The Moral Status of Abortion in Islam: A Comparative Study of Muslim and Western Normative Ethics Regarding the Act of Terminating the Life of A Foetus

Pawel Bernat

Institute of Philosophy and Sociology, The Maria Grzegorzewska University, Warsaw, Poland

Abstract: **In the West there seems to be a clear cut-line between the proponents and opponents of abortion. The former tend to justify their choice by calling for consequentialistic arguments, while the latter are, in huge majority, deontologists. The issue of abortion has been long debated in Islam. Those debates however lacked in intensity and rabidity when compared with their Western counterparts. This article is an attempt to compare the two standpoints and point at the reasons of that discrepancy.**

The paper begins with a description of two Western ethical frameworks: consequentialism and deontology, which then are linked with two contradictory attitudes toward abortion, i.e. utilitarianism based pro-choice and deontological pro-life that perceives abortion as murder.

The nature of Islamic ethics, *akhlāk*, is elucidated in the next part of the paper. The main sources of moral conduct, i.e., the Qur'ān and the Sunnah are presented and the main concepts, including *ḥarām* (forbidden) or *ḥalāl* (allowed) are explained.

The forth part deals with moral status of terminating the life of a foetus in Islam. There is a reference to the sources of the creed, namely the Qur'ān, the most relevant *ḥadīth* and fatwas. There are arguments provided for and against abortion, including the one due to social reasons before the 120th day of pregnancy and a total prohibition after this date.

The article is concluded with the statement that various ethical approaches to abortion are a manifestation of somewhat different ways of moral reasoning between the West and the Islamic world.

Keywords: **Abortion, Ethics, Foetus, Islam, Muslin Normative Ethics, Western Normative Ethics.**

1.   INTRODUCTION

The question of a woman's right to abort the pregnancy has been a struggle for moral philosophers and theologians for centuries all over the world. Western ethics has worked out the patterns of dealing with the issue in terms of 'permissible' and 'impermissible'. The polarization of the accounts is clearly elucidated by the most actual and inclusive division within normative ethics, namely between the consequentialistic and deontological ethics. The latter, in the case when conception is accepted as the beginning of life, absolutely opposes any act of termination of the pregnancy as an act wrong in itself. Consequentialism, on the other hand, seeks the maximizing of the welfare, which very often results with permission for social abortion.

Islamic perspective on the issue that is rather unknown for Western thinkers seems to be quite interesting from the ethical point of view. For example, the Muslim approach towards abortion undoubtedly goes beyond the Western dichotomy. For, as Reinhart reports, "it has seemed obvious to scholars that the Qur'ān and the Islamic law derived from it represent a classic, almost a maximal, case of deontological ethics" (Reinhart, 2001: 76). However, this claim, after a closer examination, seems to be unjustified what I shall try to demonstrate in this paper. I will argue that the Islamic ethics

cannot be fully grasped by the Western way of looking at ethics. The case of abortion scrutinised in this article shows this inadequacy.

In order to present the argument properly, first I will present a brief characteristics of both frameworks for ethics and then sketch the main differences between them. That will be followed by a short description of *akhlāk* – the Islamic ethics. After giving this theoretical basis I shall discuss the Muslim solutions regarding the problem of abortion historically and ethically and then confront this approach with the Western methods of its elaboration underlining the reasons why the Muslim ethics cannot be addressed properly by the Western categories.

2.   CONSEQUENTIALISM AND DEONTOLOGY – TWO FRAMEWORKS OF WESTERN ETHICS

There have been many distinctions or division made to describe different ethical frameworks. There are, however, two of them that are contemporarily in force: consequentialism and deontology. I follow here John Rawls' thesis that those two categories exhaust the possibilities regarding theories of right action. Rawls (2000: 21-22) writes:

> The two main concepts of ethics are those of the right and good (…). The structure of an ethical theory is, than, largely determined by how it defines and connects these two basic notions. Now it seems that the simplest way of relating them is taken by teleological theories: the good is defined independently from right, and the right is defined as that which maximizes the good.

One should not, in order to classify any ethical system, treat those two frameworks as sharply closed categories but rather as a loose typology where the given system lies somewhere between the two poles, i.e. deontology and consequentialism. For nowadays, there seems to be no ethics that would be a pure deontology or, what is even logically impossible, strictly of consequentialistic character. Let us look closer now at the two frameworks.

Consequentialism is a common name for the doctrines, which hold that the moral rightness of an act is determined solely by the goodness of the act's consequences. In other words, the proponents of consequentialism believe that an act is morally right if and only if it produces the best consequences of those acts available to the agent. Utilitarian versions of this approach support the idea that the only consequences of the act relevant to its goodness are its effects on the happiness of the sentient beings (Gaut, 2001: 176-77).

The great appeal of this adaptation of consequentialism, according to Goodin (1996: 245), is the fact that the doctrine really comes into its own in public settings.

> When our actions will affect various people in various different ways, it is the characteristically utilitarian conclusion that the right action is that which maximizes utility (however construed) summed impersonally across all those affected by that action. That is the standard that we are to use, individually, in choosing our own actions. That is, more importantly, the standard that public policy-makers are to use when making collective choices impinging on the community as whole.

However, such an approach generates another problem that is known as the "impossibility of interpersonal utility comparisons." The welfare utilitarians argue that one can actually know what is in people's interests, in this most general sense, without having to know what is inside their heads. That is especially the case in the Islamic world where members of the '*ulamā'* (Muslim scholars who are recognized by the Muslim community as having specialist knowledge of Islamic sacred law and theology) take the responsibility of judgment what is good for their community.

The second framework – the deontological view – is based on the assumption that there are certain kinds of acts that are wrong in themselves. It is a moral obligation not to commit any such act. "Deontological" comes from the Greek "*deon*," meaning duty, and is contrasted with "teleological" that is derived from "*telos*" – Greek term for goal. Those who hold teleological or consequentialistic views reject the opinion that there are special kinds of acts that are right or wrong in themselves (Davis, 1996: 205). According to the proponents of deontological ethics, agent, in order to act rightly, must first of all refrain from doing the things that can be said and known to be, before the fact, wrong. The particular requirements to refrain from doing something that is anticipated as wrong are called rules, laws, deontological constraints, etc. (Davis, 1996: 206).

It is quite easy to see that deontological views are non-consequentialistic. For deontology requires agents to refrain from doing the sorts of things that are wrong even when they foresee that their refusal to do such things will clearly result in greater harm or less good. Deontologists believe that it is not the badness of the consequences of a particular lie, but rather, lying in general, which makes it wrong to lie. Lies are wrong because of what they are, and thus wrong even when

they might foreseeably produce good consequences (Davis, 1996: 206-7). Furthermore, for the deontologist, as Davis writes (Davis, 1996: 210), the most important moral distinction is between the permissible and the impermissible, and it is the notion of the impermissible that forms the basis of the definition of the obligatory, namely that is obligatory what is impermissible to omit. "Thou shalt not kill" stands for a good example here. Thus, deontologists reject the view that an act's being wrong has a necessary connection to, and may be explicated in terms of, its having bad consequences, or producing more harm than good in the world. Here the question must arise: just what is it about a wrong act that makes it wrong? Sometimes deontologists appeal to common moral intuitions, the natural, or the divine law. And sometimes they maintain that deontological constraints can be derived from, or to be seen to be the expression of, a more fundamental principle. The candidate principle is usually one that owes its origin to Immanuel Kant (1969: 54) who formulated it as the categorical imperative as the following: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only." Such an imperative must be a priori because it must constrain the will without reference to any object of desire since pleasure or displeasure associated with the representation of such objects provides only empirical grounds for volition. Kant believes that morality is grounded on reason and that is how it becomes objectified, and thus immorality is a consequence of failure of reason (Wood, 1999: 70-71). And what follows, it is an obligation, a duty to respect others as rational creatures that we not subject them to the sorts of treatment proscribed by deontological constraints.

In this two-framework paradigm abortion may be treated, depending of course on the belief when actually life begins, as morally neutral or morally wrong, i.e., the followers of the Catholic church for example believe that the conception is the moment of ensoulment and thus any act of abortion is perceived in terms of murder that, as a moral act, is wrong in itself and hence strictly forbidden because it goes against the deontological constraint "thou shalt not kill". This ethical system however is not entirely deontological and leaves a room for consequentialistic exceptions like for instance a case where the mother's life in seriously endangered by the pregnancy and its termination is her only chance to survive. In such circumstances abortion is usually permitted. The argument here is the one of "choosing the lesser evil," which shows that there is a slight difference between the ontological and thus moral status of the mother and the foetus.

Consequentialism on the other hand is very often represented by people who accept as true more vague definition of the temporal beginning of the human person. On this account the early pregnancy can be aborted due to whatever reasons, including the social ones. The act of terminating the life of a foetus is considered to be morally neutral or morally right when it is to result with more welfare, or in general, a better situation for all the parties involved. It is important to notice however that the actual consequentialism, i.e., not in its pure form, has borders that it should not trespass. Killing for money would not be considered as morally right.

3.   AKHLĀK AND THE NATURE OF THE ISLAMIC ETHICS

The religious Islamic ethics is based on the foundations of Islam, i.e., the Qur'ān and the Sunnah (or *ḥadīth*). The Qur'ān, according to Reinhart, contains more exhortation than stipulation and in most cases it

> rallies Muslims to act rightly, and reframes their moral knowledge in a context of retribution and reward in this world, and judgment and subsequent punishment and reward in the next (Reinhart, 2001: 55).

Thus, the a*khlāk* of the Qur'ān was subsequently expanded and pointed in immense detail by the Sunnah, or the behaviour of the Prophet. As Walzer (1986: 326) writes,

> The importance of the *ḥadīth* in forming and maintaining the common ethical ideas of the Muslim Community in all ages and regions had been incalculable; but in addition it was largely responsible for the ethical framework of the developing Islamic Law (*Sharī'a*).

What is also important to notice is the fact that the translation of the term *sharī'a* as "Islamic law," i.e., a term suggestive of a fixed body of rules, the product, not the process of inquiry might be quite misleading. In fact *sharī'a* simply means "the way" and hence Islamic "law" in better characterized as an ethical system than a legal one (Brockopp, 2003: 10). On the other hand, *sharī'a* "is too far too large category to be reduced to ethics" (Brockopp, 2003: 11). It is really crucial for our further discussion to understand that it is a process of inquiry that undergoes a constant development. Moreover, the existence of different schools of *fiqh* makes for variation and even contradiction in the application of *sharī'a* (Kyriakides-Yeldham, 2005: 214). All of those facts make it clear that there is no one ethics of Islam, one Muslim morality. It seems more adequate to rather talk of a certain framework of Islamic ethics than Islamic ethics itself. This framework is based on the Qur'ānic assumptions that humans know the good and nonetheless often fail to follow it, and that since humans

know the good, they know the explanations of why the good is the good are beside the point (Reinhart, 2001: 55). This radical form of moral theological voluntarism is probably responsible for identifying the Islamic ethics as a strong deontology where what is right and wrong is exclusively defined by the will of God in forms deontological constraints. The standpoint that may be summarized by saying that anything is good because God said so and humans ought to choose it. In other words, as Reinhart puts it: "the distinction between 'religion' and 'ethics' so dear to philosophical ethicists in unnatural for the Qur'ān" (Reinhart, 2001: 56). Thus, the focus and the way of deriving particular moral laws or rules differs so much between the two approaches. For the members of 'ulamā' essential is so to say the question not whether something is *ḥarām* (forbidden) or *ḥalāl* (allowed) but why it is *ḥarām* or *ḥalāl*. It is a domain of the human reason to search for the proper sources or analogy in order to justify the moral judgment.

The anther crucial characteristics of the Islamic ethics that differentiates it from its Western counterpart is the principle that the community interest has priority over the individual. For, "the overriding spirit of Islamic law is to conserve and uphold society" (Kyriakides-Yeldham, 2005: 214). This is the reason why in Islam there is a drive, which is naturally historically determined, toward one common representation of both, religious and political power. Again, a feature that clearly stands against Western post-Renaissance ideal of sharp distinction between the church and the state.

4.   ABORTION IN ISLAM

Very briefly, abortion may be defined as the termination of pregnancy before birth. It is induced because a pregnancy is unwanted or presents a risk to woman's health. Abortion normally results in the death of the foetus (Al-Jibālī, 2000: 17).

The Qur'ān makes no reference to abortion in the contemporary understanding of the term, nor is the Prophet Muḥammad known to have dealt with any case of intentional abortion (Holmes Katz, 2003: 27). What is known for sure is the fact that the foetus becomes a person after 120 days of gestation. The latter is based on the Qur'ānic passages regarding a gradual progress of the foetus toward the physical and spiritual attributes of humanity. In the Qur'ān (23:12-14) we read:

> Man We did create from a quintessence (of clay); Then We placed him as (a drop of) sperm in a place of rest, firmly fixed; Then We made the sperm into clot of congealed blood; than of that clot We made a (foetus) lump; then We made out of that lump bones and clothed the bones with flesh; then We developed out of it another creature. So blessed be Allah, the Best to create!

This description of human development in the womb is elaborated by the very important *ḥadīth* that allows us to approximately determine the moment of ensoulment. The famous report of the Prophet's Companion Ibn Mas'ud reads:

> The Prophet of God told us – and he is the one who speaks the truth and evokes belief – "Each of you is gathered in his mother's womb for forty days; then [he is] a clot of blood for the same period; then he is a clump of flesh for the same period. Then God sends an angel who is commanded regarding four things: [his occupation,] his livelihood, his span of life, and his felicity or damnation [in the afterlife]. Then the spirit is breathed into it… (after: Holmes Katz, 2003: 30).

It becomes clear then that abortion after 120 days of pregnancy is definitively forbidden since it is nothing else but the act of killing that is evaluated as such by the God's will – deontological constraint: "Nor take life – which Allah has made sacred – except for just cause" (Qur'ān, 17:34). The ontological and thus moral status of such already developed foetus is lower than the one of the mother's. According to the tradition the Prophet required the blood money be paid for the killed foetus equal to that what is paid (known as *ghurra*) for a male or female slave (Holmes Katz, 2003: 27). This is reflected by the opinion of the majority of jurists regarding the cases when pregnancy threatens the mother's life, namely, the priority of preserving the mother's life is given over preserving the life of the foetus (Sachedina, 2001: 3).

What is essential for the main argument of this paper is the response of *muftis* on the moral status of the abortion before the 120 days of abortion. As it was said already the very nature of Islamic ethics determines the existence of not one official answer on the moral dilemmas that are not plainly resolved by the Qur'ān or Sunnah. In the Islamic world, the issues of the medical ethics are formulated by means of legal opinions, often in a question-answer format – fatwas. Fatwas are published in different media including daily newspapers, booklets, broadcast on the radio, etc. They are however non-binding legal opinions of different people and hence different and even contradictory fatwas can appear on the same issue at a given period, in various geographic locations or even in the same country (Rispler-Chaim, 2003: 83). Thus we have the whole variety of positions regarding the allowance of abortion ranging from the application of the doctrine of *Ibāḥa* in

the Shi'ia teachings, which can be summarized as "everything is permissible to you until you know that it is specifically impermissible" (Fatemi, 2005: 300) to the fatwas by Al-'Uthaymīn who states that:

> The safest position is to prohibit aborting it [foetus] except for a need, such as that the mother is sick and unable to bear a child, or something like that. In this case, it would be permissible to abort it – unless it has passed a term long enough that it takes a clear human form, in which case it would be prohibited – and Allah knows better (after Al-Jibālī, 2000: 39).

In general however the most common estimation is the one in the case of a healthy mother and foetus that abortion is prohibited. Let us look closer at the two main arguments against social abortion.

The first one is based on the Qur'ānic (17:31) verse:

> Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin.

This passage refers to the pre-Islamic practice of female infanticide and its relation to abortion before the 120th day of pregnancy is actually quite weak. Even if one may call a soulless foetus a child the category of "killing" when referred to it seems unjustified. For, foetus at this stage possesses no independent ontological status but merely the potentiality to gain it.

This potentiality is the core of the second, more coherent and sound argument that is based on the priority of community's rights over the ones of an individual and the Muslim duty to maintain and expand the *umma* (the whole community of Muslims). Abortion is opposed because it is regarded as a danger for the community. Lee Bowen (2003: 66) summarizes the position of 'ulamā' in the following way:

> Their first concern ['ulamā'], which is often implicit, is the need to recognize that respect for life is the basis of all community action. Without the reverence for life, the very existence of the community is endangered. (…) Abortion, they claim, jeopardizes the self-evident truth that Islam is predicated upon – recognition of the divine spirit in humankind. Their second concern is a wider one: they worry about trends they see as harmful to the family, the basic unit of society.

This seems to be the reason why social abortion is permitted only in three Muslim states. The arguments behind the position of other Islamic countries is very interesting, one may say "foreign" for the contemporary moral philosophers of the West. For, the deontological constraint "do not abort your pregnancy if it is not a threat for the health of the mother and the foetus" exercised by *Sharī'a* (i.e., both legal and ethical system) is everything but deontological. Abortion here, naturally before the 120th day of pregnancy, is not evil in itself. It is the negative consequences for the community that make it impermissible. But still, this constraint possesses the absolute character of the law in almost every Muslim country. This is an example that very clearly demonstrates the basic difference between the Western and the Muslim world, namely the entirely unlike approach toward the rights of the community and the understating of what community welfare means. This might be a reason why one is unable to adequately describe Islamic ethics in terms we have worked out in and for Western morals. The bi-polar scheme of deontology and consequentialism is apparently not the proper tool for the honest classification of Islamic ethics.

5.   CONCLUSIONS

The example of the moral status of abortion shows that Islamic and Western ethics differ. On the other hand, Islamic ethics, just like the Western frameworks, is from its nature a constant process of inquiry. Ethics changes because the morality alters. Undoubtedly the 20th century brought an enormous acceleration of the pace. The persistent growth of technology and civilization forces out bigger and faster changes of how we behave and what we believe is right or wrong (Bernat, 2005: 139-148). The changes that are easily to be found all over the world. In New York and in a Moroccan town of Zawiya, where the last couple of decades introduced a qualitative difference into the way of life of its inhabitants. The social norms became more liberal, veiling has decreased greatly, just as the number of the arranged marriages (Schaefer Davis, 1993: 209-11).

One should remember however that these particular changes do not have to be linear, which means that the norms in the future would become more and more liberal progressively. For, Malaysia is a country where veiling is more popular

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nowadays than a couple decades ago, which appears to be a reaction on cultural globalization and a search for identity. Nevertheless, also the Muslim world undergoes a change that is more general. More and more girls and young women attend schools and universities, the access to the global information becomes easier and easier. These factors have obviously their impact on morality and thus ethics. Three Muslim countries, as it was mentioned already, have recently legalized social abortion. In Turkey, Tunisia, and Iran the permission is given to those ones who want to have an abortion during the first trimester of pregnancy (Lee Bowen 2003, 53). This first trimester is also quite significant since it is clearly the Western approach of 90 and not 120 days.

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