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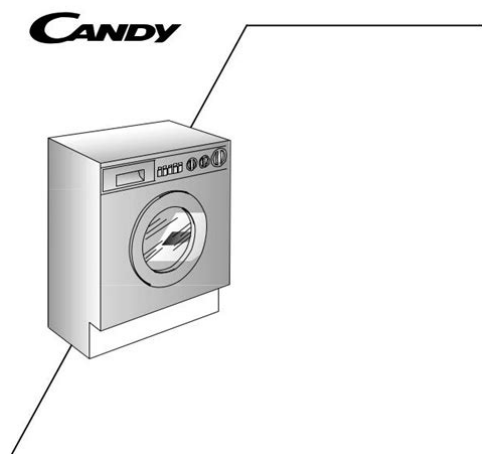
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photocopying, recording, or otherwise, without the prior permission of Oxford University Press. As a scholar steeped in Islam, his own religious tradition, Abdulaziz Sachedina has also been a conversation partner with scholars in other religious and nonreligious traditions of ethical reaction, as well as in debates about public policy in a pluralistic society. For instance, at the University of Virginia, Sachedina cotaught, with another colleague and me, a seminar on Christian, Jewish, and Islamic perspectives on taking human life, which addressed important questions in bioethics, such as abortion, suicide, and euthanasia, as well as questions about killing in selfdefense, capital punishment, and warfare.

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That is just one of the many contexts in which he has engaged colleagues—locally, nationally, and internationally—in rigorous examinations of comparative religious ethics. In debates about public policies, Sachedina has been called upon time and again to present Islamic perspectives on such topics as human reproductive cloning and human embryonic stem cell research. Through his testimony before the National Bioethics Advisory Commission and congressional committee hearings, for instance, policymakers have learned much from Sachedina’s unfailingly clear and illuminating portrayals of Islamic principles and juridical decisions. His presentations have enabled government officials and advisory committees to understand and consider Islamic views in their deliberations. He has also been an important spokesman on the international scene, for example, viii foreword in conferences sponsored by the World Health Organization WHO and other international bodies. In public policy fora, as well as in the academy, Sachedina is able to communicate Islamic positions clearly and effectively. He is able to do so both because he has lived and studied his tradition so thoroughly and because he understands as well the views of other religious and secular traditions. This understanding enables him to communicate at once what is shared and what is distinctive about Islamic perspectives and positions and to contribute significantly to ongoing scholarly and public discourse. As Islam has become an increasingly important voice in conversations about bioethics in the West, its interpreters have often addressed particular issues or problems, such as the moral status of the fetus. While these particular contributions have greatly enhanced our understanding of Islamic bioethics, we have long needed a more systematic and comprehensive articulation of Islamic bioethics, one that also connects Islamic juridical decisions to broader theologalethical beliefs.

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This need has now been met in Sachedina's Islamic Biomedical Ethics, a remarkably clear, illuminating, and reliable guide. It not only portrays the Islamic tradition's bioethical views; it also contributes to the tradition's ongoing development. We are deeply indebted to Sachedina for this rich and masterful work. James F. Childress The John Allen Hollingsworth Professor of Ethics University of Virginia Contents 1. Introduction, 3 2. In Search of Principles of Healthcare Ethics in Islam, 25 3. Health and Suffering, 77 4. The Beginning of Life, 101 5. Terminating Early Life, 125 6. Death and Dying, 145 7. Organ Donation and Cosmetic Enhancement, 173 8. Islamic Bioethics — Recent Developments, 195 9. Epilogue, 221 Glossary, 225 Notes, 231 Bibliography, 265 Index, 273 This page intentionally left blank Islamic Biomedical Ethics This page intentionally left blank 1 4 Introduction As a monotheistic tradition Islam shares its spiritual, moral, and cultural genome with Judaism and Christianity. The word islam, which designates the last of the Abrahamic religions, literally means "submission to God's will." Muh.ammad born 570 CE, the Prophet of Islam and the founder of its public order, proclaimed Islam in the seventh century CE in Arabia. The beginning of Islam in 610 CE was marked by a struggle to establish a monotheistic faith in the polytheistic Arab tribal culture, with a clear departure from its divisive and violent tendencies, in order to create an ethical public order embodying divine justice and mercy. Muh.ammad as a statesman instituted a series of reforms to create his united community, umma, on the basis of religious affiliation. Muh.ammad's religiouspolitical leadership and the universalizing mission for his community to spread Islam provided the major impetus for the expansion of the Muslim community beyond Arabia. Within a century of his death in 632, Muslim armies had conquered the region from the Nile in North Africa to the Oxus in Central Asia up to India.

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The political success of the Muslim armies and the territorial expansionism that ensued did not quell the internal struggle that was brewing among different powerful groups that vied for the leadership of the nascent community in the aftermath of the Prophet's death. Those who paid allegiance to Abu Bakr and his successors came to be known as the Sunnis followers of communal "tradition". Another equally influential group that included prominent members of the Prophet's family contested Abu Bakr. Those who refused to accept Abu Bakr formed the majority of the community. The dispute on leadership in the community was more than political. It had profound implications beyond politics. The Qur'an's persistent injunctions of obedience to the Prophet endowed him with enormous personal prestige and power in shaping the public order and the future course of comprehensive Muslim life. In the postprophetic period the dispute over the ideal leadership and the course of Muslim history left the community endlessly searching for a paradigmatic authority whose obedience could lead to thisworldly and the otherworldly prosperity. Since biomedical issues occur both in the area of interhuman as well as human-divine relations, Islamic juridical inquiries tend to be comprehensive. They comprise every possible case of conscientious decisionmaking as well as evaluation of consequences of one's action. In the context of biomedical ethics this inquiry covers practical aspects of clinical and research related decisions. Much of the juridical inquiries arose from settling more formal interpersonal activities that affected the morals of the individual in the context of the community as a whole. For instance, what was the obligation of the physician when it was clear that prolongation of life in the case of a patient in a persistent vegetative state PVS put enormous financial and psychological burden on the close family members.

Or, in a case of a spousal dispute over the continuation of a pregnancy that was dangerous to the health of the woman, what was the right course of action in the matter of allowing or terminating early life of the fetus that enjoyed inviolability, at least, after the first trimester introduction? Islamic law covers all the actions humans perform, whether toward one another or toward God. It grew out of Muslim endeavors to ensure that Islam pervaded the whole of life. Two essential areas of human life define its scope: acts of worship, both public and private, connected with the pillars of faith; and acts of public order that ensure individual and collective justice. In Islam all actions should be performed to secure divine approval, but human agency and institutions have jurisdiction only over the social transactions that regulate interpersonal relations. The acts of worship are exclusively within God's jurisdiction since they are performed simply as part of one's relation to God. Consequently, God alone reserves the right of judging their moral merit and reward. Human courts, however, are empowered to enforce the laws that govern interpersonal relations in society. This distinction between the two areas of jurisdiction allowed Muslims to adopt local cultures and

institutions to enhance the administration of newly conquered regions of the world. It also secured a better understanding of the Qur'anic principle of coexistence among diverse communities. The Qur'an, as the main revelatory source, provided paradigm cases regarding the sanctity of human life and certain situational aspects that might serve as referent points to resolve specific instances that affected human wellbeing under various conditions. For example, the Qur'an advised Muslims to write down all interhuman contractual agreements in matters of financial obligations.

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Muslim jurists have used this paradigm case to develop a detailed section in the jurisprudence to extrapolate all necessary rulings to ensure that no injustices could occur between two or more parties in matters that involve reciprocal claims and responsibilities. Hence, as I shall discuss in the book, surrogate motherhood that involved such a reciprocal financial as well as social claim and responsibility, has received much attention in the new rulings that allow a certain form of legally and religiously approved surrogacy. Whether in the civil or criminal cases, the Qur'an laid down an ethical standard of conduct from which jurists have extracted legal rulings in the realm of social interaction to ensure that justice and fair practice prevail in all human dealings. 6 Islamic biomedical ethics In order to create such an all-comprehensive legal system founded upon revealed texts, Muslim scholars went beyond the Qur'an to the person of the founder and the early community. The Qur'an required obedience to the Prophet and those invested with authority, which included the idealized community made up of the elders among the first and second generations. In this way the Qur'an opened the way for extending the normative practice beyond the Prophet's earthly life. Such an understanding of the normative tradition was theoretically essential for deriving the legal system that saw its validity only in terms of its being extracted from the Prophet's own paradigmatic status. Clearly, for the Qur'an there could be no community without the Prophet. Hence, the Prophet's life as understood and reported by the early community became an ethical touchstone for what the Muslims call the Sunna, the Tradition. The word sunna strictly meant a legal precedent from which later jurists could derive further laws for the growing needs of the community.

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Hence, in this book I will use the term "Tradition" with a capital "T" for the Sunna to indicate the information that was handed down to posterity — a hadith report, collected and compiled to form the basis for legal-ethical rulings. By the ninth through the tenth centuries every jurist was affiliated with one or the other leading scholars in the field of juristic investigation. The legal school that followed the Iraqi tradition was called "Hanafi." Another school was associated with Ahmad b. Hanbal d. 855, who compiled a work on hadith reports that became the source for juridical decisions of those who followed him. Hence, there emerged a living tradition, with different interpretations of the introduction 7 Qur'anic laws and prophetic traditions, giving rise to different schools of the juridical practice. Understanding Juridical-Ethical Discourse Muslim legal theorists were thoroughly aware of the moral underpinnings of the religious duties that all Muslims were required to fulfill as members of the faith community. In fact, the validity of their research in the foundational sources of Islam the Qur'an and the Tradition for solutions to practical matters depended upon their substantial consideration of different moral facets of a case that could be discovered by considering conflicting claims, interests, and responsibilities in the precedents preserved in these authoritative sources. What ensured the validity of their judicial decision regarding a specific instance was their ability to deduce the universal moral principles like "there shall be no harm inflicted or reciprocated" (la. As such, more attention was paid to the original rule and the ratio legis that also became the source of much debate among Muslim jurists and formed an important part of the procedures used to resolve earlier problems and reapply them in the new problematic situations.

4 Practical solutions based on earlier precedents carry the burden of proof on how closely the present case resembles those of the earlier paradigm cases for which this particular type of argument was originally devised. However, the power of these conclusions depended on the ethical considerations deduced from the rules that were operative in the original cases and the agreement of the scholars about analogical deduction that sought to relate the new case to the original rationale as well as rules. In Islamic jurisprudence ethical values are integral to the prescriptive action guide that the system provides to the community. No legal decisions are made without meticulous analysis of the various factors that determine the rightness or the wrongness of a case under consideration. The universal major premise provided by the scriptural sources — the Qur'an and the Tradition — that serves as known is part of the divine commandments regarding the good that must be obeyed and the evil that must be avoided. There is an inherent correlation between God's command in the revelation and the moral reasoning 8 Islamic biomedical ethics that undergirds the command that is acknowledged by reason as being good. Human reason is God's endowment to enable human intellect to fathom the supernatural by exploring the meanings of the revealed message through the Prophet. Whereas I am a believer in universal moral values that have application across cultures, human conditions in specific social and political cultures demand searching for principles and rules that provide culturespecific guidance in Muslim societies to resolve practical quandaries. My working assumption in this book is that praxis precedes search for principles and rules. Customarily, when faced with a moral dilemma deliberations are geared toward a satisfactory resolution in which justifications are based on practical consequences, regardless of applicable principles.

For instance, in deciding whether to allow dissection of the cadaver to retrieve a valuable object swallowed by the deceased, Muslim jurists have ruled the permission by simply looking at the consequence of forbidding such a procedure. The major moral consideration that outweighs the respect for the dignity of the dead is the ownership through inheritance of the swallowed object for the surviving orphan. Dissection of the cadaver is forbidden in Islam; and, yet, the case demands immediate solution that is based on consequential ethics. Hence, the rule of necessity determines the teleological solution and provides the incontestable rationale for the permission granted to a Muslim female patient to refer to a male physician not related to her. There are numerous instances that clearly show the cultural preferences in providing solutions to the pressing problems of health care in Muslim societies in which the highly rated principle of autonomy in the West takes a back seat, while communitarian ethics considers the consequence of any medical decision on the family and community resources. The major objective of this chapter is to introduce Islamic ethical discourse in the context of newly emerging field of bioethics in the Muslim world. The ethical doctrines that undergird the legal tradition in Islam hold the potential for an inclusive universal language that can engage secular bioethics that epistemically determines the direction of the international deliberations on several biomedical and biotechnical issues. What is critically needed in the Muslim context is to demonstrate to the religious scholars that Islamic ethics shares a common moral terrain with secular bioethics that can provide an opportunity to dialogue with international organizations like WHO or UNESCO to protect human dignity and to advance human physical and psychological health.

Bioethics in the Muslim world is a relatively new field of inquiry and, hence, there has never been any serious attempt at dening the epistemic parameters of introduction 9 the field as it relates to Muslim culture. Commonly, until recently, bioethical issues have been raised in the Muslim world without much interest in the native cultural sensibilities about human wellness and illness. Universalization of medical education has led to an erroneous assumption among healthcare professionals and institutions in Muslim societies that the solutions offered to moral dilemmas in the Western secular setting apply across other cultures. However, the growing interest in specifically Islamic solutions among a largely religiously sensitive population has required healthcare institutions and

professionals to take people's moral and religious sensibilities more seriously to provide culturally sensitive solutions in medical practice and research. After spending much time in the centers of Islamic juridical sciences, gathering rulings about new problematic areas in patient-physician relations or new medical treatments that have generated moral and religious dilemmas for Muslims, I quickly realized that in order to sit in conversation with secular or other religion-based bioethicists, I needed to take my research beyond the usual study of the juridical opinions in those areas. In particular, I needed to explore Islamic social ethics to understand the underpinnings of these rulings in their social and cultural contexts. In my studies of Islamic jurisprudence I was aware that although Islamic juridical methodology was firmly founded on some moral principles like rejection of harm and promotion of public good in deriving solutions that Muslims encountered in their everyday life, gradually, the judicial opinions were formulated without any reference to ethical dimensions of the cases under consideration.

In general, ethical inquiry connected with moral epistemology or moral ontology is underdeveloped in the Muslim seminarian curriculum which is, in large measure, legal-oriented. This lack of interest in the theological-ethical underpinnings of the juridical methodology that deduces rulings in all areas of human activity is a major drawback of seminary education in the major centers of Islamic higher learning. A number of Western scholars of Islamic legal tradition, following the antirational attitude of mainly Sunni jurists have erroneously excluded any organic relationship between theological and legal doctrines in shaping the legal methodology and application. The moral consequences of raising such questions about ethical epistemology are enormous since they lead to larger issues about human ability to comprehend justice and to assume moral agency to take the responsibility to effect changes in social and political realms. Moreover, the fact is that theological-ethical deliberations have led to moral categorization of human acts in jurisprudence based on rational understanding of one's duties and reciprocal responsibilities. Legal categorization has simply followed what was intuitively estimated as necessary, recommended, or forbidden. More importantly, investigation in the rulings that dealt with biomedical issues confirmed my suspicion that the categorical language of the rulings ruled out necessary revisions in the final decision about the right course of action that depended upon unfolding of different facets of the case in its day-to-day context of clinical research and information. During my research in biomedical ethics in the Muslim centers of juridical studies I often raised questions about theological ethics in Islam that dealt with ontology of human action and determined its goodness or otherwise, providing scriptural as well as rational justifications for the right course of action.

But based on the prevalent juridical methodology, it was evident that while the judicial decisions were made with proper reference to the scriptural sources there was very little interest in the morality of biomedical practice and research that investigated the action based on human volition and cognition. During my several sojourns in Jordan and Iran, for instance, I raised the prospects of examining modern medical advancement from ethical, more specifically socio-ethical, perspectives. In the course of my lectures in medical universities I conceptually distinguished ethical from juridical in Islamic religious sciences. However, it was not until 2005, when I spent the entire year in Iran, researching and teaching bioethics, that my proposal to analyze ethical dimensions of problematic cases in clinical situations began to be taken seriously, both in medical schools and religious seminaries. My major concern with bioethics in the Muslim world today is that it has severed its partnership with faith communities in providing solutions to the moral problems that have arisen in clinical situations as well as public health around the world. International bodies like WHO and UNESCO, which support local efforts in developing culturally sensitive bioethical curriculum, still appear to be unaware of the essentially religious nature of bioethical discourse in the Muslim world and the need to engage religious ethics in the Muslim context to better serve the populations whose cultures take religion more seriously.

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