

The Shiite Pluralistic Position on Human Cloning

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Abstract

With regard to human cloning or artificial human reproduction – and contrary to the opinions of Sunni scholars - Shiite thinkers have not held a unified position. After having surveyed a number of Shiite fatwas and analyses on the subject, this essay will classify them into four groups. The first group states that we are granted absolute permission to engage in human cloning; while the second group believes that there is limited permission; the third group argues that cloning as such is primarily permitted but because of its consequences and secondary grounds it is prohibited and unlawful; and the fourth group is of the view that cloning as such and by itself is prohibited and unlawful. In what follows, the author has examined these four views, ending in support of the permission theory.

Preface

Contrary to the consensus which exists among Sunni scholars on the issue of human cloning, we may come across a considerable discrepancy among Shiite scholars; there evidently are as many Shiite proponents of the issue as there are opponents. In their individual fatwas, official assemblies, and through a statement from the Majma'-u al-Fiqh-i al-Islami (the Islamic Jurisprudence Society) in 1997, Sunni scholars have put forth a decisively

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negative position towards human cloning by prohibiting it as unlawful.² However, there is no such consensus among the Shiites. What has paved the way for such a discrepancy is the lack of a concentrated authority for issuing fatwas on novel issues as well as the religious authority that each Shiite jurist must assume for himself in order to issue *fatawa*, as it is unlawful for him to follow the fatwas of other jurists.

By cloning, scientists mean the application of “Somatic Cell Nuclear Transfer” (SCNT), or creating a fertilized egg or zygote without the use of sperm. This technique was first introduced by the Scottish embryologist, Ian Wilmut, to create a sheep in 1996, which led to the creation of “Dolly the sheep” in 1997. Although no documented account has been reported about human cloning so far, its theoretical prospect could be enough of a reason for many scholars, in particular those from the important world religions, to formulate a specific position against it by declaring it as illegal and unethical.

The issue of human cloning, however, has not found an extensive response among Shiite scholars. Although the body of writings on the topic is quite small, the overall academic literature on the issue is considerably informative. This issue has been proposed for critical examination by Shiite scholars in the three major seminaries of Qom, Najaf, and Beirut. Referring to the primary permissibility of all things, the majority of Shiite scholars have declared plant and animal cloning as lawful and permitted.³

The Four Shiite Points of View

Having not reached any consensus on the issue of human cloning, Shiite scholars have issued different, and sometimes contradictory,

2. For further information about the Sunni point of view, see *Shabih Sazi Insan az Didgah-e Ain-e Katolik wa Islam*, (Human Cloning in the Light of Catholicism and Islam) by Sayyid Hasan Islami (Qom: University of Religions and Religious Schools).

3. For consulting different fatwas on the issue, see *Majmu'a Araye Feqhi-Qada'i dar Umure Huquqi* (A Collection of Juridico-Judicial Opinions on Legal Issues), compiled by the Research Center of the Judiciary for Legal Studies (Qom: Markaz Tahqiqat Fiqhi, 1381 A. H.) vol.1, pp.233-134.

fatwas. When studying Shiite fatwas on human cloning, one may come across four theories:

- a) absolute permission;
- b) limited permission;
- c) secondary prohibition;
- d) primary prohibition.

a) Absolute Permission

Due to the lack of a clear-cut religious text signifying the illegality of human cloning and referring to the rule which states, “Everything is lawful, unless you know it is itself unlawful to be forsaken,”⁴ and to the principle of primary permissibility, some Shiite jurists have authorized human cloning. Among the proponents of this theory are: Ayatullah Sistani,⁵ Musawi Ardebili,⁶ Fadel Lankarani,⁷ and Sadiq Rohani.⁸

From the very beginning, ‘Allama Sayyid Muhammad Hussain Fadlullah has regarded cloning as a move towards a deeper understanding of the hidden laws of nature. Calling for rationality and asking scholars to refrain from calling each other apostates, ‘Allama Fadlullah stated that if an indisputable piece of knowledge contradicted the prima facie texts of religion, those texts are to be interpreted.⁹ Ayatullah Sayyid Muhammad Sa’id Hakim is also of the view that human cloning is permissible and that there is no evidence from the *shari’ah* to ban it. He has asserted that human cloning is similar to the practice of divine laws which express God’s great omnipotence. Therefore, as long as cloning does not lead to any

4. Tafsil-u Wasa’il al-Shi’a ila Tahsil Masa’il al-Shari’a (تفصيل وسائل الشيعة إلى تحصيل مسائل الشريعة), Sheikh Hurr al-‘Ameli (Qom: Muassasat-u Alilbait li Ihya’ al-Turath, 1412 A. H.), vol.12, p.60.

5. Ganjina, p.2.

6. Majmu’a Araye Feqhi-Qada’i, p.231.

7. “Hamanandsazi Insan az nazar-e Maraje’ Adyan-e Asmani wa Baresi an az Nazr-e Fiqh-e Islami,” Mahmud Sadeqi, in Akhlaq-e Zisti az Manzar-e Huquqi Falsafi wa Elmi, p.79.

8. Ibid.

9. al-Istinsakh: Jadal-u al-Elm-i wa al-Din-i wa al-Akhlaq (الإستنساخ: جدل الدين و العلم و الأخلاق), pp.99-100.

unlawful practice it is permissible.¹⁰ Not only did Ayatullah Hakim hold that human cloning is permissible, but he also criticized anti-cloning arguments one by one considering them insufficient in proving the prohibition theory.¹¹ Having proposed different alternatives on the issue, Sayyid Musawi Sabzewari proceeds with an analysis of the related law in order to issue his fatwa. Human cloning, Sayyid Musawi Sabzewari holds, may logically be found in three cases: the first case is essential prohibition meaning that the nature of the action is regarded as unlawful because it entails a type of genetic modification in the creation of God. The second is primary legal prohibition such as the prohibition of sins like adultery and drinking wine. The third is secondary legal prohibition meaning that human cloning as such and by itself is lawful but due to its consequences and secondary grounds it becomes unlawful.¹² Having reported and criticized these three cases, he infers that human cloning as such and by itself is permissible, because it is in fact the application of science and divine laws already there in the dispositions of things.¹³ According to this view, those who claim it is prohibited are required to offer their reasoning since the permission theory complies with the primordial principles and hence its proponent is not compelled to offer an argument.¹⁴ In his 1996 answer to the same question, Ayatullah Sayyid Muhammad Shirazi said that the primordial principle here implies permission.¹⁵

After proposing eleven legal and non-legal arguments for examination and criticism, Ayatullah Mo'men has shown the

10. *Fiqh-u al-Istinsakh-i al-Bashari wa Fatawa Tebiyya* (فقه الإستنساخ البشرى وفتاوى طبية), Sayyid Muhammad Sa'id Hakim, 1999, p.18.

11. *Ibid.*

12. *al-Istinsakh bain al-Taqniyat-i wa al-Tashri'* (الإستنساخ بين التقنية والشرع), Sayyid Ali Musawi Sabzewari, pp.124-125.

13. *Ibid.*, 125.

14. *Ibid.*, 126.

15. *al-Istinsakh fi Ray-e al-Imam al-Shirazi* (الإستنساخ فى رأى الإمام الشيرازى), prepared by Sadiq Ja'far al-Hasan, Question No.1, also available at the <http://www.annabaa.org>.

inaccuracy of several of them, while for others, if the argument is indeed accurate, then it could succeed in the prohibition of only certain kinds of human cloning. He at last concludes that to embark on human cloning is allowable on the whole, however, it is necessary to observe the *shari'ah* laws of matrimonial relations such as looking or touching a stranger (any woman for whom it is prohibited to have intimate relations).¹⁶

b) Limited Permission

Relying on the extant texts and the related primary principle in this case, some other jurists have held that human cloning is allowable; however, they are of the view that the widespread performance of human cloning may lead to problems such as the creation of identical people and the difficulty of telling them apart. As a result, they say that while it can be allowable on a case by case basis, it is impermissible on a large scale. Hasan Javaheri has proposed such a view.¹⁷ He not only considers human cloning allowable case by case, but he also says that it is unlawful to claim that it is unlawful. That is, nobody has the right to prohibit lawful acts as unlawful by issuing the fatwa of prohibition unnecessarily.¹⁸ This is because the very act of prohibiting lawful acts is illegal, contrary to *shari'ah* and to the verse of the Qur'an which reads: "Do not say, asserting falsely with your tongues, this is lawful and this is unlawful." (و لا تقولوا لما تصف ألسنتكم (و لا تقولوا لما تصف ألسنتكم) الكذب هذا حلال و هذا حلال).¹⁹ As a result, in his view, although it is lawful, a legal authority may prohibit human cloning as a governmental ordinance according to his discretion for some expediencies. Such a prohibition is temporary and can be changed.²⁰

16. al-Istinsakh, p.21.

17. al-Istitam wa al-Istinsakh, (الإستتام و الإستنساخ), Hasan Javaheri, pp.19-20.

18. Ibid.

19. Nahl: 116.

20. Ibid., p.21.

c) *Secondary Prohibition*

Some Shiite scholars hold that human cloning as such and by itself is allowable, nonetheless, it inevitably leads to some evils. They therefore prohibit it as a precautionary measure to prevent those evils. Thus the ruling is given on secondary grounds. Jurists such as Yusuf Sane'i,²¹ Sayyid Kadim Ha'iri, Sayyid Sadiq Shirazi,²² and Nasir Makarim Shirazi²³ are among the proponents of this view. In his professorial lectures, Ayatullah Makarim has set forth his views and arguments in detail. In those lectures, he proposes several issues: first, he explains the mechanism and process of human cloning; second, the related *shari'ah* law; third, the criticism of anti-human cloning arguments from *shari'ah*; and fourth, he explains the related *shari'ah* rules with regard to the cloned person in relation to the laws and the consequences of the issue. As far as *shari'ah* rules are concerned, in terms of permission or prohibition, human cloning may be surveyed from three different angles: its consequences; the mentioning of human cloning in *shari'ah*; and its secondary grounds in *shari'ah*.²⁴ In regard to the first angle, he says that human cloning entails a number of prohibited acts, such as the unlawful matrimonial relations of looking or touching a stranger, except for the case in which the performer of the act is the husband.²⁵ As for the second angle, he says that the principle here is permission because there isn't any text from the Qur'an or from the traditions or consensus, nor is there an intellectual reasoning which prohibits

21. "Afkar-e Umumi wa Wakuneshhaye Siyasi, Mazhabi, wa Farhangi Dakheli wa Jahani be Pishrafthay-e Bashar dar Hamgunsazi Insan," Kasra Isfahani and Muhammad Hussein San'ati in Majmu'-e Maqalat-e Kungerey-e Bainulmelaliy-e Akhlaq-e Zisti, pp.138-139.

22. شبكة النبا المعلوماتية، الخميس: ٢٠٠٣/١/٢ - ٢٨/شوال/١٤٢٣، at the following website: <http://www.annabaa.org>.

23. The answer to the questions posed to Ayatullah Makarim Shirazi on 1382/1/12 A. H. in the collection of Twelve Istifta' existing in his office.

24. Didgah-e Fikhiy-e Ayatullah Makarim dar barey-e do Mas'aley-e Shabihsazi wa Rahhaye Farar az Riba (دیدگاه فقهی آیه الله مکارم شیرازی درباره دو مسئله شبیه سازی و راههای فرار از ربا)، p.25.

25. Ibid.

human cloning as it is a novel issue.²⁶ In regard to the third angle, he mentions some unacceptable ethical, legal, and social consequences, concluding, “As far as secondary grounds are concerned, human cloning is hazardous for human societies, so all peoples and nations throughout the world have regarded it as unethical, so that even many governments have passed some law in order to ban it.”²⁷ He then summarizes his discussion. “Because there is neither text from the Qur’an or tradition or consensus nor any intellectual reasoning to ban it, as the primary ground of *shari’ah* requires, human cloning is allowable, but the secondary ground requires it to be prohibited.”²⁸

d) Primary Prohibition

In contrast to the above three theories which regarded human cloning as permissible, although they differ in regard to its secondary grounds, the fourth theory principally holds that human cloning is, according to primary grounds, prohibited and unlawful. This theory has a small number of proponents who have offered several arguments in its favor. There are a few short statements, as well as some fatwas, from the late Ayatollah Muhammad Mahdi Shams-u al-Din upholding this theory.

From among the other proponents of this theory is the late Ayatollah Sheikh Javad Tabrizi who holds that human cloning is not permissible because divine wisdom requires there to be a distinction and difference among human beings in different societies. Allah says: “و من آياته خلق السموات و الأرض و اختلاف ألْسنتكم و ألوانكم” (“Among His signs is the creation of the heavens and the earth, and the difference of your languages and colors.”)²⁹ He also says, “و جعلناكم شعوباً و قبائل لتعارفوا” (“And indeed We made you nations and tribes so that you may know

26. Ibid.

27. Ibid.

28. Ibid., pp.26-29.

29. al-Rūm: 22.

one another.”)³⁰ This is because the general system of the world depends upon this distinction and difference, while human cloning entails a type of chaos and disorder in the organization of nature. Furthermore, it entails other illegal acts such as unlawful matrimonial relations, such as touching a non-mahram or looking at her private parts. As a result of the issue of marriage, there is a possibility of confusing the wife with a non-mahram woman or a mahram woman with a non-mahram so that one cannot distinguish between the two parties, namely the passive [wife] from the active [husband].³¹

Both human and animal cloning are held to be unlawful by Muhammad Mahdi Shams-u al-Din.³² Nonetheless, he did not have a clear and fixed position towards animal cloning. After one page affirming that human cloning is unlawful, for example, he goes on to write: “Human cloning is undoubtedly unlawful, but animal cloning requires more examination and as such we cannot prove that it is lawful.”³³ In his interview with *al-Shira*’ magazine, he said that the chief argument for the prohibition of human cloning is that humans are not the real owners of their bodies and thus it is also an alteration in the creation of Allah.³⁴

In brief, Shiite scholars maintain four positions in regards to human cloning: some of them hold that it is allowable in all cases, while others hold that it is allowable case by case and in a limited way. The third group believes that it is allowable upon its primary grounds, but by the requirements of its secondary grounds, and due to its evil

30. al-Hujurat: 13.

31. Sirat-u al-Nijat fi Ajwebat-i al-Istifta’at (صراط النجاة في أجوبة الاستفتاءات), Sayyid Abulqasim Khui ma’a Ta’liqat al-Sheikh Javad Tabrizi (Qom: Madyan, 2006), vol.2, p.564.

32. “استنساخ البشر أمر غير مشروع قطعاً و يقيناً” in al-Istinsakh bain al-Islam wa al-Masihyya, Maqalat-un wa Abhath-un wa Muqabilat-un likibari Rijal-i al-Din wa al-Mufakkirin wa al-Bahethin min Mukhtalaf-i al-Adyan wa al-Madahib (Markaz al-Dirasat wa al-Abhath al-Islamiyya-al-Masihyya, Beirut: Dar-u al-Fikr al-Lubnani, 1999), p.132.

33. Ibid., p.133.

34. “استنساخ البشر أمر غير مشروع قطعاً و يقيناً” in al-Istinsakh bain al-Islam wa al-Masihyya, pp.131-135.

consequences, it is unlawful. The fourth group is of the view that as such, and by its primary grounds, human cloning is unlawful.

The Examination of These Theories

From among these four theories, three of them somehow promote anti-human cloning. We shall begin with the weakest theory which regards it as unlawful.

a) The Examination of the Primary Prohibition Theory

Muhammad Mahdi Shams-u al-Din has frankly defended this theory by offering two major reasons, with one somehow reducible to the other. The first reason is an argument about alteration in the creation of Allah and the second is that humans are not the real owner of their bodies or those of others.

1. The Argument About Alteration in the Creation of God; The abstract of this argument is that human cloning entails some kind of alteration in the creation of God, which, according to the Qur'an, is unlawful. The detail of his argument is that human cloning results in the creation of several reproductions of the same body, which creation as such and by its primary ground in *shari'ah* and the Qur'an, declares unlawful. Referring to the verse, "وَأَضَلْنَهُمْ وَأَمَنَيْنَهُمْ وَأَمَرْنَهُمْ فَلِيْبِتَكُنْ أَدَانِ" "And I will lead them astray, and give them [false] hopes, and prompt them to slit the ears of cattle, and I will prompt them to alter Allah's creation,"³⁵ Muhammad Mahdi Shams-u al-Din claims that all exegetes say, that by "the alteration of Allah's creation," the Qur'an means any kind of change or action which can lead to the undue modification of the nature of the human body.³⁶ In the course of his argument, he has offered two premises: first, he has interpreted "alteration of Allah's creation" to mean any

35. al-Nisa': 119.

36. al-Istinsakh al-Jeini, p.58.

kind of undue bodily alteration and second, he has considered human cloning to be a kind of undue bodily alteration.

The former premise is unacceptable. If by “alteration of Allah’s creation” he means undue physical alterations which may deform the body, it cannot be applied to human cloning. This is because, through the process of human cloning, scientists attempt to produce a being which is 97% genetically similar to the original. As a result, from the cell nucleus of a healthy individual, a healthy similar individual may be produced - this is a process far different from the deformation of creatures - unless someone argues that for the time being it is impossible to produce cloned humans. This argument, however, may be valid *pro tem*, i.e., as soon as scientists reach the perfect techniques for cloning a healthy human, this argument fails. The unlawfulness of cloning will, consequently, be limited to the present and confined to the so-called “deformation of creatures.”

The latter premise is questionable as well. By the “alteration of Allah’s creation,” he means the non-natural changes in the body, and he also claims that all exegetes of the Qur’an, regardless of their sects and schools, have the same interpretation. Here, not only is it an unfounded claim, but we also have arguments proving otherwise. If he meant that all exegetes of the Qur’an interpreted the “alteration of Allah’s creation” as merely bodily change, then it is obviously inconsistent with the views of many exegetes. In regard to this verse of the Qur’an, there are two major interpretations. Viewing the context of the verse, i.e. “to slit the ears of cattle,” some exegetes have followed the interpretation of Muhammad Mahdi Shams-u al-Din. Some others, however, have explicitly stipulated that it means the alteration in the religion of Allah and his commandments rather than physical changes. In his *Interpretation*, for example, ‘Ayyashi narrates from Imam Baqir and Imam Sadiq who have said that by the phrase “alteration of Allah’s creation,” Allah had meant “alteration in religion and Allah’s

commandments.”³⁷ Ali ibn Ibrahim has also interpreted the phrase “to alter Allah’s creation” as “to alter Allah’s command.”³⁸ Having reported the above views on the issue, Sheikh Tusi writes: “The strongest view is that of those who say that “to alter Allah’s creation” means “to alter Allah’s religion,” because of the verse, *فطرة الله التي فطر* “The origination of Allah according to which He originated mankind, there is no altering Allah’s creation; that is the upright religion.”³⁹ Tabarsi has also interpreted “the alteration of creation,” saying: “By this He meant to change the lawful into unlawful and the unlawful into lawful.”⁴¹ Further, in his *Jawami’-u al-Jami’*, he writes: “And it is said that the origination of Allah is the religion of Islam and His commandment.”⁴² Thus contrary to what Shams-u al-Din has claimed, many Shiite exegetes have taken “the alteration of creation” to mean “the alteration of religion” and some have regarded this as the strongest interpretation. The case is true as well with the Sunni scholars who have mostly assumed two views. The only apparently Shiite scholar who referred to this verse in order to prohibit cloning is Shams-u al-Din. However, not only do other Shiite scholars not refer to this verse when discussing the issue, but they have also tried to refute such a reference. For example, Ayatollah Makarim Shirazi, who is amongst the opponents of cloning, has undermined this reference for two reasons.⁴³ Having mentioned the two views on the interpretation of “the alteration of creation,”

37. Tafsir al-‘Ayyashi (تفسير العياشي), Muhammad Ibn Mas‘ud Ibn ‘Ayyash Samarqandi (Tehran: Maktabat-u al-Ilmiyyat al-Islamiyya), vol.1, p.276.

38. Tafsir-u al-Qummi (تفسير القمي), Ali ibn Ibrahim Qummi (Qom: Mu‘assasat Dar-u al-Kitab, 1984), vol.1, p.153.

39. al-Rum: 30.

40. al-Tebyan fi Tafsir al-Qur’an (التبيان) Muhammad Ibn Hasan al-Tusi, researched by Ahmad Habib Qasir (Qum: Maktab-u al-A‘lam-i al-Islami, 1409 A. H.), vol.3, p.333.

41. Majma‘ al-Bayan fi Tafsir al-Qur’an (مجمع البيان في تفسير القرآن), Fadl ibn Hasan Tabarsi (Beirut: Dar Ihya‘ al-Turath-i al-Arabi, 1379 A. H.), vol.2, p.112.

42. *Jawami’-u al-Jami’* (جوامع الجامع), Fadl ibn Hasan Tabarsi (Tehran: Tehran University Press, 1412 A. H.), vol.1, p.288.

43. *Didgah-e Fikhiy-e Ayatullah Makarim*, p.27.

Ayatollah Sanad proves such a reference false, too.⁴⁴ After his report and examination of this argument, Ayatollah Mo'men proves it "false altogether."⁴⁵

Taking for granted the argument of Shams-u al-Din, there appear many objections and difficulties; for example, he must show why plastic surgery is an exception to such a prohibition, or he must prohibit this kind of surgery, too. So as far as *shari'ah* and legal rules are concerned, it is reasonable to dismiss this verse altogether, seeking another argument.

2. The Argument From the Fact that Humans Are Not the Owners of Their Bodies; There are a few points to be mentioned concerning this argument:

First, this argument is in fact another account of the same anti-cloning ethical argument put forth by the Sunnis; they say that "humans are trusted with their bodies as a deposit." A man therefore according to this argument is not the owner of his body, rather he is entrusted with it, and Allah is its owner. In view of this, any kind of usage of the body requires the permission of the owner.

The scope of this argument is not well defined, and thus one cannot infer the desired result from its premises. From the fact that one is not the owner of one's body, we cannot infer that one cannot use one's body. General permission is given to everyone to utilize their body for any common and general usage; therefore it is not necessary for someone to obtain permission for such usage, but rather it is impossible to abide by the consequences of such an argument. We naturally and continuously make use of our bodies in ways which are considered lawful by Shams-u al-Din, too. Therefore, instead of highlighting the fact that humans do not own their bodies, Shams-u al-Din is expected to show why this particular usage - human cloning, for example - is prohibited. From the celebrated premise which says,

44. Fiqh-u al-Tibb wa al-Tadakhum-u al-Naqdi (فقه الطب و التضخم النقدي), p.115.

45. al-Istinsakh (الإستساح), Ayatollah Mo'men, p.12.

“We do not have the right to use our bodies as we wish,” we cannot logically infer the conclusion, “Therefore, we do not have the right to use our bodies at all.” As it were, the denial of an A-proposition does not imply the acceptance of an E-proposition. Nonetheless, Shams-u al-Din has acquired such a deduction by inferring some broad conclusion from a sound and narrow premise. The logical conclusion of the above argument is the denial of ownership in general rather than the denial of all kinds of right of use. Hence, the acceptance of the argument is reconcilable with the limited right of use.

Second, contrary to the principle of permissibility celebrated by all Shiite scholars in *Ilm-u al-Usul*, Shams-u al-Din has began the course of his argument with the principle of prohibition. The former principle suggests that very thing is permissible in the first place unless it is proved to be unlawful, but the latter principle suggests that very thing is prohibited in the first place unless it is proved to be lawful. Among the Shiites it was the *Akhbariyyun* (traditionalists) who would follow the principle of prohibition in the first place.⁴⁶ It is noteworthy, however, that such a view cannot be accepted by the *Usuli* leanings of Shams-u al-Din, who was educated in the school of Najaf.⁴⁷ He is expected here to clarify two points before he discusses human cloning. First, he ought to undermine the *Usuli* reasons for the principle of permissibility, and second he should offer his irrefutable arguments to prove the principle of prohibition. Further, the mere refutation of permissibility does not imply the application of prohibition, for it is still possible to apply the principle of suspension of decision.

46. *Usul-u al-Istinbat* (اصول الاستنباط), Sayyid Ali Naqi al-Haidari (Tehran: Islamiyya, 1364 A.H.), p.174.

47. The Akhbari course of argument stands against the Usuli course. The Akhbari scholars, for example, rely on the traditions, but the Usuli scholars rely on human intellect first and then on the traditions. And because intellect suggests that everything ought to be allowed in the first place unless it is proved to be prohibited by shari'ah, Usuli scholars normally hold that cloning is to be permissible unless it is proved to be unlawful by shari'ah. So it is strange that such a person who was educated in the Usuli school refers initially to the principle of prohibition on this issue.

Third, supposing that Shams-u al-Din could prove the principle of prohibition to be correct, he may not propose it as the general Shiite view but as his own private opinion, for the majority of Shiite scholars have explicitly or implicitly accepted that all human beings are the owners of their own bodies. Referring to this ownership, not only have some scholars agreed that man can make use of his body, but have also claimed that he can sell his organs; indeed, selling is the best evidence or indication of ownership. In his *Tahrir-u al-Wasila*, for example, Imam Khomeini holds that on one occasion in life one may sell an organ from one's body by letting it be removed.⁴⁸ When talking about the dominion of the owner over his properties and body, Imam Khomeini has also pointed to the current custom of allowing one's body to be used for medical experiments after death or selling one's blood while still alive; he has based this idea on the intellectual rule of one's dominion over one's body.⁴⁹ Ayatollah Makarim Shirazi has allowed for the receiving of money for the donation of one's organs, with a juridical precaution of receiving money for the practice, rather than for the organ itself.⁵⁰ Ayatollah Sane'i even holds that it is most likely allowed for one to sell all of one's organs.⁵¹ Contemporary jurists have, accordingly, argued that one can sell an organ from one's body. One cannot sell anything unless one is the owner of the property, because selling is a possessory right; and according to the rule which says, "There is no selling unless in possession," we may demonstrate the

48. *Tahrir-u al-Wasila* (تحرير الوسيلة), Ruhullah Khomeini (Tehran: Mu'assasah Tanzim wa Nashr Athar Imam Khomeini, 1379 A. H.), vol.2, p.595, No.7; *Tawdih-u al-Masa'il* (توضيح المسائل), Imam Khomeini, p.700, No.2884.

49. *al-Bay'* (البيع), Imam Khomeini (Tehran: Mu'assasah Tanzim wa Nashr Athar Imam Khomeini, 1379), vol.1, p.42.

50. *Risala Tawdih-u al-Masa'il* (رساله توضيح المسائل), Ayatollah Makarim Shirazi (Qom: Hadaf Publication), p.503, No.2446.

51. *Risala Tawdih-u al-Masa'il* (رساله توضيح المسائل), Yusuf Sane'i (Qom: Meitham Tammar Publication, 1379 A. H.), p.484, No.39.

ownership of one's body. This is why Ayatollah Mosawi Ardebili has stipulated that humans are the owners of their bodies.⁵²

Fourth, supposing the principle of prohibition⁵³ in new cases where there is no previously established law, there are many traditions from the Holy Shiite Imams which give precedence to the principle of permissibility.⁵⁴ Thus despite the fact that Allah is the first and real owner of our bodies and we have no possessory right to make use of His possession without His permission, there are many verses of the Qur'an and traditions from the Holy Imams suggesting that everything is allowed for us unless a specific prohibiting law exists.

Fifth, the consequence of Shams-u al-Din's theory is the prohibition of the possessory right of one's body, including the donation of one's blood and kidneys, and even less questionable parts of the body. If we were not the owner of our bodies, and the first principle for disputable cases was prohibition, then we would be in need of a particular permission for any case of possessory use, such as kidney donation.

In a nutshell, it is implausible to defend the prohibition of human cloning; and because it is inconsistent with the Shiite methodology of *fiqh* and *usul*, very few Shiite scholars have ascribed to the primary prohibition theory.

b) The Examination of the Secondary Prohibition Theory

Although the majority of pro-cloning jurists allow for human cloning according to the primary principle of permission, they prohibit it on secondary grounds due to its evil consequences. From among these scholars, and despite its permissibility on primary grounds, Ayatollah Makarim Shirazi has proposed this theory in detail, giving his three arguments from the standpoint of ethical, legal, and social issues.

52. Istifta'at (استفتائات), Abdulkarim Mosawi Ardebili (Qom: Najat Publication, 1377 A. H.), vol.1, p.413.

53. al-Usul al-'amma lilfiqh-i al-Muqara (الأصول العامة للفقہ المقارن), Sayyid Muhammad Taqi Hakim (Beirut: Dar al-Andulus, 1963), p.501.

54. Kifayat-u al-Usul (كفایة الأصول), Akhund Kurasani, p.348.

1. Argument from Ethics; Human cloning, Ayatollah Makarim Shirazi says, challenges many ethical issues. “If we pave the way for human cloning [by] letting cloned children be born, then it would gradually put an end to the institution of marriage [and] destroy the foundation of family life; many unmarried women would become pregnant by a cell, whether of somebody else or of herself, which apparently gives rise to a mother and a child, but they may be twins in a sense! The global ethics would not stand such an environment, for it may cause the destruction of family life and human societies.”⁵⁵

Is it really possible to issue a prohibiting fatwa for a new technology by the mere supposition of something occurring?! Is there not such a supposition for prophylactic medicine? Don't we have the argument that “if” it were not for prophylactic medicine, some people may perform immoral acts in order to abort a pregnancy? Is it not due to such arguments that some scholars have banned prophylactic medicine? Is there any logical relation between human cloning and the collapse of the family? Is it not the case that human cloning may logically lead to the avoidance of marriage? Is it not possible nowadays for unmarried women to conceive a child? And is such a technology so cheap and widely available that anybody can make use of it? This theory needs to answer such questions. It must be noted that there is no logical tie between human cloning and marriage or abstinence from marriage, nor is the possible pregnancy of unmarried women the outcome of cloning. A full analysis of the logical consequences of this theory has yet to be performed.

Having relied on some future misuses of cloning, Ayatollah Makarim Shirazi infers the prohibition of human cloning. This is nothing but the very concept of the *Usuli* rule of *sadd al-zara'i*, which means the blocking of the means that may lead to an evil end.

There is no room for this rule in Shiite *usul al-fiqh*. In brief, this rule suggests that an action can be allowed but is banned because of

55. Didgah-e Fikhiy-e Ayatullah Makarim, p.25.

future evils and misuses. The *Usuli* rule of *sadd al-zara'i*, according to Sunni scholars, is less important than *qiyas* (analogy). It is by far evident that there is no room for *qiyas* in Shiite *usul al-fiqh*, let alone the rule of *sadd al-zara'i*. The rule of *sadd al-zara'i*, Shiite scholars argue, may only result in invalid conjecture which “indeed is no substitute for the truth.”⁵⁶ Shiite scholars do not issue the prohibiting fatwa as a lawful preliminary action for an unlawful end, however logical a connection they may have, let alone human cloning and its so-called consequences which entail no such logical correlation. They say that prohibition does not extend from the end to the preliminary means, and thus they follow up the chapter of “*Muqaddama Haram*” (“A Preliminary for the Unlawful”). The Shiite scholars of *usul* say that the preliminary action for an unlawful end is not unlawful, because after those lawful preliminaries, the agent still remains free whether or not to do the unlawful action. It is thus that, as Akhund Khurasani holds, the prohibition or repugnance of the ends do not extend to the means.⁵⁷ However, it must be noted that if the case was such that, after the preliminaries, the agent had no choice but to do the unlawful action, as scholars like Akhund say, the prohibition of the end extends to the means. Nonetheless, there are other scholars such as Imam Khomeini who are of the view that the prohibition of the unlawful ends does not extend to the lawful means at all, whether the agent is forced by the lawful preliminaries to do the unlawful end or not.⁵⁸

2. Argument from Law; The second argument for the prohibition of human cloning on secondary grounds comes from law. According to this argument, “a cloned man has no father or mother because he is not made from a sperm and ovule, nor has he a sister or brother or even a family. He has been developed in an artificial womb, a

56. Yunus: 36

57. *Kifayat-u al-Usul* (كفاية الأصول), p.128

58. *Tahzib-u al-Usul* (تهذيب الأصول), Imam Khomeini's lectures on *usul* prepared by Ja'far Subhani (Qom: Dar al-Fikr, 1367 A. H.), vol.1, pp.222-3.

substitute for a real mother. In one word, he is an individual of no lineage.”⁵⁹

The abstract of the above argument is: “A cloned man has no lineage and this is unlawful.” Now let us examine this argument.

First, according to the established principle of the majority of Shiite scholars, everything is allowed unless a clear-cut text suggests that it is unlawful. Accordingly, wherever there is a type of prohibition we may demand a reason for it because prohibition is contrary to the prior principle of permissibility. In the above argument, it is claimed that a cloned man has no lineage, i.e., he lacks a father, mother, sister or brother. Who has claimed that a cloned man has no lineage? Instead of a comprehensive survey of the issue, we shall take the indisputable case of human cloning, which is regarded as lawful by a number of other scholars. We may suppose that cloning is performed within the scope of a married couple with no unlawful action. Let’s begin with the missing mother of the cloned man, as Ayatollah Makarim Shirazi has claimed. In his argument, Ayatollah Makarim suffices to say “because the ovule has not been mingled,” i.e., the ovule of the mother is not fertilized by the sperm of the father. The analysis of this phrase suggests that there are two prerequisites for somebody to become a mother: one is the donation of the ovule and the other is the role that this ovule plays in genetic characteristics. In the cloning process, the former condition exists but not the latter “because the ovule has not been mingled.” As a result, this mother is not recognized as a legal mother. It is then necessary to inquire which legal text has included such conditions in the definition of the mother. This kind of discussion and the role of a mother’s ovule, however, is a totally new debate. Impressed by their own particular understanding of the topic, however, previous jurists have barely considered a role for the mother’s ovule in the process of reproduction.

59. *Didgah-e Fikhiy-e Ayatullah Makarim*, p.26.

Second, the concept of the mother is not one which has been established by the divine legislator. This concept is a customary one which requires us to see what type of person is customarily called a mother by this conventional concept so that we regard her as a mother. If that were the case, we should only see whether such traditional concepts apply to a woman who gives birth to a child developed from a missing nucleus ovule. The answer to this question is more likely to be positive. The glossaries have also defined the mother as somebody who gives birth to a child.

Third, jurists have undoubtedly agreed upon the attribution of a child to the woman who has given birth to it. For it is legally sufficient for a child to be born of a lawful relation in order to be ascribed to the mother.⁶⁰ This ascription was practiced regardless of the ovule being mingled or similar issues, and there is no reason to make an exception to this customary rule here. It simply suffices us to know, for example, that Ayatollah Hakim has regarded the customary practice here as the only principle to be followed.⁶¹

Fourth, some jurists have gone as far as to say that in order to be considered the mother of a child it is not necessary to be the donator of the ovule because giving birth to a child is sufficient evidence of motherhood. Ayatollah Khui, for example, holds that if a woman donates her ovule to be implanted in another woman's womb, the owner of the womb is the mother rather than the donator of the ovule.⁶²

Fifth, the fosterage of children, providing its specific prerequisites, may give rise to the relations of motherhood and childhood between the foster mother and the suckling infant, so much so that they become

60. al-Istinsakh bayn al-Taqrniya wa al-Tashi' (الأستساح بين التقنية و التشریح), p.139.

61. Fiqh-u al-Istinsakh-i al-Bahsari wa Fatawa Tibbiyya (فقه الإستساح البشرى و فتاوى طبية), p.22.

62. Masa'il wa Rudud Tibqan lifatawa al-Maja' al-Dini al-Sayyid Abulqasim al-Musawi al-Khui (مسائل و ردود طبقاً لفتاوى المرجع الدينى السيد ابو القاسم الموسوى الخونى), compiled and prepared by Muhammad Javad Radi al-Shihabi (Qom: Dar-u al-Hadi Publication, 1412 A. H.), vol.1, p.100; Fiqh-u al-Tibb wa al-Tadakhum al-Naqdi (فقه الطب و التضخم النقدى), p.87.

maharim (very close relatives whose marriage is forbidden). Now a woman who has developed an ovule of hers in her womb for nine months must *a fortiori* be regarded as a legal or formal mother. This is based on the priority argument which is put forth by Shiite scholars. Note, however, that the legal standard of fosterage, namely “the development of flesh and hardening of the bones,” can be found more in the case of the woman who has developed a child in her womb.

Sixth, many jurists believe that the concept of motherhood can be applied to such a case. Whether proponents or opponents of human cloning, these jurists are of the view that if the ovule belongs to a woman and the child is developed in her womb, she is undeniably the mother. However, an opponent of human cloning, Ayatollah Sayyid Kazim Ha’iri, has referred to the customary concept of motherhood in order to claim that the owner of the ovule is the mother and the owner of the cell nucleus is the father.⁶³ In his answer to the question “What relation may a cloned person have to the husband and wife?,” the cloning proponent Ayatollah Shirazi writes: “If they are married the child belongs to both of them, but if they are not he is treated as an unknown child.”⁶⁴ Ayatollah Sayyid Muhammad Sadr also argues that if an embryo is developed in a woman’s womb in compliance with *shari’ah*, she is the mother whether the ovule belongs to her or to someone else.⁶⁵ He has also issued a fatwa stating that the woman is still the mother even if the donator of the ovule is unknown since it is received from a specific bank of ovules and developed in the woman’s womb.⁶⁶

Seventh, on some occasions two women may be involved in the case. For example, the ovule of one woman is developed in the womb

63. Ma Huwa Ra’y al-Shari’at-i al-Islamiyya min Amaliyyat al-Istinsakh (ما هو رأى الشريعة الإسلامية من عملية الإستنساخ؟)

64. al-Istinsakh al-Bashari fi Ra’y al-Imam Shirazi (الإستنساخ البشرى فى رأى الإمام الشيرازى), No.2.

65. Fiqh-u al-Mudu’at al-mukhtalifa (فقه الموضوعات الحديثة), Sayyid Muhammad Sadr (Beirut: Dar al-Adwa Publication, 1419 A. H.), p.26, No.31.

66. Ibid., No.39.

of another. Who then is the actual legal mother? Here the opinions of jurists differ: some jurists regard the donator of the ovule as the mother while others regard the owner of the womb as the mother, whereas others consider both to be the mother of the embryo.⁶⁷

The first group, who considers the donator of the ovule to be the mother, may argue that inherited characteristics belong to the ovule, rather than a surrogate womb. They may also argue that the child belongs to the seed, rather than the area in which the seed may grow. Further, they argue that as an artificial womb is not regarded as a mother, a natural surrogate womb cannot be considered to be a mother either.

The latter group, who consider the owner of the womb to be the mother, rely on the following verse of the Qur'an,

"إن أمهاتهم إلا اللاتي ولدنهم".

("Their mothers are only those who gave birth to them.")⁶⁸ Some jurists, however, consider none of them to be the mother of the child, but there are others who consider both of them to be the foster mother because the ovule is from one woman and the womb from another. Not only is this discussion still going on among both Shiite and Sunni scholars, but also lawmakers of positive law have not yet come to a decisive decision. Ayatollah Khui is among those who consider the owner of the womb to be the mother;⁶⁹ He argues:

Only the woman who gives birth to the child is the mother, this is required by the verse of the Qur'an which reads:

"الذين يظاهرون منكم من نسائهم ما هن أمهاتهم إن أمهاتهم إلا اللاتي ولدنهم".

As for those of you who repudiate their wives by *zihar*, they are not their mothers; their mothers are only those who gave birth to them.") The owner of the sperm is the father, but his wife is not the mother of the child.⁷⁰

67. Fiqh-u al-Tibb wa al-Tadakhum al-Naqdi (فقه الطب و التضخم النقدي), pp.86-7.

68. al-Mujadalah: 2.

69. Fiqh-u al-Tibb wa al-Tadakhum al-Naqdi (فقه الطب و التضخم النقدي), p.87.

70. Masa'il wa Rudud Tibqan lifatawa al-Maja' al-Dini al-Sayyid Abulqasim al-Musawi al-Khui, p.100.

Having analyzed the concept of giving birth to a child, other scholars intend to attribute the child to the owners of the ovule and the sperm, saying that, although the owner of the womb is commonly regarded as the mother, she is not included in the above verse which says, “Their mothers are only those who gave birth to them.”⁷¹ Most Shiite scholars tend to hold this opinion. In his analysis of this issue, for example, Ayatollah Mo'men has likened the natural womb to an artificial one concluding that the actual legal mother is the owner of the fertilized ovule.⁷² Allowing for a surrogate womb, Ayatollah Shirazi also considers no relation between the child and the owner of womb.⁷³ In the human cloning process, Mr. Jawaheri has also regarded the owner of the ovule as the real mother.⁷⁴

There is also a more complicated case where the ovule belongs to two people. What is to be done here? Suppose that the ovule nucleus of one woman is put in another woman's ovule because of the deficiency of its cytoplasm. In this case, some scholars hold that both of the women are the mothers of the child. In his answer to the legal question, for example, Ayatollah Sayyid Kazim Ha'iri writes:

The owners of the ovule and cytoplasm are both embraced as mothers, for the customary concept of “mother’ is applicable to the owner of the ovule, and these two women are both the owners of the ovule. Did the common usage not supposedly embrace the plurality of mothers, it is because of its lack of full knowledge of all cases of the extension, rather than of the rejection of this particular case. And any mistake as to the extension by the common usage is not to be followed.⁷⁵

In this case, Mr. Jawaheri has also said that because the child is made of both the nucleus and cytoplasm it has two mothers. If they raise an

71. al-Istitam wa al-Istinsakh (الإستقام و الإستنساخ), p.18.

72. al-Istinsakh (الإستنساخ), Ayatollah Mo'men, pp.34-35.

73. al-Istinsakh al-Bashari fi Ra'y al-Imam Shirazi (الإستنساخ البشري في رأى الإمام الشيرازي), No.22.

74. al-Istitam wa al-Istinsakh (الإستقام و الإستنساخ), p.23.

75. al-Istiftah, No.1092, Ayatollah Sayyid Kazim Ha'iri.

objection that customary usage would not accept two mothers for the same person, we answer that the customary usage has made a mistake in distinguishing the extensions of the concept.⁷⁶ Further, Ayatollah Musawi Ardebili has embraced the plurality of mothers,⁷⁷ and Ayatollah Sanad has offered a few arguments for it as well.⁷⁸

As a result, not only have the majority of jurists taken for granted the presence of the mother in the process of human cloning, but they have also embraced the plurality of mothers as reasonable in a few new cases which were unknown to our predecessors, such as the surrogate womb. Thus the belief in the presence of the mother in human cloning both complies with the principles and is backed by the linguistic rules of *shari'ah*, consistent both with the customary concept of motherhood and with the customary mind of the faithful; furthermore, many jurists have issued their fatwas according to it already. This is while the denial of the mother from the cloned person is contrary to the principles and the linguistic rules of *shari'ah*, the customary concept of motherhood, and the fatwas of many jurists.

Eighth, if we recognize the presence of the mother in the process of human cloning, we naturally recognize the presence of brothers, sisters, and all other relatives through such a mother. A cloned person will accordingly have a tie of brotherhood or sisterhood with all those who may be born from the same womb, and all the relatives of this mother will truly be his relatives. The main part of the objection to the lack of lineage would thus disappear. In brief, the above claim that the cloned person lacks a lineage is unacceptable and contrary to customary understanding and to the rules of *shari'ah*, particularly if what is meant is the denial of all relatives altogether.

Ninth, the major premise of the above argument is seriously objectionable. Taking for granted that a cloned person has no family

76. al-Istitam wa al-Istinsakh (الإستتمام و الإستنساخ), p.24.

77. Istifta'at (استفتانات), Musawi Ardebili, vol.1, p.407.

78. Fiqh-u al-Tibb wa al-Tadakhum al-Naqdi (فقه الطب و التضخم النقدي), p.87.

or lineage, who said that it is forbidden to produce a man of no lineage or parents? This argument is required to first prove that a cloned man has no lineage or parents and then to subsequently prove that producing a man of no lineage or parents is forbidden, then it may conclude that human cloning is forbidden. The latter claim, i.e., the major premise, is open to question. The author of this argument has taken this major premise for granted, when it actually calls for argumentation. According to Ayatollah Mo'men, even though we may embrace the fact that a cloned child has no parents, there is no reason to proclaim that producing such a child is forbidden, but rather the principles of *usul* require the permissibility of such a measure.⁷⁹ Now that we ought to begin with the permissibility, the burden of the argument for prohibition is with those who regard that such a measure is forbidden.

3. Argument from Social Issues; The third argument to prove the secondary prohibition comes from social issues. This argument suggests that human cloning gives rise to social disorders that could undermine the foundations of society; it is thus forbidden on secondary grounds. It says that "human cloning may cause many discrepancies and disorders in the organization of the society, for it is inconsistent with the spirit of the verse, "And We made you nations and tribes that you may know one another"

"و جعلناكم شعوباً و قبائل لتعارفوا".⁸⁰

By the process of human cloning, similar people with similar desires and standing may come into being which may ruin social diversity.⁸¹

The abstract of this argument is that human cloning undermines human diversity and this is not compatible with Allah's command or the social system. The argument is based on erroneous presumptions. The first presumption is that a man is not but his genes, which implies

79. al-Istinsakh (الإستساح), Ayatollah Mo'men, p.20.

80. al-Hujurat: 13.

81. Didgah-e Fikhiy-e Ayatullah Makarim, p.26.

that the similarity of genes entails the similar characteristics of their owners. A man, however, may act far beyond his genes, i.e., a man's character is not always determined by his genes. This assumption, which derives from some sort of genetic pre-determinism or biologism, is unacceptable. It does not distinguish phenotype characteristics from genotype ones either. Supposing the possibility of similar people, it is a mere formal or biological resemblance rather than an ethical or spiritual one. The second presumption is that this argument proceeds as if all proponents of cloning intend to follow one identical design or they all want to practice cloning in order to produce a specific person or people, so that within a few decades or a century all human beings will be copied repeatedly in compliance with design A or B, for example. This presumption, however, is unfounded. The third false presumption is as if there is only one overwhelming power on the earth which predestines the future of human cloning and who is to be cloned. The fourth false presumption is that human cloning leads to absolute resemblance, which biologically is unattainable. There may be up to a 3% difference between the cloned man and the person from whom the nucleus cell is taken, which means that their resemblance is less than identical twins. The fifth erroneous presumption is that human cloning, if allowed, will change into the predominant method for reproduction. Although thousands of people may engage in human cloning on earth, it cannot affect human diversity for people will keep following the natural method of reproduction.

Having failed to consider the biological facts, particularly the difference between phenotype and genotype, they propose the issue of cloning Hitler, saying: "If we paved the way [for this to occur], all criminals in different societies would clone such people as Hitler and Hajjaj."⁸² A more thorough survey and consideration will show that not only is a cloned Hitler logically not identical with Hitler himself, but it is also impossible to redevelop the phenotype characteristics in

82. *Didgah-e Fikhiy-e Ayatullah Makarim*, p.26.

the process of human cloning. Furthermore, the future and potential misuse of a certain technology is not grounds for its banning, unless somebody believes in the rule of *sadd al-zara'i*. Having reported the future and potential misuse of cloning, Ayatollah Hakim gives a sound, precise, and juridical answer:

Although crimes are forbidden, it is possible for an act beneficial to the criminal to be lawful. How many technologies made by the modern world are more beneficial to the criminals than to human cloning! Still, nobody has even thought of forbidding them. How much more benefit criminals may have of operations such as plastic surgery than they do of human cloning! Is it reasonable to forbid plastic surgery for that reason?⁸³

The conclusion here is that there can be found no convincing judicial argument against human cloning.

c) The Examination of the Limited Permission Theory

Although this theory allows for human cloning because of the first rules of *usul*, it limits cloning due to its possible evil consequences when practiced on a large scale. As far as its grounds are concerned, this theory is acceptable. The problem with it, nonetheless, is its simplistic conception of human cloning. The permission element in this theory is judicial and according to the established grounds of Shiite *fiqh* and *usul*, however, it suffers from the current simplistic conception of human cloning as envisioned by science fiction literature and works such as *Brave New World* by Aldous Huxley, thus they have limited permission in order to supposedly save the world from disorder. Yet if we take into consideration the scientific facts of human cloning, such as the lack of absolute resemblance of cloned people, the impossibility of phenotype cloning, the high cost of cloning, the possibility of distinguishing cloned people, and the fact

83. *Fiqh-u al-Istinsakh-i al-Bahsari wa Fatawa Tibiyya* (فقه الاستنساخ البشرى و فتاوى طبية), p.20.

that the presence of identical twins, who constitute a considerable population of the world, we can see that it would not cause any disorder in the world. It is noteworthy that human cloning could never substitute for natural reproduction, just as extra-uterine pregnancy has never been a substitute for natural reproduction since it is merely a subordinate technology. Thus, in view of the scientific findings, and upon judicial grounds, there remains no basis for limiting permission.

d) The Examination of the Absolute Permission Theory

According to the bases of Shiite jurisprudence, there seems to be no well-founded ground to prohibit human cloning. It is thus lawful and does not go against any Shiite theological or judicial doctrines. As a result, those jurists who promote this theory have proceeded in compliance with the undeniable and celebrated principles of Shiite jurisprudence. If, nonetheless, someone wants to survey this theory, he is expected to examine the bases of this theory which requires more space than we have here.

Instead of a general discussion on human cloning, it is more reasonable to distinguish between different probable cases of cloning in order to expand our treatment in a more precise and well-organized way. Sometimes, for example, cloning may take place between a married couple, between two women, or even from one woman. Since the confusion of treating all such cases in the same manner may lead to the mystification of judicial bases and their different laws while cloning is still a new technology, this confusion is not reasonable. It is thus crucial here to begin with the permissibility of cloning in general, leaving its different cases and branches to more detailed discussions which seek to clarify the related law and fatwa of each case.

It is at this point that many jurists have decided on the prohibition of all types of human cloning from an unlawful action or problem seen in one or two cases. On the contrary, some other jurists have granted permission to perform all kinds of cloning based on the principle of permissibility which again has been observed in only one or two

cases. In these cases, as we can see, the claim goes far beyond the argument. In what has been discussed in this essay, the author has attempted to develop his discussion within the limits of a married couple with no genetic modification in the nucleus cell.

In conclusion, some Shiite jurists, according to their judicial analysis of the subject, have at the very least allowed for human cloning within the limits of a married couple. They have thus diverged from Sunni scholars who have unconditionally banned cloning in any form.