Science and technology have introduced new concepts and options to the whole world, including the Muslim world. Some momentous effects of technology include the linkages of previously isolated groups and communities, extension and qualitative change of life and health, and the potential for imminent and horrible human-inflicted death.

Conservative and revivalist Islam have fought the effects of new technology at times, but also accommodated religiously based ideology to desired innovations. Examples abound and include the introduction of the telegraph and the telephone, the religious sanctions for family planning, and changes in the civil laws of personal status. Discussion on the potential for new reproductive technologies began some years ago, but relatively little information has accrued.

The voices of Muslim women are conspicuously silent in the consideration of new reproductive technologies and their religious and social implications. Instead, the official Islamic perspectives on new reproductive technologies and the legal considerations they raise have been shaped by conservative male religious scholars and predominantly male medical authorities. That the conservative “Islamic” view of surrogate parenting and in vitro fertilization upholds the paramount value of legitimate fatherhood, the sanctity of the traditional nuclear family, and the traditionally defined social and economic goals of motherhood should not surprise us. But the message is not only due to its medium but also to the selectivity of its formulation.

Muslim physicians and several conservative jurists have accepted the use of two forms of in vitro fertilization, manipulations of the legitimate (married) sperm and egg. The acceptance of this new technology in the mid 1980s1 does form a break with earlier castigations

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1. Member of the Council of the Muslim World Association, “Second Opinion on
of *in vitro* fertilization as adultery, or a defiance of God's mysterious plan for his human creations as iterated in Surah *Shura*:

To God belongs the dominion of the heavens and the earth. He creates what He wills (and plans). He bestows (children) male or female according to His Will (and Plan). Or He bestows both males and females and he leaves barren whom He will. For He is full of knowledge and power.²

So far, the experts reject sperm, egg, or uterine donation and the contractual proposition of surrogate motherhood on legal grounds. For the collective good of the *ummah* (the community of believers) takes precedence over the satisfaction of the individual, and therefore, if pregnancy can not result from the above method, then infertility should be accepted. Neither surrogate motherhood nor adoption are viable alternatives for the devout Muslim family for reasons to be explained. Men have at least two other options, if they are determined to be fathers, divorce and remarriage, polygamy or *Mut'a* marriage (temporary contractual union), although the latter two options might not appeal to a younger man.

The need to have children has preoccupied the minds of Middle Eastern women for centuries since the establishment of Islam. Failure to bear sons often resulted in divorce and a return to a woman's parental home, or in her husband's marriage to another wife through the institution of polygamy. The pain of childlessness held devastating economic and social meaning for Muslim women. It is significant then that Phyllis Chesler refers to surrogacy as "post-industrialized polygamy."³ Scholars have informed us that before Islam, lineage and inheritance could pass through the mother's line in some tribes, and correspondingly, the role of the individual father may have been less important.⁴ Fertility was necessary for the survival of the tribal and clan units, and the gods and goddesses were thought to deliver children to the favored.

In the social and legal system instituted by the Prophet Muhammad, the function of motherhood anchored women to a newly established nuclear setting in the Medinan community. The increasing importance of the paternal role, and of patrilineality has been mainly

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² Surzh *Shurz* (Consultation) XL1:99-50.
⁴ W. Robertson Smith, *Kinship and Marriage in Early Arabia.* (Cambridge at the University Press, 1885) and Fatima Mernissi, "The Effects of Modernization of the Male-Female Dynamic in a Muslim Society: Morocco." Ph.D. diss., (Dept. of Sociology, Brandeis, 1973) based primarily sections from al-Isfahani. Others claim that these sources exaggerate the polyandry and matrilineality of the *jahiliyya* period.
discussed in terms of the creation of a stable family unit.\(^5\) The insistence on female monandry was unfamiliar to certain tribes and revealed a heightened concern for ascertainable legitimacy. The system asserted a significant control over women's bodies and their future issue. Adoption, which had been common in the pre-Islamic peninsula, was quite specifically forbidden.

Nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells you the Truth and He shows the Way. Call them by the names of their father; that is juster in the sight of Allah:\(^6\)

And the Prophet's own adopted son, known as Zaid ibn Muhammad, retook his own name, Zaid ibn Harith.\(^7\) The Qur'anic pronouncements on the care of orphans emphasizes the knowledge of one's own parentage, and the need to protect any existing estate of an orphan from his/her guardian. On the other hand, the guardian was not to give his own property over to an orphan as if to legitimate offspring, but to protect the child until the age of majority.\(^8\) Many of the regulations were revealed after the Battle of Uhud when the numbers of widows and orphans had grown. And so it was the duty of the whole community to support the weak — the poor, widows, and orphans by relying on zakat as well as the wherewithall of the guardian. The incorporation of these edicts into the shari'ah (Islamic law) forms one part of a historically sanctioned argument against both adoption and a contract for surrogate motherhood.

**HISTORIC FORMS OF SURROGACY**

The Prophet Muhammad himself grew up without his birth mother, and without a father. He was cared for by his milk-mother, his surrogate, Halima, who nurtured him and loved him. In pre-Islamic Arabia, it was not unusual for a youngster to be suckled and raised by a milk-mother, often away from his or her own clan members. The milk-mother was responsible for parenting, feeding, and


\(^6\) Surah Alhz (The Clans) XXXIII:4-5. However Muslims "embraced" orphans in a *de facto* form of adoption and continue to do so today. These children may be given money by living parents, but may not inherit or take their names.


\(^8\) See al-Baqarah (The Cow), II:220; Nisa' (Women) IV: 2, 6, 10 and 27, and Banu Isra'il (The Children of Israel) XVII:34; for the story of the mysterious strangers see Bayhaqi, *Dala'il an-Nubuwwa* 1:12; Abu Nuaim, *Dala'il an-Nubuwwa*, p. 117 cited by Annemarie Schimmel, *An Muhammad is His Messenger: The Veneration of the Prophet in Islamic Piety*, (Chapel Hill and London: University of North Carolina Press, 1985) 68-69.
correcting the behavior of the young child. Less common now, the practice and the attitudes stemming from it continued up into the twentieth century when convenient for the parents, when nursing is impossible for the mother, or in case of divorce and paternal custody. One medical doctor I know had not one but two milk-mothers. Young Saudis of the contemporary royal family were sent to the tribes in the summers to learn the creed of manliness and noble behavior. In the past, they would have had milk-mothers in these groups.

The milk-mother's children were regarded as siblings by the milk-child, for they suckled at the same breast. And, indeed, the Qur'an forbids those who have suckled together to marry, as part of an incest taboo. The culture expects them to regard each other as affines for some time. The Prophet interceded later in his life on behalf of his milk-sister, al-Shayma, and the captured women of Halima's tribe, the Sa'd bin Bakr, at the battle of Huayat in the wars of the early Muslims.

Halima wanted to keep the Prophet for fate shone on her while he stayed with her. But a curious incident took place, wherein three mysterious strangers arrived, cut Muhammad's chest open, and removed his heart, washing it with snow (or with the water of Zamzam). Halima fearing for his life returned him to his people. He was then raised by his uncle Abi Talib. After Abi Talib's death, Muhammad with his new creed and handful of followers faced the wrath of the Meccan elders. He was so vulnerable according to the calculation of social status among the Meccans that flight to Yathrib was his only viable action. Though one might suppose the Prophet would promote the adoption of orphans, the divine message he revealed instead guaranteed protection to the orphan not only in the household of the guardian but also in the community. It symbolized a break with the earlier Meccan form of adoption and was linked to the new limitations on clan factionalism and feuding.

HISTORIC ALTERNATIVES TO SURROGATE PARENTING

Orphans did go to family members who cared for them. Often even those with living parents came to live with other relatives who provided emotional and material support. Throughout Muslim history, craftsmen apprenticed their nephews, generally the man's sister's son, and might eventually reveal their trade secrets only to them. Uncles and aunts could not, however, legally adopt.

9. For the story of Halima, see Ibn Hisham 103-06, 856-07, 877, see also al-Wakidi and Montgomery Watt, Muhammad at Mecca, pp. 33-5, and Muhammad at Medina 99f.
In light of the Qur'anic regulations of marriage and prohibition of fornication and adultery, the rejection of single motherhood was overwhelming. Illegitimate births meant death at the hands of women's own family members or death by stoning according to law. Women whose childless state was due to their husband's sterility (and this fact could only recently be established) could neither adopt nor easily divorce and remarry. Certain tribes practiced forms of polyandry in the pre-Islamic period, which meant that women might more easily conceive children, but these customs were strictly forbidden by Islam.

In the jahiliya (the pre-Islamic period), polygamy was also practiced, and provided one alternative for a man who could not have children (or sons) with his first wife. In fact, religious scholars, including the Muslim fundamentalists of the twentieth century, most commonly employ the fertility argument for the retention of polygamy. Women and liberals have argued for an end to polygamy since the 1920s, indeed, Tunisia made it unlawful, but Egypt did not. Scholars and men married to more than one woman have also claimed that the practice is a sanctioned alternative to extra-marital affairs. In the West, they say, men disregard their marriage vows, or divorce when attracted to others, thus really holding to an informal form of polygamy. The third argument pertains to men married to women who are ill or incapacitated to the point that they cannot provide sexual service to their husbands. Those in favor of polygamy argue that it is more fair to continue supporting these women, but to marry another if one can afford it, so as not to sin, for all believers deserve the physical benefits of marriage.

According to the Islamic perception of women's functions, surrogate motherhood can be viewed as a form of temporary polygamy contracted for the purpose of offspring. One could even say that the traditional mahr or brideprice is included in the contract. But until the father legally marries the surrogate mother, the union is illicit and in no way can it compare to a legal marriage. Although a relatively small percentage of men can now afford to maintain polygamous households in the Middle East, conservatives take issue with legal reforms abolishing polygamy, viewing it as an integral part of the early Medinan community.

The other alternative for men who wanted offspring or licit sex outside of the regular (nikah) marriage has been temporary marriage, (mut'a also called sigheh in Iran). Temporary marriage, although acknowledged in various ahadith, is not recognized by the Sunni scholars, who claim that it was forbidden after the conquest of Mecca (disagreeing on the exact date). It is a union between an un-
married Muslim woman and a married or unmarried Muslim man contracted for a fixed period of time in return for a set amount of money. It is practiced in Iran, in Pakistan, in India, less often in Syria and Lebanon, mostly by middle aged and older women, but has been recently recommended by Mr. Rafsanjani as a means of protecting the large numbers of single or widowed women following the long Iraq-Iran war. Mary Beth Whitehead could not have contracted a mut'a marriage for she was married (and Catholic). One older Syed man of Uttar Pradesh contracted sixteen mut'a marriages and said that he did so "because our religion sanctions it and, of course, for sexual pleasure." Men contract mut'a often when traveling and clearly for sexual variety, while women use it as a means of support. Children may be acknowledged and supported, but they are a by-product, not the drive of temporary marriage.

MODERN ALTERNATIVES

Single professional women in the Middle East would not choose to become single parents due to the stigma attached and also do not opt for adoption or impregnation through artificial insemination. In fact marriage is recommended to all believers, and women if single or divorced, hope to marry. Women still regard bearing children as a proof of the commitment of the marriage, and they are valued by the poor as an eventual source of income. If a woman could not get pregnant in the 1970s or 1980s, then she would resort to fertility treatments, surgery perhaps, but rarely artificial insemination. The religious argument is stated quite simply in the contemporary period by Dr. Ahmad Sakr who says that

Whether the person is known or unknown it [artificial insemination] is considered to be a type of adultery using scientific and technological methods. Such a method, if used, will not allow the offspring to know their family relationship. Islam does not allow such an act to be practiced.

10. The Shi'a cite Surah Nisa' IV:24 in support of the practice of mut'a. And all married women are forbidden unto you save those (captives) whom your right hands possess. It is a decree of Allah for you. Lawful unto you are all beyond those mentioned, so that you seek them in honest wedlock, not debauchery. And those of whom you seek content (by marrying them), give unto them their portions as a duty. And there is no sin for you in what you do by mutual agreement after the duty (hath been done). Allah is ever knowing, (and) wise.


12. Ahmad Sakr, Matrimonial Education in Islam (Lombard, Ill.: Foundation for Islamic Knowledge, n.d.). Sakr also finds oral and anal sex unacceptable to Islam as
Here the parental form of in vitro is not even mentioned. Because artificial insemination can involve only the married couple, and is actually a form of non-coital reproduction, Hasan Hathout finds that adultery is not involved. He distinguishes between the two basic forms of in vitro fertilization, but concludes:

Although artificial insemination by donor semen is not adultery, it leads to procreation outside the specific duality of a marriage contract. It is a human right to be the legitimate and real child of one's own father, and be the fruit of the bond of legitimate marriage.¹³

Hathout also points out other objections to the introduction of a third person in the fertility equation, the real father is not required to support, raise, or be responsible for his offspring, inheritance laws are ignored, and finally, there is an increased risk of incest within the community, if its members do not know their true lineage.¹⁴ Because the modern interpretations of shari‘ah prohibit genetic contributions for men as well as women, they cannot disassociate themselves from parenting in the manner referred to by Western popular magazines.¹⁵ That is, Islam has never accepted technology's division of nature and nurture for men, as the West did, despite their decreased contribution to parenting historically.¹⁶

Hathout does not mention, as does Chesler, the violation of the mother's rights to know, parent, or leave property to her offspring, because his preeminent concern is with "father's rights," for he rejects surrogate mothering at an earlier stage of debate. Finally, Hathout invokes that fundamental objection to human control over creation saying, "The crux of the issue, of course, is the switch of the

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¹⁴ Hathout bases his views on the stance of the participants in two Muslim conferences on this issue, one held in Kuwait and the other in Saudi Arabia. He also disapproves of sterilization, abortion, homosexuality and AIDS activists in America. Also see al-Gindui, A.R., ed. Human Reproduction in Islam, trans. A. Asbahi (Kuwaiti Islamic Organization for Medical Sciences and Kuwaiti Foundation for the Advancement of Science, 1989).
¹⁵ Id. at 14.
¹⁶ Dianne Goldner, "Viewpoint: Should I donate my eggs to Michael and Linda," Glamour (January 1992), 56. Over the last two years many short articles concerning aspects of surrogate motherhood have appeared in such popular magazines. Some speak of the selflessness, the glow of the donor. This article concludes that the potential donor cannot view motherhood detached from her genetic contribution, that she would be donating because she herself was not "ready" to be a parent — an argument also used in favor of abortion.
concept of 'legitimacy' from God-made to man-made.” Should human beings meddle with God's Plan? Referring to sex selection, Yusuf Abdullah 'Ali points out that parents are often spoken of as the "author" of a child, the implication is that if so, might they not choose the sex or other aspects of their offspring's genetic makeup. He and the medical and religious 'experts' who met subsequently in the Gulf some twelve years later feel that parents with their rather selfish concerns are not considering the effects of the relative numbers of men and women within the population who might then be disturbed. (Other Muslim medical experts have found sex selection permissible in individual cases.) But 'Ali goes on to point out the great contrast between God's creativity and man's ability to procreate which these Qur'anic verses underline.18

If we reject the notion of in vitro fertilization based on the right to lineage from the father, then we still do not have an indivisible argument against surrogate motherhood. It is not, of course, "the fruit of legitimate marriage" according to Islam, and that is part of the answer.

And, yet, there are specific Qur'anic references that could support the creation of surrogacy (as well as adoption):

And if both parents decide by mutual consent and counsel on separating [of mother and child] they will incur no sin [thereby] . . . . If you decide to entrust your children to foster mothers you will incur no sin provided you ensure in a fair manner the safety of the child you are handing over.19

Here, the consentual nature of the agreement is a prerequisite. The commentators have then referred to the need for monetary compensation for the foster mother. They mention that such a relationship could be concluded in the event of a woman's losing her milk, but that the passage usually refers to a post-divorce situation. Furthermore, it is the father, the source of family authority, who makes the financial arrangement.

The acknowledgment of and belief in the fruition of the bonds of marriage is fundamentally related to control over property as well as reproduction. And, as Martha Gimenez suggests, the prospect of surrogate motherhood and extra-parental in vitro techniques present a

transitional stage of reproductive and family options\textsuperscript{20} which could only be rejected by the principles supporting the existing family and social system in the Middle East. Muslim doctors and jurists are rejecting the new “social” relationships to which Gimenez refers,\textsuperscript{21} more fiercely than the scientific context in which they developed. To these Muslims, the new techniques are not so much “fertility alternatives,” but rather human assertions that the biological order is unrelated to the divine order. Yet when \textit{in vitro} techniques are employed on legitimate gametes, then the experts say that fertilization can occur through the will of God.

The Muslim objection to surrogate motherhood is distinct from feminist or anti-scientific arguments, though. It does not so much object to the fragmenting of motherhood into egg-bearing, child-carrying, birthing, and child-rearing functions. No, the loudest objection is to the overt assignation of a stated price of motherhood — even though we know from the legal, inheritance, and bridewealth systems in Islam and in Muslim culture that value was always implicitly recognized. In fact, we see it in \textit{nikah} and \textit{mut'a} marriages, and in milk-mother arrangements. Hathout totally rejects surrogate motherhood, however, declaring:

There is even more to it than denying to the progeny the right to a legitimate root, or cheating both children and the civil registries about real parentage and lines of ancestry, etc. For perhaps the first time in the history of mankind, a woman agrees and plans to become pregnant with a child, knowing that she will give the child away. It is worst of all if done for money, thus reducing motherhood from a “value” to a “price.”\textsuperscript{22}

Children will then become commodities (which they always have been) but so acknowledged by practice and legal precedent. Hence, the issues that matter so much to Barbara Stark in her “Constitutional Analysis of the \textit{Baby M} Decision”\textsuperscript{23} to positively or negatively exercise decisional rights, and the surrogate’s right to control her own body are basically irrelevant here. Her argument against the constitutionality of the termination of parental rights could, however, apply if one substitutes the notion of a coherent \textit{shari'ah} fulfilling constitutional functions, and if one overlooks the legal arguments comparing the role of the biological father versus a biological mother.

\begin{footnotes}
\item[21.] \textit{Id.} at 344.
\item[22.] Hathout, “Islamic Concepts,” pp. 15-16.
\end{footnotes}
Instead, the arguments revolving around the division of women into two classes, the impoverished bearers and the elite mothers, is more relevant. Imagine the scenario in the Middle East, where the wealthy but childless Gulf lady could then hire her poor Egyptian maid not only to cook, clean, babysit, and discipline her children for her (which she is already doing), but to bear them for her as well. Now Islam rejects this scenario, declaring the fundamental equality of all believers, for their property is really for their use in their lifetime only. In fact then, most conservatives and fundamentalists claim that if zakat were applied properly, the huge gap between the rich and the poor would narrow, thus mediating the global and regional conditions fueling discrepancies and potential surrogate or adoption arrangements. Although rich and poor states are now quite apparent in the Middle East, this particular form of exploitation is too overt to be tolerated within the Muslim context.

What Hathout and other theorists fear most is the erosion of the family unit, for if surrogacy were accepted, or Hathout says, then "values other than parenthood will dwindle, values that we much cherish, such as natural love and mutual compassion and care within the family unit." Of course, this is the same objection raised against working women, against activist feminism, and against alternative sexual arrangements. And I hardly think that a reconsideration of the rights of orphans and the laws of adoption, for example, would threaten the family unit, now in this age, and with the sight of children in Lebanon, Sudan, Ethiopia, and Iraq, for example. Surrogate motherhood is, however, a more delicate issue proposing as it does a licit extramarital and triangular relationship. But perhaps the "other mothers," those who cannot bear children, should be consulted.

The Other Mother

The rather ambiguous and silent role played by Elizabeth Stern in the Baby M saga was, indeed, curious. It did seem that the feminist and female voices raised in her defense, claiming her to be a more appropriate, more endowed parent than Mary Whitehead, were more active than she was in the whole drama. In her place, I imagine my friend, Mrs. S., who underwent years and years of treatments for infertility. She is not a particularly religious Muslim, but she never considered adoption as an alternative, instead accepting her childless life. What would the surrogacy option have meant to her? Might it

24. Id.
not have meant a closer relationship with her husband and decreased daily social pressure from her family, friends, and in-laws? Or what about another friend, now divorced, a lower-class woman, whose mother dragged her to zars,\textsuperscript{26} to shrines, and to eggplant gardens to remedy her childless state. This kind of reaction is common enough to be included in a commercial film about an infertile woman.\textsuperscript{27} In a society that has only recognized women's productive role alongside their reproductive role, would removing the choice of childlessness ever change the belief that, as Samar Attar put it, "women are chickens who lay eggs. And when she stops she is of no use?"\textsuperscript{28}

Ruth Hubbard said that she had never thought that every woman had the right to have children, "anymore than that every woman has the right to a 34 inch bustline or a 24 inch waist."\textsuperscript{29} She could only understand this belief in light of the sacrifices demanded of some women in return for the future promise of marriage and support. But Middle Eastern women and men would only reluctantly agree with her. The regional family planning programs took note finally of women's socially determined need to mother and emphasized the notion of spacing instead of birth control — and certainly not childlessness, given the continuing emphasis on the individual in the family setting, never alone, on their own, as in the West.

In conclusion, we may note that Muslims, like the majority of Westerners, long for their own children. In the West, surrogate motherhood provides one-half of the desired genetic component, closer to some parental primal instincts than those white babies of Romania and Albania so popular at the moment with adoptive couples. But conservative Muslims reject these alternatives, and that of \textit{in vitro} via sperm or egg donation. The legacy of \textit{shari'ah} and the conservatism of Islamic scholarship and medicine are so unshakable that it will be only the rare, courageous, and unorthodox individual who challenges these mores in the quest for that precious bond, a child by contract. While a reconsideration of the laws prohibiting adoption may seem more in line with the humanistic goals of Islam, such a move would also open the door for legitimation of the new reproductive technologies here discussed. That \textit{bid'ah}, or heresy, seems

\textsuperscript{26} A ceremony of exorcism, performed mainly by women.
\textsuperscript{27} \textit{Dumu'a bila Khati'a} (starring Najlah Fathi) here a wealthy girl marries a doctor (an \textit{effendi}) of a humbler background, but she can't get pregnant. Shocked by her resort to a zar, the local, "unscientific" remedy, he eventually deceives her and marries another to have a child. Only her eventual pregnancy allows a happy ending.
to threaten the patriarchal structure of society too intensely for its scholars to consider it at this time. The historical alternatives for parenting support a juridical reliance on consensus (\textit{ijma'}) which effectively bars acceptance of these new methods for at least the foreseeable future.
Religious Sources
al-Qur'an al-Baqarah II:220, Nisa'IV:2,6,10,24,27; Banu Isra'il XVII:34; Ahzab XXXIII:4-5.
Ibn Hisham, 103-106, 856-857.


ISLAMIC PERSPECTIVE

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PUBLICATIONS AND PAPERS

REVIEWS

GUEST LECTURES AND PANELS
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