significant degree of pragmatism at its very core.[2]

7. The Four Sources of Sharia

The Five Pillars of Islam are considered the defining and essential aspects of Islamic life. The "Declaration of Faith," however, states that "There is no God but Allah and *Muhammad is his messenger*." In this simple declaration one commits oneself to submitting the entirety of one's life to the Will of God *as revealed in the Qur'an, and through the example provided by the life of Muhammad*.   The first pillar of Islam thus includes all of Islamic law and ethics, called **The Sharia.**

Sharia is usually translated "Islamic law" but the concept of law at work here is that of the moral law in the broadest possible sense. Sharia means both Law and the Path. Similarly, the word for Islamic jurisprudence, *Fiqh,* means both Jurisprudence and Insight. The Sharia path is a guide for one's entire life, it involves insight into the Will of God for man, and it is thus much more than law in the civil and political sense of the term. The Sharia is in fact more specific about family law (which governs marriage, divorce, and inheritance) than it is about criminal and civil law in more general terms.[3]

The Sharia is based on **four sources:**
1. **The Qur'an** -- the prophetic recitation from Allah (through the Angel Gabriel) to Muhammad
2.   **The Sunna and Hadith** -- stories of the life and sayings of Muhammad
3. **The Consensus of Scholars** -- including the classical commentaries on the meaning of the Qur'an & Hadith, and the "Schools" of interpretation (explained below)

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[2] For more on the Five Pillars of Islam, see Ruthven p. 143-148; and see
http://www.islamicity.com/mosque/pillars.shtml
For an excellent discussion of the Islamic way of life, see Suzanne Haneef *What Everyone Should Know about Islam and Muslims*; especially pp. 63-90 ("Islamic Values and Qualities: The Islamic Personality") and pp. 93-128 ("Islam in Society"). For a more progressive Islam, see Riffat Hassan "What Does it Mean to be a Muslim Today"
[3] For a comprehensive account of the Sharia and the different schools of interpretation, see Michael Cook *Commanding the Right and Forbidding the Wrong in Islamic Thought* (Cambridge University Press, 2000).

4. **Analogical Reasoning** from previous settled cases – Casuistry

The primary source of Sharia is of course **the Qur'an**. The Qur'an, however, is primarily focused on the articulation of the unity and majesty of God, the lessons we should have learned from the earlier prophets from Adam to Jesus, and the conflict with polytheism and idolatry. Although there are some specific guidelines in the Qur'an, especially about family law and warfare, specific moral guidance, in concrete and ever new situations, can only be inferred from its broad and poetic language and its few specific rules.

The second source of Sharia, **the Hadith**, thus takes on extra importance. Since Muhammad was chosen by God as the messenger, he was especially favored by God, and his life thus provides a model for Muslims to emulate. If the Qur'an is silent on an issue, Muhammad's sayings, actions, and character provide additional guidance. Unlike the Qur'an, however, the accuracy and authenticity of Hadith are often sources of controversy. In early scholarship, much emphasis was placed on establishing chains of oral and eventually written transmission of the words and deeds of the Muhammad. After over 100 years of oral transmission and after the companions of Muhammad had all long since died, the collections of Hadith took on clearer shape and authority. There are, nonetheless, distinct equally authoritative collections of the Hadith and small details of stories, or of wording, that can have significant impact on an overall interpretation and generalization to new cases. Even when we have clear agreement on the prophet's words or actions, as we shall see below, the actual implications for us can remain unclear or controversial. As a canon of interpretation the Qur'an trumps the Hadith, and the Qur'an emphasizes the righteousness, mercy, equity, and justice of God. It thus follows that we should always interpret the Hadith so that it elucidates the Qur'an, and thus so that the conclusion is reasonable and just.

The next source of Sharia is the **consensus** *(Ijma)* of religious scholars that forms slowly through the shared effort of interpreting the Qur'an and Hadith. In practice, this scholarly consensus takes form, first, in the early written commentaries on the Qur'an and Hadith, and later it comes to include the four major Sunni "Schools" of thought (or alternatively the Shia traditions) and other influential interpreters of the Qur'an and Hadith. (The four Sunni Schools and the Shia- Sunni split are discussed briefly below.) *Ijtihad'* refers to the act of novel interpretation by an individual of the Qur'an and Hadith. In the beginning, after the death of Muhammad, there was much room for independent and novel interpretation. Over time, however, a strong consensus formed on many matters of interpretation, and the consensus of the community of scholars itself takes on independent authority. The unstated assumption of Qur'anic interpretation is that, with the help of the Qur'an and of the Prophets, the Will of God as it applies to our lives is knowable by man. Thus, if after much reflection, scholarship, and discussion a consensus has formed, other things equal, we have reason to trust the accumulated wisdom of the scholarly community. As a result, once consensus has formed, it is said that "the gates of *Ijtihad* close," and the authority of tradition trumps novel interpretation. Others argue, however, that gates of *Ijtihad* never close; that is, the need for novel interpretation in changing circumstances is always necessary. Each generation must use

their reasoning to apply the timeless Islamic principles in creative ways to the evolving problems of human life.[4]

   With each new situation, new knowledge, and new technology, we get novel problems and questions. Of course, this is especially the case in biomedical ethics. Since the Qur'an and Hadith provide some clear cases of required actions, permissible conduct, and prohibition, we can use these examples as a basis for analogies to guide us in thinking about new situations. When a consensus forms on an issue or case, then this additional example provides the basis for a new analogy to help us resolve a novel moral problem or question. The fourth source of Sharia is this type of **analogical reasoning** from clear cases to new cases. Moral reasoning that is based on analogical reasoning is called **casuistry**.

   For example, the Qur'an states that man should not use fire as a punishment, for it is the punishment of God, and this has been interpreted by many to exclude the firing of cities in times of war. On this basis, many argue that the use of nuclear weapons to incinerate cities is clearly analogous to burning cities, and thus the first use of nuclear weapons is also forbidden. The Qur'an, however, also says that one should arm and prepare oneself for war so as to deter aggressors. And, additionally, the Qur'an also states that one need not continue to restrain oneself, from otherwise forbidden means of waging war, when the enemy has not shown similar restraint. On the basis of these three different passages, many Islamic scholars conclude that the first use of nuclear weapons is forbidden, but nuclear deterrence and nuclear retaliation (in response to another's first use of nuclear weapons) may be permissible.

An opinion on a moral question, like the permissibility of nuclear weapons, or on other matters of theology, is called a *Fatwa*. A fatwa is simply an opinion on a particular issue or question that is based on the four Sharia sources. Anyone who has seriously studied the Sharia may issue a fatwa, but the weight, the significance and influence, of a particular fatwa will depend both on the quality of the reasoning, and also on the reputation and authority of the person issuing it. On new issues, there are likely to be competing opinions based on different sources, or on different interpretations of the significance of Qur'anic passages and Hadith. There are also different traditions of interpretation that lead to different conclusions. Over time, if a consensus develops as to the best opinion, then this becomes part of the settled Sharia itself -- and a source of future analogies. In other instances, different Sharia sources may equally justify distinct and competing opinions and thus there may be a plurality of shared but distinct opinions on an issue. When distinct subsets of the larger Islamic community hold different opinions on an issue, each of these opinions is entitled to respect. Consequently, the consensus would state that the matter remains undetermined and each opinion maybe equally valid. In these unresolved cases, many believe that individual Muslims can then follow the opinion they believe to be most compelling.

   More concretely, there are four major classical "schools" of Sunni Islamic thought that continue to play an influential role in defining the Sharia. They are the Hanafi, the Maliki, the Shafi, and the Hanabali, and are named after their founders.

  - The **Hanafi** School was originally founded in Iraq, as the favored school of the Abbasid rulers, by Abu Hanifa (*d.* 767). This school of thought is now especially

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[4] See Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford, 2009); *In the Footsteps of the Prophet: Lessons from the Life of Muhammad* (Oxford, 2007)

- influential in Western Asia, except Arabia, including Turkey, lower Egypt, Pakistan, and South Asia. It is the most liberal tradition.
- The **Maliki** School was also known as the Medinian School because it grew out of the particular Sharia interpretation, the practice of Islamic Law, in the city of the Prophet, Medina. Its champion was Malik ibn Anas (*d.* 795) who collected the traditions upon which he, as a practicing judge at Medina, based his decisions into a corpus called *al-Muwatta* ('the Leveled Path').   This school of thought is now especially influential in Upper Egypt, North and West Africa.
- The **Shafi** School was founded by al-Shafi'i (*d.* in Egypt 820), who was a disciple of Malik. Al-Shafi'i laid the foundations of contemporary Sharia jurisprudence that is based on the four sources (explained above) by emphasizing the central role of analogical reasoning. This school of thought is now especially influential in Egypt, Indonesia and Southeast Asia.
- The **Hanabali** School was originally founded in Baghdad by Ahmad ibn Hanbal (*d.* 855). This school was a conservative reaction and response to the emergence of more rationalist Islamic movements. (Islamic rationalism will be discussed below.) This school of thought is now especially influential in the Arabian Peninsula. The now influential conservative and fundamentalist Wahhabi tradition in Saudi Arabia is a contemporary descendant of the classical Hanabali School. The Hanabali are especially deferential to the classical tradition of that emerged in the first three centuries, and especially resistant to new or novel interpretations of the Sharia. The Hanabali tend to emphasize that "the gates of *Ijtihad"* (individual interpretation) closed in the third Muslim century.

To clarify, these are schools of thought; that is, traditions of interpretation which emphasize particular commentaries and collections of Hadith, the opinions of particular classical scholars, and the scholars that have followed them and further developed the particular tradition of interpretation.

In addition, although each of these Schools is more influential in some regions than in others, in general, there is a mutual respect and reciprocity between the different schools. Specifically, each School may itself form a consensus on an issue, and this consensus within the particular School is then recognized as an acceptable alternative opinion by the other Schools. The exception here is the Hanabali/Wahhabi School of interpretation, which tends to be significantly more intolerant of the other Schools, and more insistent on the orthodoxy of its particular (more conservative) interpretation of Sharia. In short, the Sharia relies heavily on already established consensus on many issues, but there is also a range of acceptable positions officially represented in the distinct Schools of thought.

We have focused on the four sources of Sharia. Equally important, however, is the core objectives of Islamic Sharia: the protection of the Islamic community, the inner strengthening of faith, and the protection of life, family, and property**.** In difficult cases and moral dilemmas, the fundamental core and objectives of the Sharia takes center stage. This brings us to the final two fundamental, although secondary, principles of Islamic Sharia) that deal directly with moral dilemmas. The **principle of necessity** states that *necessity makes permissible the prohibited,* and the **principle of lesser evil** states that when forced to choose between undesirable outcomes always *choose the lesser evil*. As the Qur'an emphasizes: "God desires your well-being not your discomfort" (Q 2:185),

and so in circumstances where there are serious consequences to life, health, or well-being particular prohibitions that would block life-saving action or cause serious harm do not apply. Of course, applying the principles of necessity and the lesser evil requires judgment and is highly context and situation specific. One must consider the significance and point of the prohibition as opposed to the beneficial consequences of an infringement, and decide if the prohibition is waived in that particular context. These principles inevitably play a significant role in matters of life and death, and they are thus central principles of Islamic medical ethics.

8. Casuistry as Method

As a general model of reasoning, casuistry starts from a consensus on particular cases, and then moves, by means of analogy, from the clear and settled cases to more difficult or novel cases. The art of casuistry requires an intimate understanding of the particular case to be decided and its analogies and disanalogies with clear settled cases. The method of casuistry is typically thought to emphasize the *particular case* over more abstract principles. It is also said to involve an inductive model of moral reasoning that treats the particular case as prior to general moral principles. Moral principles are thus supposed to be derived from the particular cases.[5]

Because of its reliance on analogy from settled cases (in the Qur'an, the Hadith, and earlier consensus), Islamic ethics is often considered a particularly clear example of casuistry. Sharia interpretation, however, also presupposes basic principles of justice, toleration, compassion, and of the fundamental value of human life. Furthermore, in examining difficult moral issues, as we shall see, the process of Qur'anic interpretation cannot simply focus narrowly on particular verses. It must instead look for the underlying principles that make the most overall sense of the Qur'an as a whole. What then is the proper place of principles in a form of reasoning that is supposed to be rooted in particular cases?

Although Islamic ethics and jurisprudence relies heavily on particular cases, there is an alternative interpretation of the role of settled cases in moral reasoning, which perhaps more accurately reflects the structure of Islamic jurisprudence. First, it is important to notice that the settled cases, that provide the starting point for moral reasoning, always include underlying principles that systematize cases together into a line of reasoning. Any set of cases is unified explicitly or implicitly by judgments of relevance that allow one to reason from one case to the next. All case-based reasoning presupposes a principled basis for selecting apt analogies (from competing ways of seeing the case and thus from competing analogies). Second, this makes clear that interpreting cases is itself always theory-laden. There is no morally neutral description of a particular case. The features of the case are selected and noted based on considerations of moral relevance, and these principles of moral relevance are the means by which the case is generalized and shown to be relevant to novel and more complex cases.

The actual process of moral deliberation, and Sharia reasoning, is not so much inductive or deductive as it is a process of seeking coherence and consistency. By thinking about concrete cases in all their specificity, we are able to better and more

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[5] Add references here

accurately specify the demands of our principles and also see more clearly how to balance competing principles The details of specific cases are important not because they are methodologically prior to principles but because previously settled cases provide paradigmatic models for balancing and specifying principles.

9. The Principles of Islamic Ethics

The Islamic approach to ethics is fundamental shaped by submission to God's will as revealed by the Qur'an and the example of the prophet. At the core of the Muslim way of life are the five pillars of Islam (the Declaration of Faith, Prayer, Charity, the Ramadan Fast, and the Hajj Pilgrimage). The Sharia, Islamic law and ethics, is deeply rooted in the Qur'an and the Hadith which recount the sayings and the life of Muhammad. From these initial sources, a consensus of scholars has formed on many fundamental issues. New ethical questions and problems are addressed by a process of analogical reasoning from cases that is itself guided by basic principles. Devotion, dereference, and submission to the Will of God is the essence of Islam, but human reason and judgment is our only tool for understanding and interpreting the Divine Will as revealed to Muhammad. The inescapable tension between faithful submission to the Qur'an and the Hadith and rational reason-governed interpretation is the definitive and fundamental feature of the distinctively Islamic approach to moral problems.

In brief, the principles of Islamic normative ethics include:
- Submission to the Divine Will through the Qur'an, Hadith, and reasoning; not Individual Autonomy
- Non-malificence - Life and Death ultimately in God's hands:
  "Do not kill except for just cause"
- Beneficence, Charity and Compassion
- Justice and Equity
- Focus on Responsibilities; not rights
- Family Autonomy; not individualism

In chapters that follow, we will explore the application of these principles to a range of particular issues including clinical medical ethics & the patient-physician relationship (sect 33), the concept of death & organ transplantation (sect 38), assisted dying & euthanasia (sect 49), and abortion & reproductive ethics (sect TBD). In exploring these concrete problems and moral dilemmas, the contours and character of Islamic ethics will take on ever sharper shape and specificity.

Appendix I - The Sixth Pillar of Islam: Jihad

Jihad is sometimes called the sixth pillar of Islam, and radical "Jihadists" are too often the face of Islam in the West. Jihad is a duty in Islam but Jihad is not a license to kill innocents and nonbelievers as the Jihadist terrorists claim. It is thus worthwhile before concluding our discussion of Islam, to look at least briefly at the nature of Jihad in mainstream Islamic thought. First, "Jihad" basically means struggle and it signifies the *struggle in the name of Islam.* There are two forms of Jihad. The Greater Jihad is the internal struggle to follow the Sharia and to have true faith in God. The Lesser Jihad is the defense of the Islamic Community and it does include spreading and extending the calling of Islam. Obviously, the Greater Jihad is not a source of controversy; it the lesser Jihad that is associated with Jihadist terrorists supposedly fighting in the name of Islam.

The question before us is thus over the nature of the **Lesser Jihad**, and this question is essentially the question of the nature of just war theory in Islam.[6] First and most importantly, for most Muslims *the Lesser Jihad is defensive war only and is not supposed to be a war of conversion or a general state of war against unbelievers.* This is a point of controversy, however, and radical Jihadists tend to divide the world into the World of Islam, the World of War, and the World of Truce. On this radical interpretation of Jihad, believers are in a perpetual state of war with the unbelievers, and fighting unbelief itself can be a just cause for war.

The consensus of Islamic scholars, however, clearly and unequivocally rejects this understanding of Jihad as contrary to the fundamental principles of the Qur'an. First, the Qur'an explicitly states, "There shall be no compulsion in Religion" (Q 2:256). There is also the famous verse of the Qur'an titled "The Unbelievers" that asserts,

> "Say: 'Unbelievers, I do not worship what you worship, nor do you worship what I worship. I shall never worship what you worship, nor will you ever worship what I worship. You have your own religion and I have mine.'" (Q 109)

Two other important verses state:

> God said "Leave to Me those that deny this revelation" (Q 68:44); and
> "Forgive them and bear with them until God makes known His will. (Q 2:109)

In all of these verses, the Qur'an expresses a "live and let live" approach to other religious beliefs. This attitude was institutionalized in Islamic history, first when Muhammad did not seek vengeance, after the fall of Mecca in 630 CE, on those who had persecuted him and made him flee to Medina. Additionally, in 1187 CE when the crusaders hold on Jerusalem gave way to Saladin, he followed Muhammad's example by taking no significant retaliation on the non-Muslim peoples of the city, and instituted a system of religious freedom. More recently, under the Ottoman Empire the Islamic rulers instituted the "Millet" legal system that recognized three distinct systems of laws and courts for Muslims, Jews, and Christians. The Millet legal system clearly follows the Qur'an on "The Unbelievers" that states, "you have your own religion and I have mine" (Q 109). Religious tolerance, at least for Jews and Christians, is deeply rooted in the Qur'an and the history of Islam.

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[6] For an excellent discussion of Jihad and war, see Sohail H. Hashimi "Saving and Taking Life in War: Three Modern Muslim Views" in *Islamic Ethics of Life* edited by Jonathan E. Brockopp (University of South Carolina Press, 2003). On the Greater and Lesser Jihad, see Malise Ruthven *Islam: A very short Introduction* (Oxford 1997).

(As a point of clarification, because of the doctrine of apostasy, according to many jurists, religious freedom does not extend to Muslims in that they cannot abandon Islam. On some interpretations of Sharia, the punishment for Apostasy is death. It follows that a Muslim converting to Christianity is subject to the death penalty, and this clearly is not religious freedom. The doctrine of apostasy is indeed a part of the Sharia tradition, but like the prohibition on images of Muhammad or the status of women in Islam, it is not clear that it has a sound Sharia basis. Most clearly, the radical doctrine of Apostasy is founded on (controversial) Hadith, but it contradicts the Qur'an's injunction quoted above that "there shall be no compulsion in religion" (Q 2:256). Recall that the Qur'an takes priority over the Hadith, and so the intolerant doctrine of Apostasy is subject to criticism from Islamic progressives. However, apostasy is not the topic in question here.)

Given the Islamic emphasis on religious tolerance, what then accounts for the beliefs of radical Jihadists? First, as a historical and sociological matter, the legacy of the Crusaders and the religious war by Christendom on Islam has a lingering impact in Islamic attitudes toward the West. Second, the Qur'an includes significant praise for war and for defending Islam by violent military means. The Qur'anic accounts of the original battles between Muhammad and the Meccans provides a rich source for the glorification of war and dying for Islam. Third, after the death of Muhammad we have the violent battles for control of the young Muslim community and the fratricidal Sunni-Shi'a split that last till the present day (See Appendix below). Fourth, the early history of Islam is a glorious expansion which included both peaceful and militarist means. Eventually the Islamic Empire falls to the Mongols but Islam rises again to glory in the Ottoman Empire. Islam is a religion of peace and toleration but its rich cultural history includes enough violent lore and legend to inspire Jihadists to emulate a sometimes violent past and to strive to bring back the once glorious Islamic Empire.

Leaving these broad socio-historical generalities behind, let us look more directly at the Qur'an itself. Jihadists maintain that they are simply following the Qur'an, which is the clear word and will of God. Why would they claim this? The most important verse supporting the Jihadists is the famous *verse of the sword:*

> "and when the forbidden months are passed, slay the unbelievers wherever you find them" (9:5)

And we also have these two inflammatory verses:

> "Slay them (the unbelievers) wherever you find them. Drive them out of the places they drove you. Idolatry is more grievous than bloodshed" (2:191)
> "Fight against them until idolatry is no more and God's religion reigns supreme. But if they desist, fight none except the evil doers." (2:193)

There is much in these simple verses to incite Jihadists. On the other hand, the last verse does restrict war to those who do not "desist" and in this respect suggests a more defensive stance. Similarly, the following verse makes clear that one should not "slay" those who are seeking peace:

> "If they withdraw from you and fight you not, and instead give you assurances of peace, then God has opened no way for you against them" (4:90)

More explicitly, the following verses do not glorify war at all:

> "War is prescribed of you, though it be hateful to you" (2:216)

> "Fight in God's cause against those who wage war against you, but do not transgress (attack them first), for God loves not transgressors (aggressors)" (2:190)

Here we have an explicit statement limiting war to defensive war, and this fits the more general prohibition on killing in the Qur'an:

> "Do not slay the soul sanctified by God, except for just cause" (6:151, 25:67)

And it also fits the doctrine of religious freedom that we discussed above:

> "There shall be no compulsion in religion" (2:256)

Lastly, in the Qur'an, we have the doctrine of giving quarter ("aman") to enemy troops, which is sanctuary and safe passage:

> "If an idolater seeks asylum with you give him protection so that he may hear the Word of God (the call of Islam), and then convey him to safety. For the idolaters are ignorant men" (9:6)

And the principle that treaties must be honored even with idolaters:

> "repose no trust in idolaters, save those with you have made treaties … So long as they keep faith with you keep faith with them. God loves the righteous" (9:7)

On the basis of these passages, and the Hadith too, the consensus of scholars insist that war must be limited to defensive wars and humanitarian wars in defense of the rights of Muslims when they are oppressed by others. War must be limited to those who are attackers and so it is limited to combatants, and the targeting of innocent non-combatants is clearly prohibited (the principle of discrimination). Islamic scholars also insist on the principle of efficacy (the means must be likely to achieve the end) and proportionality (the harm of war must be outweighed by the end to be achieved). In addition, a Lesser Jihad, a violent war, must be declared by a legitimate political authority representing the Muslim community. It is not an individual mission like the Greater Jihad which is focused on inner faith and virtue. For all of these reasons, Jihad does not justify indiscriminate terrorism aimed at innocent non-combatants.

Once again, we clearly see in reading these many passages on war that the interpretation of the Qur'an must be guided by underlying moral principles, and that it is not enough to refer to a particular verse, like the "Verse of the Sword," and draw conclusions about the Will of God.

Appendix II - The Sunni-Shi'a Divide

Ninety percent of Muslims are Sunni and the Four Schools of interpretation discussed above are Sunni. In addition to Sunni Islam, however, there is also Shi'a Islam. Although the Shi'a are a small percentage of all Muslims, they are a significant force in the Middle East and the Sunni-Shi'a Split is a major factor in the history of Islam. The Shi'a are the majority population in Iran, Iraq, Azerbaijan, Bahrain, and a significant minority in Lebanon (40% Shi'a) and Yemen (47% Shi'a). Although the vast majority of Muslims in Pakistan and India are Sunni, a significant number of the total Shi'a population of the world (about 30% of all Shi'a) live in these two large countries. Nonetheless, the political and cultural center of Shi'a Islam is clearly Iran (90% Shi'a majority) and Iraq (60% Shi'a majority). The conflicts between Iran, Iraq, and the United States have clearly raised the profile of the Sunni-Shi'a split in the West.

In the West, Sunni and Shi'a are considered two versions of Islam, but it is also important to realize that many Sunni Muslims and Shi'a Muslims do not even recognize the other as fellow Muslims. Indeed, in so far as the Sunni-Shi'a dispute involve the essence and history of Islam itself, the divide between Sunni and Shi'a can inflame greater passions than the division between Islam and Christianity or Judaism. (The exception here is the more liberal Hanafi Sunni who recognize the Shia as Muslims and also consider The Shi'a Jafari School, named after the Sixth Imam, as a fifth School of Islam. For the Hanafi the profession of faith alone is sufficient to make one a Muslim. The final fate of misguided or sinful believers is to be decided ultimately by God.)

The essence of the split and schism occurred after the death of Muhammad and involved the leadership of the nascent Islamic community. The Sunni Hadith emphasizes Muhammad's view of the authority of consensus itself and treated the succession of power as a matter of the consensus of the community. Those who emphasized this interpretation chose first Abu Bakr, Muhammad's close friend and father of his young wife Aisha as leader. After Abu Bakr died of illness (or on some accounts slow poison), Muhhamd's other companions Umar and Uthman are chosen to lead the community of believers. The Shi'a, on the other hand, emphasized a Hadith in which Muhammad is said to have designated his cousin and son-in-law Ali as his successor. Ali's father was Abu Talib, the uncle who raised Muhammad and was like a father to him. Ali was also one of the first, with Muhammad's first wife Khadija, to accept the veracity of the revelation and join Muhammad in submission to Islam. Ali also married Muhammad's daughter Fatima and so was both his cousin and son-in-law. Although Ali stepped aside and accepted Abu Bakr and Umar as leaders, the Shi'a believe Ali was thus the rightful successor and leader of the Muslims. Indeed, according to the Shi'a, the succession of religious and political authority flows through Muhammad's hereditary family line.

This early disagreement took on new dimensions after Umar was poisoned and Uthman was killed. Ali briefly became the fourth successor to Muhammad after Uthman's murder but he too was soon assassinated as the struggle for control of the young Muslim community intensified. At this point, the Shi'a Muslims followed Ali's sons, the grandsons of the Prophet Muhammad, Hasan, the compromiser who settled in Medina, and younger Hussein, the rebel who was killed in the famous battle of Karbala on the 10th day of the first Month of the Muslim calendar. This day is called Ashoura and the remembrance of Hussein martyrdom is a center piece of Shi'a worship. All of the subsequent leaders of the Shi'a were also killed, until the eleventh Shi'a leader, or 11th

Imam, is killed in 874 (CE). His young seven year old son, the 12th Imam, then "disappears" and it is said that the 12th Imam will return when the time is right and reassert his proper authority over the Islamic community.

The Shi'a-Sunni divide is thus born in bloodshed and violence, and this violence continues down to the present day. To the Shi'a, the Sunni's killed off Muhammad's family in the pursuit of political power. To the Sunni, the Shi'a's have tried to transform Islam into a system of hereditary power that is contrary to the essence of the Islamic community. It is here that a struggle for political authority in the early Islamic community takes on theological significance.

The Shi'a call religious authority **"Alid Power"** to signify the hereditary descent from Ali. The leader of the Shi'a, called the Imam, is supposed to be based on a hereditary descent from Ali. The Shi'a declaration of faith, the First Pillar of Islam, reflects this theological difference "There is no God but Allah and Muhammad is his messenger *and Ali is the Friend of Allah.*" For the Shi'a, the Qur'an is the final revelation, but Ali and the Imams continue to have the power of prophetic interpretation that is similar to Muhammad. The Shi'a thus include the "Hadith" of Ali and the other eleven Imams, in addition to the Hadith of Muhammad. In most respect the Jafari School of Sharia interpretation does not differ significantly from the Sunni Schools, but methodologically and theologically, there are significant differences. The hostility and conflict between the Shi'a and Sunni Muslims, however, is rooted in the violent history and mythology more than theology.

In the bloody internal conflict for control of the early Muslim community, each Shi'a Imam dies in battle or is murdered until the young 12th Imam "disappears" in 874. In the absence of the Imam, as the true and authoritative leader, "Ayatollahs" have replaced the Imam's authority. The Shi'a maintain that Allah would not leave humankind without some form of Prophetic assistance. It is part of our nature to wander from the path and Will of God, and so Prophets are sent to provide divine revelations. Muhammad was the last prophet, after his death the Imams were also guided by God in *interpreting* the Qur'an (and the Hadith). In the Ayatollahs lack true Alid power of the Imams, but they nonetheless have significant authority in Sharia interpretation. Recall that the Sharia is based on the Qur'an and the Hadith, and that the Hadith is treated as if it has divine authority (despite the fact that it is not the word of God). The Hadith is primarily the traditions telling us how Muhammad lived and recounting his interpretation of the Qur'an and the Will of God. For the Shi'a, this same authority that is manifest in Muhammad's life and his sayings also falls on Ali, and the Imams.

It is an important consequence of this difference that Alid Power allows more independence from past tradition and interpretation (that is, of the Sunna). For the Shi'a the gates of *Ijtihad* (or individual interpretation) never close. The Shi'a thus can adapt more quickly than the slow changing Sunni consensus.[7] Shi'a authority is also significantly more hierarchical than in the Sunni tradition. As we have seen, Sunni religious authority is highly decentralized and derived from the consensus of many independent scholars all working on mastering the Sharia, interpreting its significance, and extending it to new cases. The Sunnis emphasize that scholarship is a duty of the entire Muslim community and that truth results from a settled and stable shared consensus of the four Sunni Schools of thought and of independent scholars. When there

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[7] Ruthven p. 82-83.

is no shared consensus of religious scholars then there is also no one orthodox Islamic position on the issue. Instead, for Sunni Muslims, there is often a range of reasonable and thus acceptable positions. The Sunni model, however, moves slowly and is based on the cumulative authority of the community of scholars.