

FOROUZAN AKRAMI • ABBAS KARIMI

MAHMOUD ABBASI • AKBAR SHAHRIVARI

ADAPTING THE PRINCIPLES OF BIOMEDICAL ETHICS TO ISLAMIC
PRINCIPLES AND VALUES IN THE CONTEXT OF
PUBLIC HEALTH POLICY

Forouzan Akrami

Shahid Beheshti University of Medical Sciences, Medical Ethics and Law Research Center, Tehran, Iran.

Email: froozan_akrami@yahoo.com

Abbas Karimi

University of Tehran, Faculty of Law and Political Science, Tehran, Iran.

Email: abkarimi@ut.ac.ir

Mahmoud Abbasi

Shahid Beheshti University of Medical Sciences, Medical Ethics and Law Research Center, Tehran, Iran

Email: dr.abbasi@sbmu.ac.ir

Akbar Shahrivari

Shahid Beheshti University of Medical Sciences, Medical Ethics and Law Research Center, Tehran, Iran

Email: shahrivari.akbar@yahoo.com

Abstract: Public health ethics is a subfield of bioethics that focuses on population health. This study aims to conform the principles of biomedical ethics to Islamic values in the context of public health. It culturally helps to optimize health care delivery. The approach is based on the method of immanent critique. The principle of the common good in Islam has a rational justification to draw public interests and ward off harms. The rule of “no harm”, with an emphasis on the preferability of preventing harm to increase benefits, is consistent with the principle of utility, intending to produce a maximum balance of benefit over harm in the context of public health. Thus, on the one hand, the government is obliged to prevent harm and improve public benefits and, on the other hand, as a steward of health and with reference to the article “limitation of the ownership dominance”, it has the right to protect public health with the least justifiable harm. Islam attention to human dignity, individual justice and good will in the rule of goodness implies that Islam, beyond distributive justice, knows that human flourishing and the cultivation of moral virtues are a requisite for the realization of social justice. The present study discusses about the adjustment of the principles of PHE to the principles of the Islamic jurisprudence and, at the same time, it explains why the optimal PH in Muslim societies requires research in order to define accurate indicators of benefit and harm based on the teachings of revelation and reason.

Key words: public health, ethics, common good, utility, justice, Islam

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1. Introduction

Public health ethics (PHE) is a new field of bioethics that focuses on population health. Some public health interventions are counted as a threat to individual autonomy, privacy and confidentiality. As a political responsibility, at a minimum, the government commits to protect population health, which requires collective effort and cannot be achieved with an individual acting alone. PHE connects overlapping fields of political, moral and social philosophy. This general philosophy provides a moral basis and identifies a set of limitations in the laws, policies and practices of health systems. PHE as a normative discipline can provide a framework for exploring the fundamental moral values which define the relationships and duties of personal, governmental and social institutions in the realm of public health (PH). It can also provide some ways in which to solve conflicts occurring among moral values (Childress 2015, 5). Various moral theories can give a different shape to the PHE framework. For example, in consequentialist theories, policy or action that will result in the best outcomes is morally right; in utilitarianism – a widely used theory in health policy, the only value is to maximize the utility (Childress and Bernheim 2015, 23).

In the Islamic tradition, the laws and principles are derived from a divine source and are specified in the sharia. Thus, the foundations of ethics cannot be separated from religion. With the revival of the revelation-based rational thought, a trans-cultural system can be created to assist human in the assessment of bioethical problems. This study intends to adapt the principles of bioethics to the Islamic principles and values in the context of public health. It thus tries to elucidate if the application of the principles of PHE is an appropriate system or approach to be used in a Muslim community. It culturally helps to optimize health care delivery.

1.1. Methods

The present study uses the method of immanent critique. Therefore, it not only attempts to place the research issue in its proper context but it also examines its epistemic base. This technique has a theoretical-operational approach that puts the relevant norms in practice (Stahl Titus 2013, 7).

1.2. Foundations

The basis of this study is a common moral language between Islamic and secular ethics. According to epistemological foundations, the main foundations of secularism are rationalism, scientism, and humanism

(Aderyani and Kiani 2015, 37). Human dignity is an intrinsic quality and the foundation of the Universal Declaration of Human Rights that explains the purely secular character of the Universal Declaration (Hughes 2011, 1). This fundamental value emphasizes that human beings, regardless of their external features such as color, race, language, social class, religion, nationality etc., should be respected. God expresses his preference for the human being over other creatures in the Qur'an as follows: "Indeed, we have honored the children of Adam and carried forth them on land and sea and we provided them a variety of good things and preferred them on many creatures".

Islam, as a rich scholarly tradition, has its own set of principles that can be successfully utilized. The principles of Islamic jurisprudence (Uşul al fiqh) is a set of principles by means of which Muslim jurists deduce legal rules from the foundational sources of Islamic law, Qur'an and the hadith (the sayings of the Islam Prophet). Moreover, the jurists utilize the consensus of the Muslim scholars for making a decision regarding a particular issue (Ijma) and analogical reasoning (Qiyas) by Sunni Muslims or reason (Aql) by Shiite Muslims (Mustafa 2013, 479). Thus, the present study examines the conformity of the principles and norms of Islamic jurisprudence with the principles and norms of PHE.

2. Public health as a common good

Generally, health policy-makers think about public health as a public good and the first consideration is benefit produced in conjunction with other connected moral considerations including avoidance, prevention and elimination of harm, and the maximum balance of benefits against the program burdens (Childress and Bernheim 2015, 9; Abbasi et al. 2017). This is why we first focus on the issue of the common good.

The objectives and interventions of the public health practice mainly relate to the ethical principles of beneficence, non-maleficence, and justice (Childress et al. 2002, 172). Public health is an important public interest that should be pursued by governments and communities. It is an intrinsic and instrumental social interest in a community. Therefore, public health is placed under the broad norm of beneficence (Childress and Bernheim 2015, 5). The prominent feature of the practice of public health is its focus on population health, whereas medical ethics focuses on the principle of respect for autonomy with a liberal basis (Faden and Shebaya 2016). Daniel Callahan comments on the individual good and the common good as follows: "Communitarianism, as an alternative ideology that focused more on the common good and the public interest than on autonomy, was a neglected approach. But many bioethical issues cannot reasonably be reduced to questions of individualism and choice only. Serious ethical analysis must take the social implications seriously and not

simply assume that they should be left to the autonomous choices of individuals” (Callahan 2003, 496).

In the area of policy-making, the discussion of the allocation of resources focuses on community health and the common good. Thus, public policies should be based on the common agreement on the good community, rather than individual rights. We should abandon the liberal assumptions about the neutrality of the state and the society must be allowed to implement the fundamental conception of the good. Biomedical ethics needs to use community-oriented values to implement social rules and regulations governing health promotion, the use of genetic knowledge, and the application of modern advances in medical technology, health care responsibility for future generations and health care restrictions for the elderly (Beauchamp and Childress 2009, 258). PH, like any other professional and political institutions, spreads tradition that requests participants to foster certain virtues in themselves. For the past several decades, the concept of “structures” in theological ethics, almost exclusively, has focused on social structures in need of change. Structures that perpetuate unfair situations and provide systematic disadvantages to human development were classified as the “structures of sin” and were targets of social and theological criticism. Public health officials are in an effort to create new structures such as law, policy, environment etc. that have a positive impact on the lives of individuals and their communities. These social structures are formed by individual characteristics and virtues as fundamental value units that make a person's habits and form them (Rozier 2016, 39).

3. The common good “Maslaha” from the perspective of Islam

The term “*maslaha*” in Arabic means “attention to promote benefit and remove harm” and the word “*al-mursala*” means to be free. The two words together, *Maslaha al-mursala* (considerations of public interest), mean the pursuit of the good of the people, without any reference to the revelation texts. The implication of this concept is that the common good is so obvious that it does not require any revelatory text for credit verification. In addition, from the perspective of the legislator, since the purpose of good is recognizable by reason, it also seeks God's approval. Generally there is concomitance between revelation and reason about the “common good” (Sachedina 2011, 48). The Islamic ethical system is of divine origin, and the importance of legal ordering is derived from it. Yassar Mustafa has quoted Ghazali's sayings about ‘best interests’: “...its meaning is protecting the purposes of Revelation. There are five purposes of Revelation for mankind: (1) their religion, (2) their lives, (3) their lineage, (4) their minds and (5) their property. Everything that promotes the preservation of these five purposes is beneficial and everything which damages them is a source of corruption” (Mustafa 2013, 480).

According to the verse “indeed, God commands to justice and goodness” and the hadith of the Islam’s Prophet, harm shall not be inflicted nor reciprocated (*la-darar wa la-dihar*), it can be said that the rules of goodness “*ihsan*” and no harm are two general rules that flow from the principle of “*maslaha*” (Sachedina 2011, 47), while the rule of goodness also covers harm exorcising. The concept of “*ihsan*” is primarily associated with intention. One who does what is good, based on good will (benevolence), is called a “*Muhsin*”. (Mohaghegh, Damad 2016, 148). That is why the principle of the common good and the rule of goodness in Islam have more far-reaching concepts than the principle of beneficence in bioethics. The two juristic rules of “*istislah*” (preventing harm and promoting benefits in the public sphere) and “*istihsan*” (priority of two equally valid judgments) are implications of the public interest (Sachedina 2011, 46). When the rule of “*istihsan*” (choosing one of the two possible solutions of a case) is evoked to justify a legal-ethical decision, the rationale for the decision is based on considerations of the common good. Thus, the common good functions as a criterion for legislation, while the individual good functions as the context for derivative rulings (Sachedina, 2011 57).

4. The “utility principle” in the area of public health

The “utility principle” has had different interpretations in the past few centuries and philosophers like Jeremy Bentham and John Stuart Mill, provided the following normative terms: “the greatest good for the greatest number” which provides a way to determine right and wrong, or justified and unjustified policies and conducted actions, with determining whether they “can provide the greatest good” (Beauchamp and Childress 2013, Childress 2015, 27). In recent years, in order to better isolate the impact of the explanations about the production of the pure balance of good over bad consequences, the label consequentialism is preferable to utilitarian. Following the beneficence principle, the principle of utility can be understood as the principle of producing the maximal balance of benefits over harms or the maximum net benefits of health (Childress 2015, 22). Regarding some general moral considerations, the principle of utility does not commit us to utilitarianism as a general framework. This because from the perspective of utilitarianism, generating utility is considered a fundamental principle that all moral norms are divided from or a maxim that cancels other moral norms (Mill 2006, 269).

Risk Reduction may be considered a benefit and different interventions in the light of their effectiveness in reducing complications and death are evaluated. Utility-based justifications for public health interventions is conducted often using cost-effectiveness analysis (Index of quality adjusted life year-QALY). Risk assessment shows the likelihood

of negative consequences, particularly harmful effects and seeks to determine whether the estimated risk is acceptable or it can be reduced. Because of the inherent nature of public health practice to reduce morbidity and mortality outcomes, and promote health, the adoption of an intervention depends on the balance of benefits and possible risks in that context. Different types of burdens come from PH activities. Most burdens fall in three major categories: risks to freedom and individual autonomy; risks to privacy and confidentiality, especially in data collection activities; and risks for justice, when public health experts suggest interventions only for certain groups. We are morally obligated to minimize the burdens identified and this implies it is necessary to determine whether the program can be modified through minimizing the burdens while the benefits of the program are not reduced to a large extent, or whether there are alternative strategies or interventions (Kass 2001, 1779-80). A variety of physical and psychological harms can be expected following a PH intervention. For example, if forcible quarantine is necessary in order to control a contagious disease, it should be accompanied with psychological support for the people. Social values and the public perception of the risk rooted in the culture and religion of the society form an important part of the context of public health and are involved in the implementation of ethical principles in various communities. For example, people fear the risks associated with accidental HIV infection more than other comparable risks, such as accidental infection with hepatitis B, because of the stigma associated with HIV infection.

Autonomy at least means freedom from both the interference of the others and the insufficient perception, because these two are significant barriers of any informed and free selection. In medical ethics, autonomy is used for the critique of utilitarianism and paternalism (Beauchamp and Childress 2013, 107). For respecting individual autonomy, valid data about the benefits and potential harms of intervention should be tailored to the needs of different levels of awareness and access. Six justificatory conditions of effectiveness, necessity, minimal infringement of autonomy, proportionality, impartiality and public justification have been provided for the prominence of norms in conflicting conditions of selecting PH interventions. If there are two interventions to solve a public health problem, assuming that the benefits will not decrease significantly, we are morally obligated to choose an approach that is less threatening to other moral claims such as autonomy, privacy, opportunity, and justice (Childress and Bernheim 2015, 8).

In public health programs where obtaining informed consent is not possible, such as Tab water fluoridation, a democratic decision-making process with the participation of affected groups and individuals for a fair decision-making procedure (procedural justice) has been recommended. In a democratically legitimate public decision process, people's

participation in public health thinking is necessary. Prompt public health decisions are usually located in communities with specific conditions. Hence, transparency and accountability have to provide rational reasons and justifications for mandatory interventions such as quarantine to ensure that people can accept and support such actions (Kass 2001, 1781).

Regarding the criticisms that have been considered for QALY as an indicator of benefit, Erik Nord believes that whenever ethical questions arise in health care, the preferences of the public should be referred directly. In his opinion, people should directly ask what should be given to the public. This is because the answer of the public usually makes a real difference to the results of the analysis of benefit and cost effectiveness, because the public considers the factors such as severe disability and vital technologies more seriously (Nord 1999, 2). The well-being theory emphasizes the limitations of theories of justice to resolve priority issues and also the need to integrate social values in such decisions in ways that it does not provide formal analyses. The methodologic review of the cost-value analysis and also some claims based on procedural solutions to solve the prioritization problem, using the disability adjusted life years-DALYs or QALYs, show that the democratic theoretical contribution is a general approach for any discussion on the allocation of priorities that emphasizes the need for reasonable accountability in decision-making processes affecting public matters (Powers and Faden 2006, 279).

5. The principle of utility from the perspective of Islam

The rule of “no harm” (la-darar) in the Islamic law is among the governing rules and it has veto power over other laws and rules. This rule covers the non-maleficence principle in bioethics and it has strong rational reasons in addition to legal documentation. The principle of “no harm” is dominant in the relations between people, in social moralities, as an important barrier to harmful interventions. Avoiding probable risks, based on the principle of “preference to avoid harm to improve the benefit”, jurists support the patient's right to avoid harm (Mohaghegh Damad M 2004, 150). Both from the standpoint of the rational and of tradition, which implies the respect for no harm to oneself or others, it has been concluded that only a certain harm is not the target, but if the harm is the suspicion, it must be avoided. Of course, for the notable harms, such as corruption or destruction of the body, this is important to the extent of a rule called “necessity of prevention of possible harm”, which means a rational rule has been created. According to this rule, it can be generally said that harm is not legitimate in Islam and the illegitimacy of harm encompasses both legislative and implementation phases (Safaei and Abbasi 2016, 235). In other words, the avoidance of harm has priority over the pursuit of a benefit of equal or lesser worth. Another maxim in this category (Darura or necessity) also states that harm may not be

removed by a similar harm, and in case of coincidence of two harms, then a 'lesser of two evils' approach should be considered to prevent greater harm (Mustafa 2013, 481). This can be applied where the public good takes priority over the individual good. For example, individual autonomy can be infringed in case of necessity of the vaccination to prevent the imminent epidemic of an infectious disease. From what was said, the consistency of the principle of utility in public health with the rule of "no harm" can be inferred.

Islam greatly emphasizes the personal autonomy and responsibility that contribute to the strength of the social system. According to the domination rule, human beings have no right to dominate or control other people unless guardianship intervenes as a proof, such as a father's guardianship of his young children. This rule, in addition to the religious reason, has a rational reason and the legitimacy of governments derives from the fact that people have the right to choose (Mansoor 1998, 91). Thus, on the one hand, the government is obliged to promote public health and to prevent harm to improve public benefits and, on the other hand, as a steward of health and with reference to the article "limitation of the ownership dominance", it has the right to protect public health with the least justifiable harm.

6. Justice

Justice has been defined as 'giving everyone his or her due' (Have 2006, 101). In public health, the principle of justice including distributive justice for a fair distribution of benefits and burdens, equal access and the reduction of inequalities in health outcomes, and also procedural justice in the form of the participation of all affected parties in decision-making processes have a central role. (Kass 2001, 1780; Childress et al. 2002, 171; Childress and Bernheim 2015, 5; Marckmann et al. 2015, 4). John Rawls believes that justice will be achieved through the correct distribution of goods and responsibilities in social cooperation and this is linked to the structure of society and its constituent entities. This is because social institutions determine the access to resources and the rules for determining merits and achieving the political power and capital accumulation. Thus, justice is the elimination of unreasonable privileges creating actual balance among the conflicting demands of people predicted in the structure of a social institution (Rawls 1999, 5).

A liberal theory of justice focuses on individual freedoms, along with one's duty to respect the freedom of others and the duty of the government to protect the rights and freedoms of citizens. This often means that the "minimal state" is able to prevent or punish breaches of personal boundaries, including individual property rights. In this view, health care is not a right but people can voluntarily contribute to the distribution of health care in a community. In the perspective of

utilitarianism, justice is seen as a set of policies or rules that produce the maximum net benefit, involving the correlation of the rights and duties not as an independent decision but rather deriving from benefit. Health care and public health can be valuable at least partly involved in the production of the net social benefit (Childress 2015, 27). Nevertheless, utilitarian justice principles are relative but if their inclusion range is precisely specified, utilitarianism, as a consequence-based doctrine, will play a major role in health policy-making (Beauchamp and Childress 2013, 361). Communitarian theories of justice arise from several philosophical views that do not necessarily take into consideration the importance of individual rights such as freedom. Their perception of health care and just health rather depends on the perception of the community of the good of health, in conjunction with other primary goods (Childress 2015, 27). Communitarians emphasize community obligations towards the individuals and the duty of individuals in society. They believe that an emphasis on community and common good is also evident in the policies of health care allocation. Egalitarian theories have a history as old religious traditions and believe that all human beings should be treated equally because they are created equal and have equal moral status (Beauchamp and Childress 2013, 256), which makes the foundations of human rights. The right to health requires governments not only to respect individual human rights, but also to protect people from harm and to satisfy the community health needs (Annas and Mariner 2016, 129). No dominant egalitarian theory has included a distributive principle of equal sharing of all primary goods to everyone. The quality of dominant egalitarian theories is to identify basic equalities that allow some inequalities and many of them recognize the probable legitimacy of a two-layer system, with the least favorable layer of health care (based on the deliberative democratic process) (Beauchamp and Childress 2013, 273). John Rawls' theory of Justice is the most important temperate egalitarian theory which has challenged liberalism, utilitarianism and communitarianism. From among those who have been influenced by John Rawls, Norman Daniels argues on the concept of "fair equality of opportunity", in which justice has to remove or reduce the barriers which prevent fair equality of opportunity for people, such as health as moral importance, to pursue a variety of objectives and programs of individual life, depending on the talents and skills of people (Daniels 2008, 47).

Since the beginning of the 21st century, some innovative ideas have been debating on justice in bioethics. Although this literature has been formed in response to Rawls's egalitarian theory, in terms of foundation it is not exactly like Rawls's theory. This literature is mainly influenced by the moral theory of Aristotle, in particular the role and importance of human flourishing states that rely on moral virtue and excellence. The approach starts from the assumption that the opportunity to achieve good performance and well-being are ethical principles and the freedom to

achieve such cases is analyzed in the language of “capability”. The quality of life depends on what people are able to do, and a good life is a life in which people maintain their original capabilities. This theory holds that the minimum level of social justice requires “main capabilities for all citizens”(Beauchamp and Childress 2013, 259). The capability theory focuses on the pre-condition of capabilities for well-being, whereas some new theories have focused on well-being. In other words, freedom, capabilities and empowering education and their resources are considered a well-being equipment. Regarding bioethics in public health and health policy-making, Powers and Faden have provided a non-distributive justice theory that complements the distributive justice but it is beyond it. In their point of view, questions about the important inequalities are understandable only by examining the social determinants that interact with human well-being (Powers and Faden 2006, 37; Powers, Faden, and Saghai 2012, 8; Beauchamp and Childress 2013, 260). According to the well-being theory, the job of justice is to ensure an adequate level of six fundamental dimensions of human well-being, including health, reasoning, self-determination, attachment, personal security and respect for all (Powers and Faden 2006, 25; Beauchamp and Childress 2013, 261). Therefore, according to recent theories of justice, the most important topic discussed in public health is not the set of restrictions on freedom and the autonomy of individuals, but also the promotion of their autonomy. In other words, autonomy is a central value in a just society in which better conditions are provided in order to facilitate the possibility to make right decisions (Buchanan 2015, 409).

7. The principle of justice in Islam

Justice in Islam is one of the basic principles, and this has been stressed in the Qur'an and the Hadith. From the perspective of Islam, justice is one of the inherent characteristics of rational dignity and every human, with a sound mind, and who is against moral vices, will always tend toward it. The human will and freedom of choice are the basis of legitimization of the rules and responsibility in Islam, without which individual and social justice is unreasonable (Sobhani Tabrizi Gh 2000, 4-23). Distributive justice is most evident in the concept of *maslah al-mursala*, that is common good. Thus, the ultimate goal of the sharia is the establishment of justice along with the preservation of the best interests of people. Individual justice accounts for a moral virtue in each individual, as a result of control and balance of internal tempers of humans and this is the underpinning pillar for social justice. History is a good evidence of the vanguard of Islam in the fight against injustice and for the establishment of social justice. Commands such as paying “*khums and zakat*” and also giving parts of the asset to poor people (*infagh*) are the instances of distributive justice and fairness in Islam. Justice in Islam is the basis of

jurisprudence, law and legislation. The most famous and most comprehensive definition of justice among the veterans and jurists “granting the right to their owners” shows that justice and the right are intertwined and justice is the implementation of the right. The principle of justice does not put alongside other rules but it is in fact a meta-juridical principle. There are also many other important legal rules, such as the “no-harm” rule as a strategy to achieve justice (Motahari Morteza 2011).

8. Fairness (not the ‘split-half’)

Equality and negation of discrimination are the most important meanings of the social dimension of justice. Equality is a precondition of justice, but the order of justice is not equality only. However, in Islamic jurisprudence, if there is a financial dispute and there is no preference for one of the parties involved, in order to remove suspicion, the sentence is for dividing the asset between the parties, in two halves. Some lawyers have defined justice as a vague feeling of fairness that arises in the application of legal norms by persons. Sometimes fairness means to divide equally, but if it is to complete the law, it means to give rights on the basis of merit of individuals, not only on the basis of equality (Asghari 2009, 174).

In the Islamic attitude, social justice does not only include distributive justice but it also has a broader sense. The analysis of the general policies of the politico-moral philosophy of Iran health system as an Islamic country suggests egalitarianism as the dominant theory (Akrami et al. 2017, 1). But it should be noted that the foundation of social justice consists of divine justice, on the one hand, and of human nature, reason and freedom, on the other hand. As noted above, because of the inherent dignity, the human has the right to live honorably in society and no one has the right to produce a risk for his/her life or property. Islam, with a deep understanding of the human in addition to inherent dignity, has also given him a valuable dignity which the human being acquires through the knowledge, self-purification and proximity to God: “Indeed, the most honorable of you with Allah is the most pious of you”. This kind of dignity is an adventitious prosperity acquired as a result of fulfillment of the inherent talents. Thus, it can be concluded that the religion of Islam is for human flourishing and the fostering of moral virtues necessary not only for individual justice, but also for social justice. This is possible by providing Islamic and healthy social structures meant to shape these behaviors.

9. Conclusions

The present study outlines the connection between the principles of PHE and the principles of the Islamic jurisprudence. The principle of the common good has a rational justification in Islam meant to draw public interests and to remove harm. The rule of “no-harm”, with an emphasis on the preference for preventing harm in order to increase benefit, is consistent with the principle of utility meant to produce the maximum balance of benefit over harm in the context of PH. Therefore, on the one hand, in PH, the government, due to its responsibility to prevent disease and death and to promote health, has the duty to prevent harm and to promote PH. On the other hand, as a steward of PH and with reference to the article “limitation of the ownership dominance”, it has the right to protect PH with the minimizing justifiable harm.

The right to health and public use of biotechnology advances are the rights of all human beings and implementing it is the instance of true distributive justice in Islam, with special attention to disabled persons and the poor. Islam’s attention to make people conscious of their rights and duties and of acquired dignity, as a result of the fulfillment of inherent talents, suggests that Islam, beyond distributive justice, knows that the cultivation of moral virtues and human flourishing are a requisite for the realization of social justice. In Islamic philosophy, human excellence is considered to the extent that good will in addition to the concept of individual justice can be deduced from the concept of the rule of goodness. Applying the principles of PHE is an appropriate approach to be used in a Muslim community in order to optimize health care delivery. At the same time, the optimal PH in Muslim societies requires research in order to define the accurate indicators of benefit and harm based on the teachings of revelation and reason.

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