

# Shiite Perspectives on Kinship and New Reproductive Technologies

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Islamic medical ethics are a burgeoning topic among ulama and academic scholars alike. Organ transplantation, cloning and euthanasia have provoked widely documented Muslim debate. Some of the most interesting issues are those centring on the new reproductive technologies (NRT) such as in vitro fertilization (IVF). Muslims have for the most part welcomed these new medical techniques as a remedy for infertility. And yet some of the possibilities such procedures raise are still problematic for many, coming from a variety of ethical perspectives. IVF involves fertilizing an egg outside the body with a sperm and then transferring it to the uterus of a woman for gestation and delivery: this allows eggs, sperm and uterus to be from unrelated parties, unrelated that is, in terms of marriage or "partnership." Commentators in the West have sensed that such possibilities

**Lebanon has a thriving and diverse reproductive medical sector: procedures are practised that have aroused much ethical controversy, such as those using donor eggs and sperm. Sunni ulama have reached a broad consensus on these matters, and do not allow donor procedures. However, Shiite opinion remains diverse: some Shiite authorities allow their followers these controversial treatments, but have evolved concomitant rulings that entail surprising new patterns of kinship relations.**

thus debate is perhaps more immediate than elsewhere. Techniques such as IVF are widely available and utilized in Lebanon. However, no consensus has been reached on the ethical regulation of such technology between the religious communities, and so even ethically controversial procedures such as those involving donor eggs remain relatively freely practised; and indeed patients come from other Middle Eastern countries to benefit from this relatively relaxed regime. Of course, not

everyone pays strict attention to the opinion of religious experts, and the relationship between fatwa and practice has formed an important part of my research.

## Shiite opinions on IVF

The lack of consensus in Lebanon over these matters, and the widespread practice of donor egg procedures, among other controversial measures, is in no small part due to the position adopted by Ayatollah 'Ali al-Khamene'i, spiritual leader of the Islamic Revolution in Iran and thus widely followed amongst Lebanese Shiites. Khamene'i does not prohibit the use of sperm or eggs from a third, or even fourth party, by a husband and wife<sup>2</sup> (nor, by implication, does he prohibit surrogacy arrangements), as, he holds, zina requires the physical act of sexual intercourse. This opinion, stated in a fatwa collection widely available in Lebanon and confirmed for me by Shaykh Muhammad Tawfiq al-Miqdar, Khamene'i's representative in Beirut, has proved highly influential in the practice of such procedures in Lebanon.<sup>3</sup> Doctors keep Khamene'i's fatwa collection on the shelves of their surgeries to demonstrate the permissibility of such procedures to sceptical Muslim patients; and many such patients have profited from it to undertake donor sperm and egg procedures, even surrogacy arrangements, with a clear conscience. Amongst the ulama, however, it is viewed with some astonishment, consistent with a common lack of high regard for Khamene'i as a legal thinker. I was strongly advised by those in Shiite jurisprudential circles in Lebanon to go beyond Khamene'i's opinion to look at those of other authorities.

Ayatollah Muhammad Husayn Fadlallah, Lebanon's most prominent Islamic figure, does not hold with the entirety of Khamene'i's opinion, finding the use of sperm from a third party unacceptable. He does, however, permit the use of donor eggs.<sup>4</sup> While, according to doctors, patients were previously advised by Shiite authorities that it was advisable, or essential, for the egg donor to marry the husband, albeit temporarily, this condition seems recently to have been lifted. This holds true of Fadlallah's position, as I discovered from my interviews with him and other members of his staff. For his part, Khamene'i clearly stipulates in his fatwa that marriage is not required. This removal of the need for such a marriage is significant for the practice of egg donation, not so much because of the difficulty of persuading an egg donor to undertake such a marriage, as due to the fact that egg donation very frequently occurs

herald a new age in kinship thinking and practice, or at the very least force people to question the meaning of even the most basic kinship concepts, such as motherhood: is motherhood a genetic relation, or one earned through the carrying and delivery of the child? My own research has investigated to what extent such transformations and interrogations might apply in the Islamic Middle East, both in theory and in practice: for, beyond the discussions of the ulama, IVF and allied technologies are now widely available and utilized in the region.<sup>1</sup>

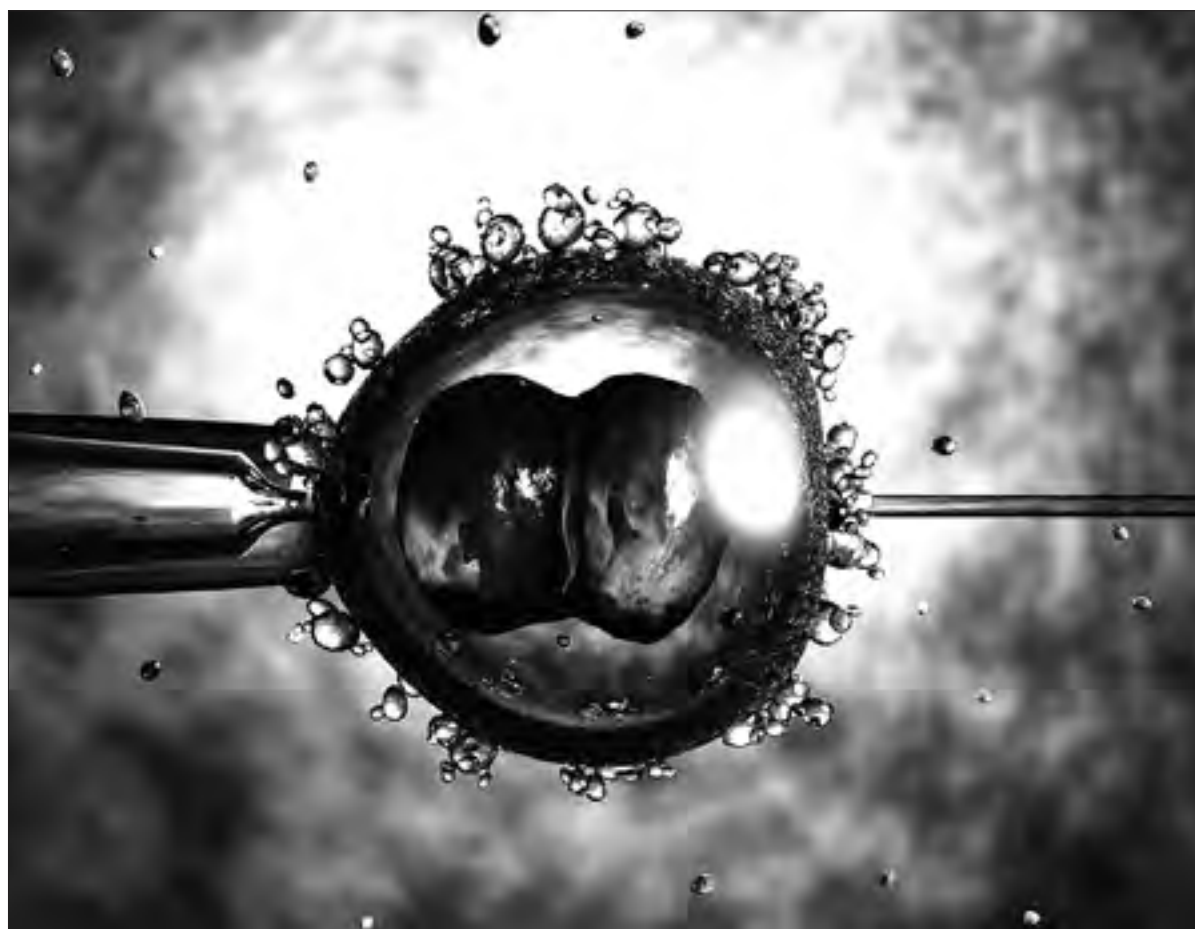
Sunni ulama have reached a broad consensus that medical interventions in human reproduction should restrict themselves to a husband and (one) wife couple, without the involvement of any other parties, as would be the case in those procedures using donor sperm and eggs, and gestational surrogates (where another woman carries an embryo formed from the couple's sperm and egg). Such third party procedures are seen as akin to, if not identical with, *zina*: that is, illicit sexual relations, such as fornication and adultery. They, like *zina*, imply a "mixing up" or "confusing" of relations. This is consonant with a wider popular unease concerning such procedures. However, while many scholars have assumed that this Sunni consensus signifies the end of the matter, some Shiite opinions are at stark odds with this position, and these issues are far from finally resolved in Shiite jurisprudential circles.

I have been studying these debates and examining their consequences for kinship thinking, and have carried out extensive fieldwork in Lebanon, in both medical and religious settings. Lebanon is rich in religious diversity: for one thing, clearly, Christian opinions are important as regards religious debate and medical practice; but, furthermore, Shiite and Sunni opinions are to be found alongside one another, and

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between sisters. In Islamic law, a man is forbidden from marrying two sisters simultaneously; but the way has now been cleared by this new wave of Shiite rulings for what is, doctors assured me, a relatively common procedure in Lebanon nowadays.

However, again, Fadlallah is considered somewhat “hasty” by many others in jurisprudential circles, and I was further recommended to check the thinking of some other authorities, notably Ayatollahs ‘Ali al-Sistani and Muhammad Sa’id al-Tabataba’i al-Hakim. Both these authorities advise caution in these matters, and view third party interventions as most likely unacceptable.<sup>5</sup> But in terms of the practice of these procedures in Lebanon, and despite the widely acknowledged and growing supremacy of Sistani’s opinions more generally, these other standpoints regarding IVF are not widely known. No doubt this is because they are not as immediately useful for patients or practitioners: while it is commonly sensed that the use of donor sperm or eggs is in some way ethically dubious, those opinions that hold otherwise are valuable evidences for the moral permissibility of undertaking such a course.



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## Debating kinship

What of the potential “confusion” of kinship relations identified by the Sunni ulama? Khamene’i, Fadlallah and many other Shiite authorities hold that paternity and maternity follow the sperm and the egg: that is, the genetic relation. This is not, one should note, the opinion of Sistani, who follows the late Ayatollah Abul-Qasem al-Khu’i in holding that it is the gestational carrier who is to be considered the mother, and not the provider of the egg. This latter is also the opinion of those Sunni authorities who deal with this problem, and, for that matter, that of the British Human Fertilization and Embryology Bill of 1990. The consequence of following the genetic principle is that, in the case of the use of sperm or eggs from third parties, new and unconventional—albeit clear—patterns of relation are created. A child of donor sperm will be the child of the sperm donor and not of the man who raises that child. This has consequences for concomitant principles: veiling and inheritance. A girl born of donor sperm, for instance, would have to veil before her unrelated “social father” (an anthropological rather than Islamic phrase). This would seem to raise considerable problems for the practicalities of domestic life, not to mention undermine the objective of undertaking such a procedure in the first place. However, Shiite doctors working within circles following Khamene’i assured me that these rulings are followed, and that there are ways of obviating the problems: in the case of inheritance through gifts and bequests; and in the case of veiling, through the institutions of *rida*’ (milk kinship) and the rulings associated with being the guardian of a *rabibah* (foster-daughter), both of which entail marriage prohibitions and hence obviate the need for veiling. I should say that, whatever the case, where Shiites in Lebanon are using these permissions and procedures, they are for now keeping their actions completely secret. Public opinion is lagging behind that of these religious specialists here, and the extent to which these complex ramifications of kinship may unfold is an open question for the future.

Clearly, the adoption of such a “biological” principle of relation has profound consequences, and cannot easily be squared with all the rulings of *nasab* (filiation) of classical Islamic jurisprudence, formulated at a time when the existence of the female egg, if suspected, was not known for certain. While for the most part the literature available for interested parties is rather schematic, following the fatwa (response) format or the somewhat bare presentation of the *risalah ‘amaliyah* (legal handbook), Ayatollah ‘Ali al-Sistani’s son, Muhammad Rida al-Sistani, has chosen to devote an entire volume of richly documented

*fiqh istidlali* (legal analysis) to these debates, an invaluable resource for other scholars.<sup>6</sup> Here a comprehensive range of scenarios—artificial insemination by husband and donor, egg donation and embryo transfer, among many others—are fully explored, with the arguments illustrated with a wealth of citations of the Quranic and *riwayat* literature, as well as references to secondary works and the opinions of the major authorities. Paralleling to some extent discussions in Western “bioethics” and anthropology, the consequences for relatedness and even the meanings of basic kinship terms such as “mother” and “father” are debated, as well as more typically Islamic concerns such as the ramifications for inheritance law and marriage regulation.

Sistani’s work, while perhaps posing more questions than clear answers, opens up for other scholars a fascinating window into this area of Shiite jurisprudential debate, at a time when the Western media are just waking up to the vibrant engagement Shiite scholars have had with other such new technologies, as witnessed by last year’s interest in Britain and the United States in Ayatollah Khomeini’s permission of transgender surgery some forty years ago.<sup>7</sup> These debates are not just important in terms of “medical ethics,” defining the boundaries of medical practice for Muslims, but touch on much more general and important issues. They bear witness to the continuing dialectic between revealed religious knowledge and the propositions of modern science, and test the ability of religious specialists to push the thinking of their followers regarding the most fundamental of social categories in new and unexpected directions.

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## Digital rendering of the IVF process

### Notes

1. As medical anthropologist Marcia Inhorn has documented: see, for example, her *Local Babies, Global Science* (New York: Routledge, 2003).
2. As Inhorn has noted: “Religion and Reproductive Technologies,” *Anthropology News* 46, no. 2 (2005): 14.
3. Ayatollah ‘Ali al-Khamene’i, *Ajwibat al-Istifta’at* (Beirut: al-Dar al-Islamiyah, 2003), part 2, 69-71; interview with Shaykh Muhammad Tawfiq al-Miqdar, Beirut, 2003.
4. Interviews with Ayatollah Muhammad Husayn Fadlallah and Shaykh Muhsin ‘Atwi, head of Ayatollah Fadlallah’s fatwa department, Beirut, 2004.
5. I am drawing on email correspondence and interviews with representatives in Beirut, as well as published sources here: Ayatollah ‘Ali al-Sistani, *al-Fiqh lil-Mughtaribin* (Beirut: Dar al-Mu’arrikh al-‘Arabi, 2000); Ayatollah Muhammad Sa’id al-Hakim, *Fiqh al-Istisakh al-Bashari* (Beirut: al-Murshid, 2001).
6. Muhammad Rida al-Sistani, *Wasa’il al-Injab al-Sina’iyah* (Beirut: Dar al-Mu’arrikh al-‘Arabi, 2004).
7. See, for example, Frances Harrison’s *BBC Newsnight* report of 6 January 2005, and Nazila Fathi’s piece in the *New York Times*, 2 August 2004.