

Muslim Perspectives on Cloning

with Mohammed Ghaly, "Human Cloning through the Eyes of Muslim Scholars";
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A CRITIQUE OF ISLAMIC ARGUMENTS ON HUMAN CLONING

by Farrokh B. Sekaleshfar

Abstract. Sunnism constitutes eighty percent of the Islamic world. The most academic and renowned religious seminary in the Sunni world is Al-Azhar University in Egypt, and it is from here that most verdicts on novel issues such as human cloning are decreed and disseminated throughout the Islamic and non-Islamic worlds. The perspective of this seminary and of other significant Sunni jurisprudential councils and figures are alluded to throughout this essay. I lay out the method of legal derivation employed by the Sunni clergy and scholars and then illustrate how they have arrived at their prohibition on human cloning. I demonstrate weaknesses of methodology employed by the major Sunni Muftis within the domain of jurisprudence.

Keywords: analogical deduction; ethics; human cloning; Islam; jurisprudence; slippery slope arguments; Sunnism.

The cloning of Dolly the sheep in 1997 produced a plethora of antagonistic and negative headlines in the Arab Sunni world. Although such attitudes were observed in the media throughout the world, the nature of the comments made here was somewhat different. Some of these front-page newspaper headlines include: "And Wilmut Rested on the Seventh Day" (a play on Genesis 2:2) (*Al-Safir*, 6 March 1997), "Cloning Has Transformed and Altered All the Laws of Nature" (*Al-Sharq Al-Awsat*, 6 March 1997), "Story of the Sheep, and the Sheikhs That Don't Understand" (*Ruz al-Yusuf*, 10 March 1997), "The New Nuclear Bomb" (*Al-Sharq Al-Awsat*, 8 March 1997), "After Today, There's No Need for the Male Species" and "Chief

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Egyptian Mufti: Lucifer Is Behind the Whole Human Cloning Saga” (*Al-Safir*, 17 March 1997), and “Saudi Mufti Calls for the Deaths of Those Who Participated in the Creation of Dolly” (*Al-Safir*, 17 March 1997). These are some of the outbursts during the early days after Dolly was introduced to the world. In this essay, however, I focus on what religious authorities had to say on the matter.

But first, I outline the course of action taken by jurists (*muftis*) when encountering issues with no precedent within the sacred texts.

HIERARCHICAL ORDER OF INVESTIGATING CANONICAL MATTERS

On encountering a given canonical issue—in this case the permission to clone human beings—the jurist initially must scrutinize and carefully peruse the transmitted texts. In Sunnism, the texts are tantamount to (1) the Qur’an (revelation, word of God) that exists today as it did 1,400 years ago and (2) authentic traditions narrated from the Prophet Muhammad. Assuming that no reference to human cloning is observed in either the Qur’an or traditions, Sunni legal theory (*usul*) dictates the use of a set of procedural courses of action that ought to be executed in a specific hierarchical order.

The five most important sources of extrapolating Islamic law are:

1. *Ijma’* (consensus), whereby all jurists (or, according to a few, the whole community irrespective of their status of knowledge) of a given era are unanimous in relation to a canonical issue’s verdict. This legal tool is only rarely observed in the present day for a variety of reasons, from the geographical to the sociopolitical (Mumisa 2002, 86–87). Moreover, accuracy-wise, a mere unanimous consensus need not disclose or reveal God’s law. A strong probability or speculation (*zann*) may be attained as a result of such consensus, but certainty vis-à-vis God’s laws is not automatically acknowledged. Acting in accordance with speculation, in contrast to certainty, is not approved by the Qur’an: “Most of them just follow *zann*; indeed *zann* is no substitute for the truth” (10:36).

2. *Qiyas* (analogical reasoning). This tool is defined as “the extension of Shari’ah [canon] value [a subject matter whose ruling has been textually stipulated by the Qur’an/Traditions] from an original case (*asl*) to a new case [*far*], because the latter has the same effective cause [*ratio legis*] as the former” (Kamali 2003, 264). In the absence of Qur’anic and traditional references, this method of reasoning has constituted the main drive in Sunni legal extrapolations (except within Hanbali schools of jurisprudence¹). A minority of scholars even claim that such extrapolated deductions of analogy “do not assume the status of laws unless they have been sanctioned by *ijma’*” (Mumisa 2002, 92). Applications of this interpretative tool in relation to human cloning are discussed in detail below.

3. *Istihsan* (juristic preference), juristically defined as the “method of exercising personal opinion in order to avoid any rigidity and unfairness that might result from the literal enforcement of the existing law” (Kamali 2003, 325), refers to an extrapolated ruling attained via analogy (*qiyas*). The jurist considers the best interests of the community and deems it preferential to give priority to these interests over dry analogical deductions. Assuming that the interests were textually stipulated, why should *istihsan* count as a tool or source separate from the Qur’an and traditions? However, what if the interests are delineated by a person alone, without textual guidance? This form of derivation has been refuted by some, including the head and founder of the Shafi’i school, Imam Shafi’i (d. 820 C.E.), who said that “he who practices *istihsan* assumes unto himself, the power of law-making” (Mumisa 2002, 133).

4. *Maslahah Mursalah* (public interests) is defined as “a consideration that is proper and harmonious . . . with the objectives of the Lawgiver [these being the protection of one’s rights to religion, life, sanity, lineage, and property]; it secures a benefit or prevents a harm; and the Shari’ah provides no indication as to its validity or otherwise” (Kamali 2003, 351). Because of its mutual exclusivity with the Shari’ah, the interpretations put forth by jurists via this route may be deemed, at best, speculative (*zanni*).

5. *Sadd al-dhara’i* (slippery slope arguments): As in *qiyas*, this concept is a subject of controversy between the four schools. Hanafi and Shafi’i jurists, among others, regard it as irrelevant in that a same ruling may be derived via recourse to other principles. Otherwise, its conceptual validity is agreed upon by all—that is, the prevention of evil before it actually materializes (Kamali 2003, 398–401).

These five are regarded as the most important of subsidiary juristic devices employed by Sunni jurists in relation to a matter not alluded to throughout the Qur’an and Prophetic traditions. In this essay we focus on two of them—*qiyas* (analogical reasoning) and *sadd al-dhara’i* (slippery slope arguments)—because they are used with respect to the prohibition of human cloning. First, I review the verdicts and rationale as declared by Sunni religious authorities. I then attempt to refute the decreed positions by revealing inconsistencies in their perspectives as well as potential weaknesses residing within their use of analogy and slippery slope arguments.

JURISPRUDENTIAL REASONS FOR PROHIBITING HUMAN CLONING

Before classifying the different jurisprudential reasons behind the prohibition of human cloning, I want to mention a number of general negating comments and statements that jurists have made.

According to the *al-Muslimun* newspaper, Abdul Aziz bin Baz, the Grand Mufti of Saudi Arabia, stated that “there is no truth to human cloning, and one is not permitted to carry it out” (Awdatullah 2003, 164). Many renowned religious scholars in the Middle East such as Syrian Muhammad

Said Ramadan al-Buti rejected such a reality (Awdatullah 2003, 163). Another Syrian religious scholar who initially called human cloning a “lie” was Dr. Wahbah al-Zuhayli (Al-Zuhayli 1997, 121). Affiliated with Al-Azhar, the Majma’ al-Buhuth al-Islamiyyah (Islamic Research Council)—which was established in 1961 and replaced the Jama’ah Kibar al-Ulama (Grand Assembly of Scholars) in Egypt—issued a ban on human cloning and urged all Islamic nations to take the same stance (Atighetchi 2007, 242; Awdatullah 2003, 166). Furthermore, they, in addition to Saudi Sheikh Muhammad ibn Saleh al-Othimin (Youssef 1997), called for Islamic penalties to be executed in relation to those who involved themselves in such scientific procedures. The Academy of Research of Al-Azhar (Atighetchi 2007, 242), European Council for Fatwa and Research (Aldeeb 2006), Majma’ Fiqh Islami [Islamic Fiqh Academy] (Aldeeb 2006), the Islamic Jurisprudence Council of the Organization of Islamic countries of Jeddah (Al-Aqeel 2005, 1867), Islamic Medical Association of North America (Athar and Fadel 2007), the (Kuwaiti) Islamic Organization of Medical Sciences—IOMS: at their 9th Medical and Jurisprudence Seminar held in Casablanca, Morocco (El-Gendy 2006)—and the Muslim World League (MWL) (2003) also prohibited human cloning.

Dr. Muhammad Sayyid Tantawi, Head of Al-Azhar, explained that “Islam is not anti-science” but that “human cloning is illegal” (Misbah 2001, 49). Dr. Nasr Farid Wasil, former Grand Mufti of Egypt and member of Al-Azhar’s Dar al-Ifta, stated that “human cloning is a satanic act and prohibited in Islam” (Al-Khadimi 2005, 136; Awdatullah 2003, 114). He believed that human cloning would increase crime because of the potential alterations to personal identity (Al-Khadimi 2005, 136). Professor Ali Khalifa (of Ain Shams University) regarded human cloning as a threat to one’s “human personality, human dignity and honor, and human family and society” (Sawahel 2004). Abd al-Muhsin al-Turki, secretary-general of the MWL, even called it heretical (Sawahel 2004). Major jurists and authoritative Muslim bioethicists of other countries who also deemed human cloning as *haram* (prohibited) include Dr. Muhammad Sulayman al-Ashqar of Jordan (Al-Ashqar 2001, 38), the Mufti of Tunisia, Shaykh Mukhtar al-Salami (Eich 2006, 300), Dr. Gamal Serour (Serour 2005, 189), and others.

Listed below are a number of jurisprudential deductions made by key Sunni figures on the illegitimacy of human cloning.

1. *Analogized to Lesbian Interactive Activity.* In Islam, lesbianism and homosexuality in general are strictly forbidden. Muhammad Ra’fat Uthman, from the Shariah department of Al-Azhar University, analogizes human cloning to lesbianism in the following manner (Uthman 2003, 23–50):

Premise 1: According to the texts (Qur’an and authentic traditions), lesbian interaction is forbidden in Islam.

Premise 2: The textually stipulated *ratio legis* (reason behind a law) for the above is that people of the same sex are not allowed to engage in physical acts of sexual gratification with one another, such acts being confined to mature and married members of the opposite sex.

Premise 3: Human cloning may involve scenarios whereby a woman *A*'s somatic cell's nucleus is inserted into woman *B*'s denucleated egg.

Conclusion by Analogy: Human cloning is therefore prohibited (because it is subsumed under lesbianism).

Uthman has extended lesbianism's ruling to a new case, human cloning, because they possess the same *ratio legis*. However, lesbian activities are forbidden because physical sexual contact is made between two women leading to sexual arousal. How can this be analogized to the event of a person's extracting the nucleus from a somatic cell and inserting it into a denucleated egg, which occurs wholly within a laboratory and involves one person's actions with cells? Where in such a process does sexual arousal occur? Who or what is making physical contact with whom? Surely there exists no common *ratio legis* between the original case of lesbianism and the new case of human cloning.

A common example of a valid analogy is the following:

Premise 1: Drinking wine is forbidden.

Premise 2: The textually stipulated *ratio legis* is that wine has intoxicating properties that can affect one's thinking (thinking being an attribute essential to personhood).

Premise 3: Beer and certain drugs can cause intoxicating effects.

Conclusion by analogy: Drinking beer and taking drugs are forbidden.

Here, the original and new cases possess a shared *ratio legis*, thus justifying the conclusion. In Uthman's scenario, the *ratio legis* of the two cases are mutually exclusive and the conclusion is at best weakly speculative (*zanni*).

2. *Analogized to Adultery.* In Islam, as well as in other monotheistic religions such as Judaism and Christianity, adultery—sexual intercourse between a married woman and any man other than her husband—is forbidden. The reason for deeming such deeds illegitimate is the intimate sexual contact between the genitalia of unrelated members of the opposite sex. Copulation-free contact (hugging or kissing) between such individuals is deemed *haram* but not qualified as adultery. Coitus interruptus or emission-free copulations do qualify as such. Adultery, therefore, takes place—as deemed by the texts—once the juxtaposition (copulation) of the related genitalia has been actualized.

Uthman has analogized human cloning to adultery, thus acquiring further reason why it should be prohibited (Uthman 2003, 9–22; Islami 2005, 130). His rationale may be structured as follows:

Premise 1: According to the texts, adultery is forbidden in Islam.

Premise 2: The textually stipulated *ratio legis* for the above is that two unrelated persons of opposite sexes are not allowed to copulate (this act being confined to legally married couples).

Premise 3: Human cloning may involve scenarios whereby a man *A*'s somatic cell's nucleus is inserted into the denucleated egg of woman *B* who is not *A*'s wife.

Conclusion by Analogy: Human cloning is therefore prohibited.

This reasoning, however, is not faultless. First, the *ratio legis* within the original case of adultery is not to be found within the new case of human cloning. In human cloning, one observes no traces of illicit copulation; everything is carried out in a lab environment without the assistance of genitalia. No proof results from such a weak analogy.

Second, continuing from such logic, surrogacy and in vitro fertilization (IVF) may also be analogized to adultery and thus deemed forbidden because of the transfer of reproductive material from a man to an unrelated woman. Some scholars, including Uthman, stipulate that surrogacy or IVF that involves a lawful couple's own embryo or sex cells is not problematic. My question is why one would rule human cloning impermissible just because it has the potential to be used between unrelated men and women. It should rather be accepted on the whole and then forbidden in cases such as those mentioned above.

3. *Analogized to Ethnic Cleansing.* The *ratio legis* behind the prohibition of ethnic cleansing in Islam (and, I presume, all other religions and schools of thought) is the killing and destruction of innocent human lives. Al-Khadimi's analogy of human cloning to ethnic cleansing may be reconstructed as follows (Al-Khadimi 2005, 136):

Premise 1: Ethnic cleansing is prohibited in Islam.

Premise 2: In ethnic cleansing, one brings about the predominance of a certain genotype and phenotype and reduces the percentage of another (thus negatively affecting genetic diversity).

Premise 3: In human cloning, favoring one genotype variation to another is observed.

Conclusion by analogy: Human cloning is therefore prohibited.

This reasoning may be challenged in that there is no textual stipulation specifying that the *ratio legis* underlying the prohibition of ethnic cleansing is that of promoting genotypic/phenotypic predominance and reducing genetic diversity. Rather, that which lies at the heart of such a prohibition is the killing of innocent life. As John Harris claims,

... cloning cannot be said to impact on the variability of the human genome; it merely repeats one infinitely small part of it, a part that is repeated at a natural rate of about 3.5 per thousand births. Those who raise threats to the human genome as a fear in connection with human cloning owe us an explanation of how the human genome or genetic variability might be adversely affected. (Harris 2004, 50)

These are just the three most accepted variations of the many analogical attributions made in relation to human cloning. The phenomenon also has been analogized to female infanticide, albeit not appreciated by most Sunni jurists (Islami 2005, 130). In any case, I want to show that the interpretative tool of *qiyas* may very easily be subject to abuse and lead to a vast spectrum of loose and speculative conclusions. Acknowledging the *ratio legis* of the original case textually and then ascertaining that the same *ratio legis* exists within the new case must be demonstrated with certainty before issuing negative verdicts on technologies that may promote the advancement and happiness of thousands of men and women.

4. *Prohibited because of Slippery Slope Arguments.* The essence of *sadd al-dhara'i* (lit. blocking ways to something) involves the preventing and blocking of any means to evil or canonically prohibited actions. In jurisprudential terms, *sadd al-dhara'i* is the process of blocking or prohibiting permissible actions that ultimately may result in prohibited or impermissible ones. A common example is the case of selling grapes to one who might make wine out of them. Selling grapes per se is permissible; however, it is deemed impermissible when the possibility exists that wine may be produced as a result. Precaution is dictated in such cases in order to avoid the actualization of evil.

The problem with *sadd al-dhara'i* is threefold. First, *most* permissible and legitimate actions have the potential to lead to impermissible (*haram*) actions. If *sadd al-dhara'i* were to be fully incorporated in our lives, we would feel totally constrained and imprisoned. The more one thinks into the long term in relation to a given act, the higher the probability of *haram*. Helping out a homeless person who begs on the street may lead to his or her acquiring drugs or alcohol. Transplanting a patient's cirrhotic liver or suctioning the excess fat from a patient's body may lead to the patient's increasing his or her alcohol/lipid input in unhealthy proportions. The possibilities are endless.

Second, *qiyas* contained a set of clear guidelines to abide by in order to formulate a valid analogy, but *sadd al-dhara'i* is lacking in this regard. How does one decide whether *x* action will lead to *haram* consequences? Moreover, who must decide? And by what criteria ought the decision to be made? It is true that precaution is wise when one rationally fears that committing *x* action would lead to wrong, but, unless a clear protocol is set for one to make that decision to be cautious or not, one will be left bewildered.

After all, most normally permissible actions, even driving motor vehicles or watching television, can potentially lead to impermissible actions.

Third, *sadd al-dhara'i* may be compared to the principle of dangerous precedent in that any given action that is not in accordance with the norm, according to the Qur'an and traditions, is either (a) wrong or (b) right but ought to be refrained from because of its potential negative consequences. Tantawi, for example (Islami 2005, 74), regards human cloning as unethical because zygotes ought to be produced solely by means of the union of sex cells. Because he does not regard the method of uniting the sex cells as having to be customary, he deems IVF as unproblematic.

Other major Sunni figures have employed *sadd al-dhara'i* as a tool in order to prohibit the use of human cloning. Sheikh al-Furfooor said at an Islamic Jurisprudence Assembly: "That which I believe in and my heart is assured of, in relation to human cloning—in all its variations including human cloning confined to a married couple's materials—is that of the concept of *sadd al-dhara'i*. For if we slightly open up to human cloning, one fears that it may open the floodgates to serious dangers" (Islami 2005, 137).

Azhar-educated Sheikh Qaradawi, former member of Dar al-Ifta, also has promoted the ban on human cloning because of its potential side effects and dangers, which include the disruption of the institution of marriage and the family unit as well as the promoting of Islamically unethical practices such as homosexuality (Islami 2005, 84). Such a rationale is in itself a form of *sadd al-dhara'i* (more on this later). Wasil and Hamdi Zaqqooq, the present Minister of Religious Affairs in Egypt, also have put forward such lines of reasoning (Al-Khadimi 2005, 136).

5. *Human Reproduction Must Occur Only via Male-Female Sex Cell Union.* Tantawi (Awdatullah 2003, 161; Misbah 2001, 49), Wasil (Eich 2006, 300), the MWL, and others (Al-Khadimi 2005, 20) believe that human reproduction must occur by means of the union of the female and male gametes that forms the zygote. This stance has been supported by the Islamic Fiqh Academy, who believe that this method of reproduction is how God ordained it to be.²

I offer the following criticisms. First, the rationale used by such theorists is that because the Qur'an speaks of natural sexual reproduction in relation to humankind (7:189), this ought to be the method that human beings practice. However, the Qur'an also speaks of traveling with camels and ships or by foot. Would this prohibit humans today from traveling by train and airplane? Prohibiting other forms of reproduction by extrapolating from 7:189 is shortsighted. The best one may deduce from the verse is that natural human reproduction is permissible.

Second, Islam and Christianity accept the miraculous birth of Christ—that it did not occur by means of natural reproduction. Limiting repro-

duction to the union of male and female sex cells causes problems for this belief. Surely Christ's birth was more than legitimate.

Third, no reference whatsoever throughout the texts suggests or indicates that human reproduction *must* arise as a result of the sex cells' union and that no other route is permissible.

6. *Loss of Kinship and Lineage.* Tantawi (Awdatullah 2003, 161), Wasil (Ghanim 2001, 153), Abd al-Muhsin al-Turki (2003, 31–33), Abdul-Qadim Zalum (Awdatullah 2003, 162), al-Khadimi (2005, 64–65) and most Sunni Muftis (Awdatullah 2003, 189) refer to the mixing of kinship as a *ratio legis* behind the prohibition of human cloning. But why should this be? It is not as if human cloning will be executed with unlabeled containers, which could lead to the insertion of a man's nucleus into an unrelated woman's ovum. Proper regulations and supervision will avoid any mixing up or loss of kinship. Even if a mixup were to occur, it would be the result of human error, not of the cloning process per se. Although the potential for such mixups is possible, surely the risk does not justify prohibiting the technology altogether.

7. *No Need for the Human Male.* According to Abdul-Qadim Zalum (Awdatullah 2003, 162), one of the principal aims of the Islamic Canon—to protect kinship—will be threatened by human cloning. With cloning there arises the theoretical possibility of producing offspring without any assistance from the human male. Some Muftis regard this threat as one reason behind the prohibition of human cloning.

Two difficulties are associated with this viewpoint. First, no text stipulates that it is forbidden to produce fatherless children. The existence of Jesus and Adam bear witness to this claim. Second, even if such a production of offspring were illegal (woman's somatic nucleus inserted into her own denucleated ovum), this need not be applied to all scenarios of human cloning where both parties of a married couple are involved in the procreation of their offspring via somatic cell nuclear transfer.

8. *Annihilation of the Family Unit and the Constitution of Marriage.* According to Yusuf Qaradawi (2002), to marry and bear the difficulties of marriage and family life will be threatened by human cloning. Once again, even if such potential side-effects resulted from using this technology, this logic would lead also to the prohibition of many other things, such as driving cars because they can be used to commit crime.

9. *Propagating Homosexual Relationships.* In Islam, homosexual practices are strictly forbidden. Human cloning, according to sheikhs such as Qaradawi (2002), has the potential to enhance and develop lesbian and homosexual lifestyles. Here again one may observe the slippery slope arguments used against human cloning. Surely there exist more simple methods of acquiring offspring for homosexual persons than that of expensive

cloning. Why should speculative potentials hinder the development of such beneficial technologies?

NOTES

1. This is one of four main schools of jurisprudence within Sunnism, along with Hanafism, Malikism, and Shafi'ism.
2. Development of a Regional Position on Human Cloning, Regional Committee for the Eastern Mediterranean (51st session), available at www.emro.who.int/rpc/pdf/RC51-INF-DOC-11.pdf.

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