

**BAYAN ISLAMIC GRADUATE SCHOOL**

**AND**

**CHICAGO THEOLOGICAL SEMINARY**

**ADOPTING MUHAMMAD:**

**THE MERCIFUL *FIQH* BEHIND A RENOWN *SUNNAH***

**A THESIS**

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## ABSTRACT

Although a strong *sunnah*, or practice done, instructed, or approved of by Prophet Muhammad, Muslims grapple with ideas of adoption being prohibited and adoption *fiqh* details while shying from the communal obligation. Matters impeding commitment include financial burdens, protection of the child's lineage, holding *mahram* status, and ensuring equal treatment with inheritance. Both the detailed rulings and lack thereof bring ease and clarity allowing for and encouraging Muslims to adopt orphans armed with knowledge of how to go about it in a manner that is validated in Islamic law that can remove some, if not all, stigmas toward adoption and, as a result, increase the rate of adoption in the Muslim community.

*Keywords:* adoption, breastfeeding, lineage, *mahram*, inheritance, *fard kifaya*

## **DEDICATION**

This work is dedicated to my parents and their parents without whose vision and prayers I could never have had the honor to study to the extent and depth that I have with the goal of being in service to humanity.

I additionally dedicate this to my nieces, the lights of my life and my hope for a future better than my own.

Lastly, I dedicate this to my adopted child to be, whom I may or may not ever have the honor of caring for in this life, but with the prayers I have made to Allah, the Most Merciful, the Most Loving, I know my path will lead me to you somehow, in some way, as He deems wisest for me and for you. Should He bless me with a son, I will name him Muhammad, after his namesake, peace be upon him – the orphan who adopted the world.

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## INTRODUCTION

More than five decades before the *hijra*<sup>1</sup>, a man parted from his wife in Makkah to travel to Yathrib, where he fell ill and passed, leaving behind his wife, and now orphaned unborn child, Muhammad<sup>2,3</sup>. The moment Prophet Muhammad's father passed, he became an orphan by Islamic legal standards - even though he still had a mother, without a father a child is considered an orphan.<sup>4</sup> By Islamic law, it is the responsibility of the husband to financially provide for his family, so it is assumed that if he passes, the family needs a provider to care for them. In Arab society then, the care for the child was passed on to the male next of kin until he is grown and financially independent (or, in the case of a female orphan, until she marries a new financial supporter).

Prophet Muhammad's financial care was passed from his deceased father to his grandfather, Abdul Muttalib, and after his passing, to his paternal uncle, Abu Talib, until he reached adulthood and became financially independent. However, this is not the case for all children as there may be no next of kin. What, then, does one do and whose responsibility is that child? This is where the concept of communal obligation, or *fard kifayah*, is introduced. In this particular situation, it is obligatory for society to care for

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1. The migration of Prophet Muhammad and the Muslims from Makkah to Madinah in 622 AD due to the violent persecution they were facing in Makkah is termed the *hijra*. *Hijra* is used to denote when an event took place in Islamic history, such as prophethood beginning in 12 years before *hijra* and the death of Prophet Muhammad 13 years after *hijra*.

2. The name of Prophet Muhammad, his family, and his companions will be mentioned often throughout this paper. Out of love, respect, and religious obligation, it is to be assumed each time they are mentioned, Allah's peace and blessings are wished upon them all.

3. Martin Lings, *Muhammad: His Life Based on the Earliest Sources*, (Rochester: Inner Traditions, 2006), 21.

4. Nermeen Mouftah, "The Muslim orphan paradox: Muslim Americans negotiating the Islamic law of adoption," *Contemporary Islam* 14, (2020): 217.

and raise the orphan, regardless of having or not having a biological relationship with the child.

As a result of the life of Prophet Muhammad and legal and spiritual rulings provided to him by Allah, in a popular *hadith*<sup>5</sup> among Muslims in the West, is when the companion Sahl ibn Sa'd reported that the Prophet said, "I and the guardian of the orphan will be in the Garden like that," indicating his forefinger and middle finger being held up connected side by side.<sup>6</sup> This *hadith* is used far and wide among Islamic relief aid nonprofits which are working to have donors sponsor orphans with financial assistance, thus caring for them which is what the *hadith* is referencing.

However, despite Prophet Muhammad having been an orphan himself and having encouraged supporting orphans, adoption may be viewed by some Muslims, surprisingly, as prohibited in Islam. Additionally, there are difficulties in some Muslims overcoming commonly misunderstood issues of how to protect the orphan's lineage, how to adopt a child who will not be *mahram*<sup>7</sup> to all in the household, and how to treat biological and orphan children as equals given the Islamic laws of inheritance not considering orphans as among the blood children in the will. Although, these are matters can so much as being seen as non-issues through educating the masses of Muslim Americans.

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5. A *hadith* is a narration of something Prophet Muhammad did, said, or approved or something that God stated that was communicated to the community. The narrations have been passed down from the companions through their students until today through a chain of narration.

6. Sahih al-Albani, Al-Adab Al-Mufrad, *hadith* 135.

7. A *mahram* is a non-marriageable kin. For example, a mother and son cannot wed, a half-brother and a half-sister cannot wed, an uncle cannot wed the daughter of his brother, and there are more such relationships. One way to change this though is to feed a child a woman's breastmilk, thus rendering that child unmarriageable to the woman and the woman's other children. This paper will go into more detail of this in upcoming sections.



In the times and the lands where Islamic jurists would carry information about what *fatawa*, or Islamic rulings, were being composed and being communicated to Muslim communities near and far, there were some issues. Sometimes their manner of disseminating that information and educating the masses was not the most effective and could lead to confusion. Therefore, *islahi* representatives, ones who provided Islamic instruction to the people on the ground, were included to deliver the information in a way that made sense to the people given the contexts in which they lived.<sup>8</sup> It was extremely important to have harmony between the ones who processed legal rulings for the public and those who knew how to deliver it in a motivational, dauntless manner.<sup>9</sup> Therefore, it is the focus of this writing to serve as a type of *islahi* where the information from Islamic and secular texts can come together to create a digestible explanation of the Islamic laws regarding adoption while taking into consideration the realities of adopting today in the West as Muslims.

The goal of this thesis is to break down the hindrances that exist in American Muslim society to adopt considering the ease and mercies created through Islam to facilitate and promote adoption.

To understand this, it is necessary to:

- a. affirm that adoption is not forbidden in Islam (a point which may prevent individuals from considering it at all) and adoption in adherence to Islamic law can be carried through even in the West,

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8. Shoaib A. Rasheed and Aasim I. Padela, "The Interplay Between Religious Leaders and Organ Donation Among Muslims," *Zygon* 48, no. 3 (September 2013): 645, [zygonjournal.org](http://zygonjournal.org).

9. Rasheed and Padela, "Religious Leaders and Organ Donation," 643.

- b. establish the responsibility to take care of this Earth by also taking care of all who live on it, including the review of *fard kifaya* and *kafala*,
- c. break down barriers between biological bonding in adoption, financial means to adopt, state of being a *mahram* or lack thereof, and justice in the naming of an orphan and leaving inheritance for him/her in a manner that is equivalent with one's biological children.

In this exploration, it will be uncovered if one's own Muhammad could be adopted.

## CHAPTER 1

### ADOPTION: FORBIDDEN IN ISLAM OR A MISUNDERSTOOD *SUNNAH*?

#### What is Adoption?

In America, adoption is a legal process by which a child comes into permanent care of someone other than his/her biological mother and/or biological father.<sup>1</sup> For Muslim Americans, the legal aspect of adoption is more than national law; it includes understanding of, and ensuring compliance with, Islamic law. Prior to exploring the implications of this on Muslim Americans who may consider adopting, it is important to understand what adoption is per the types of adoption available to explore.

In summation, there are three kinds of adoption listed below:

1. Foster-to-adopt. Fostering children means taking them into one's home to provide guardianship over them for a period of time until the state assumes guardianship over them again or the biological parents or custodial guardians (such as grandparents, aunts, uncles, etc.) are able to care for them again. However, there are circumstances under which a biological parent may choose to terminate parental rights, or the state may do so due to finding the parent unsuited to care for the child after a series of opportunities to improve. In such a situation, the individual fostering the child may be posed with the opportunity by the state to assume permanent guardianship by adopting the foster child.<sup>2</sup>

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1. "Adoption," Child Welfare Information Gateway, <https://www.childwelfare.gov/topics/permanency/adoption/>.

2. "The 5 Types of US Adoption," Embrace Families, <https://embracefamilies.org/the-5-types-of-us-adoption>.

2. International adoption. This is when a child is adopted from his/her birth country overseas. This requires the valid adoption process per the United States and also making the child an American citizen.<sup>3</sup>
3. Private adoption. This requires legal agreements between birth and adoptive parents regarding the terms of adopting the child and legally the child now assuming the role of son/daughter to their adoptive parents and birth son/daughter to their birth parents, with whom they may or may not have contact.<sup>4</sup>

Unless there are legal rules involved keeping adoptive and birth parents from being in communication, adoptive and biological parents may have the option to a closed or open adoption. In the case of an open one, there will be communication between the sets of parents and perhaps even having the biological parents actively in the child's life even though they are not the child's legal guardians. However, sometimes parents may choose to have closed adoptions so that no identifying information is shared, there is no communication between the two sets of parents, and the child's records are sealed by the state.<sup>5</sup>

### **The Permissibility of Adoption**

Before any further conversation, it is necessary to resolve the confusion that exists among Muslims as to if adoption is even permissible in Islam. The below *ayaat*, otherwise referred to as "verses" of the Qur'an, lay at the crux of the matter:

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3. Embrace Families, "The 5 Types of US Adoption."

4. Embrace Families, "The 5 Types of US Adoption."

5. "Types of Adoption," Adoption Center, <https://www.adopt.org/adoption-resources/types-adoptions>.

God has not placed two hearts in the breast of any man. Nor has He made your wives whom you repudiate with the practice of *zihar* your mothers. Nor has He made those whom you claim [as sons] your sons. Those are mere words from your mouths. But God speaks the Truth and guides upon the way. Call them after their fathers. That is more equitable before God. But if you do not know their fathers, then they are your brethren in religion and your clients. There is no blame upon you for mistake therein, but only for that which your hearts intend. And God is Forgiving, Merciful.<sup>6</sup>

In the revelation of these brief *ayaat* in *Surah al-Ahzab* (the name of this chapter in the Qur'an), the entire idea and system of adopting children came under scrutiny.

Dr. Zainab Alwani states, "Reading and analyzing the Qur'an in its entirety, thereby acknowledging its complete structural and linguistic unity, enables scholars to observe a specific term's movement throughout the text and how its meaning changes according to the context in which it is used, without its original meaning ever being violated."<sup>7</sup> The lack of this particular understanding is what usually causes confusion and misinformation in the processing of content from *ayaat* long ago in today's context.

It is important to note that this idea of adoption being "prohibited" with the revelation of *ayaat* 4-5 of *Surah al-Ahzab* was not so much referring to today's Western idea of adoption, but instead a system resembling more like slavery to utilize an orphan's wealth, bolster the tribe in military power, and claim children from their biological families, such as a man claiming another living man's son (dead or alive) is his full son, not adopted or fostered.<sup>8</sup> Though this was not, of course, Prophet Muhammad's

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6. Seyyed Hossein Nasr, et al., eds., *The Study Quran: A New Translation and Commentary*, (New York: HarperCollins, 2015), 1019-1020.

7. Zainab Alwani, "Kafāla: The Qur'anic-Prophetic Model of Orphan Care," *Journal of Islamic Faith and Practice* 3, (2020): 7.

8. Mouftah, "The Muslim orphan paradox," 211.

relationship with the one he called Zayd ibn Muhammad, he had to lead by example in ending all forms of that pre-Islamic practice. Thus, it resulted in Prophet Muhammad returning the name of Zayd ibn Muhammad to Zayd ibn Haritha, Zayd's father by blood rather than his father by adoption.<sup>9</sup>

This act of Prophet Muhammad leading by example is not to be confused with a distancing from the adopted child, but rather it is an alteration of pre-Islamic practices of adoption where the adopted child would take the family name and the family would have access to the property and wealth of the adopted child. This was not the point at which the Qur'an established Islamic law to forbid formal adoption<sup>10</sup>, in fact, it modified it "by allowing a child to know the identity its birth father, to retain his name, and to inherit from him."<sup>11</sup> This meant the child should have knowledge and access to his/her lineage, knowing that the adoptive family's lineage is separate. In the pre-Islamic era, the revelation that resulted in Zayd returning to Zayd ibn Haritha that also shaped the understanding of adoption in modern day going from a societal norm (albeit with a different definition) to a societal prohibition (again, with more nuance), to now a society that is unsure how it should navigate this matter.

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9. Amira al-Azhary Sonbol, "Adoption in Islamic Society: A Historical Survey," in *Children in the Muslim Middle East*, ed. Elizabeth Warnock Fernea (New York: University of Texas Press, 1995), 48.

10. Sonbol, "Adoption in Islamic Society," 47.

11. "Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child: The Digest," Muslim Women's Shura Council, *American Society for Muslim Advancement*, (2011), accessed December 19, 2022, <https://www.oxfordbibliographies.com/display/document/obo-9780195390155/obo-9780195390155-0226.xml#obo-9780195390155-0226-bibItem-0001>.

Dr. Mohammad Fadel argues that what can be seen as a prohibition of adoption in Islam actually a “complex and subtle body of legal doctrine that deals with children of unknown parentage” for situations like for foundlings that “functions as a near substitute for adoption.”<sup>12</sup> The true matter was the forbidding “of a fictive relationship of descent between the child and the adoptive father.”<sup>13</sup> That fictive relationship would be particularly laying claim that a non-biological child is one’s own blood child when his/her parent(s) was still alive and one was not caring for the child financially, but rather reaping benefits from the child’s inherited wealth. All of this shows the uniqueness in *fiqh*, or Islamic law and jurisprudence, and that it can be re-examined given a different context and through *ijtihad*, the process Islamic jurists follow to draw rulings and conclusions on Islamic matters, it can arrive at a new *hukum* (judgment), leaving the foundation of the original *shari’a*<sup>14</sup>, or Divine Islamic law, intact while deriving new laws.<sup>15</sup>

In a lecture Dr. Yasir Qadhi stated, “The *shari’a* did not come with a specific code and guidelines. The *shari’a* came with general rules.”<sup>16</sup> “Though ordained by God, few of these rules have been precisely spelled out for man’s convenience; rather, man has

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12. Daniel Pollack, Moshe Bleich, Charles J. Reid Jr., and Mohammad H. Fadel, “Classical Religious Perspectives of Adoption Law,” *Notre Dame Law Review* 79, (2003–2004): 732, accessed December 18, 2022, <https://www.oxfordbibliographies.com/display/document/obo-9780195390155/obo-9780195390155-0226.xml#obo-9780195390155-0226-bibItem-0033>.

13. Fadel et. al., “Classical Religious Perspectives of Adoption Law,” 733.

15. Feisal Abdul Rauf, “What is Ijtihad and Who is the Mujtahid?” in *Islam: A Sacred Law: What Every Muslim Should Know About Shariah* (Qiblah Books, 2000), 36.

16. Shaykh Dr Yasir Qadhi, “The Importance of Family Ties in Islam,” YouTube Video, 37:07, August 11, 2017. <https://www.youtube.com/watch?v=thr55U4U00Q>.

the duty to derive them from their sources”<sup>17</sup> thus *shari’a* is understood and applied by *fiqh* and is subject to change given context.

Shaykh Yousef Wahb said, “*Fiqh* is a reflection of our theology that deepens our understanding of the Qur’an, allowing us to organize our competing obligations and guide our sacred missions of worship and cultivating the earth (*‘imarat al-ard*).”<sup>18</sup> Continuing with the metaphor of cultivating the earth, Weiss also created a metaphor where rules are branches or fruit which grow from the roots, or the sources, and that these branches or fruits cannot exist if it were not for the roots of the original law.<sup>19</sup> For this reason, there is *ijtihad* which is a method of deriving laws from the base Divine Law known as *shari’a*. *Ijtihad* varies from one Islamic school of thought to another – such as Hanafi, Maliki, Shafi’i, and Hanbali, including the schools of thought in Shi’ism. All of these schools begin with reliance on the Qur’an and *Sunnah* first and branch from there to go through a systematic process to arrive at religious legal rulings. A ruling may not be agreed upon with consensus but so long as it does not speak against direct teachings in the Qur’an and *Sunnah* then it is valid.

*Fiqh* is there to facilitate how life is lived, but understandably it only exists in a classic Islamic model with *siyasa* (tribunals who take from the *fiqh* to make rulings). In the case of where Muslims live in non-Muslim ruled lands, there is none of that in the

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17. Bernard Weiss, “Interpretation in Islamic Law: The Theory of *Ijtihad*,” *American Journal of Comparative Law* 26, (1978): 199.

18. Yousef Wahb, “Fard Kifayah: The Principle of Communal Responsibility in Islam,” *Yaqeen Institute*, last modified June 30, 2021, <https://yaqeeninstitute.org/read/paper/fard-kifayah-the-principle-of-communal-responsibility-in-islam>.

19. Weiss, “Interpretation in Islamic Law,” 199.



nation-state model and instead legislature, executive order, and case law. This is imposed upon Muslim community members in those nations, thus there is a fear that Islamic adoption cannot happen in America. A prevailing issue barring American Muslims from adopting is a lack of understanding of American law and the assumption that the style of adoption in America is the only kind of adoption that there is, leaving no room for Islamic adoption.<sup>20</sup> The Muslim Women’s Shura Council defines Islamic adoption as the equivalent to the concept of open adoption in the West.<sup>21</sup> Open adoption means that the adopted child knows and can have relationships with his/her biological parent(s) while remaining under the care of the Western legally adoptive parents. The rest of this writing will assist in clarifying more of these related misconceptions.

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20. Alwani, “Kafāla: The Qur’anic-Prophetic Model of Orphan Care,” 29.

21. “The application of *kafala* in the West” in *Research Handbook on Islamic Law and Society*, ed. Nadirsyah Hosen (Northampton: Edward Elgar Publishing, 2018), 70, DOI: 10.4337/9781781003060.

## CHAPTER 2

### EMOTIONAL AND PSYCHOLOGICAL HINDRANCES

#### Biological Bonds

In preparation for this writing, broad-based informal surveying was done to understand the general hindrances toward adoption in the Muslim community and it was found that some feared that the lack biological connection to the child would also result in a lack of emotional connection leading one to not feel as though the child is theirs, especially in the event of already having biological children. The question became that if all other hindrances are resolved, would the matter of genetics still stand in the way?

In the literature, information was found stating concepts explaining that “all babies, adopted or not, have a biological instinct to keep a primary caregiver close so their needs for protection, comfort and security can be met.”<sup>1</sup> For babies, there already is a biological component for desiring to connect with their parents, whether they are biological or not. It is about the relationship over shared blood.

Now, it is true that when adopting, the child’s age or history of other living spaces could result in additional hurdles to bonding with the adopted child from an emotional and life experience perspective.<sup>2</sup> Perhaps not those exact hurdles, but difficulties nonetheless will exist in raising a child. It may so happen that the difficulties in raising a biological child can be prepared for beforehand, but even with preparing for an adopted child, the difficulties of adapting to his/her emotional needs over the years can be

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1. Elaine E. Schulte and Robin Michaelson, “Attachment: The Foundation of Connections,” in *Caring for Your Adopted Child: An Essential Guide for Parents*, (Itasca, IL: American Academy of Pediatrics, 2019), 105.

2. Schulte and Michaelson, “Attachment: The Foundation of Connections,” 106.

prepared for the best possible. In the end, it is clear that a parent can never be prepared for every scenario.

One aspect of this that is helpful is about how a biological and a non-biological mother may come in to their “motherhood:”

Whereas biological mothering begins with mother/baby ‘at-one-ment’ in utero, proceeding to ‘*not one, not two*’ post-birth (Oxenhandler 2001, p. 25), non-biological mothering begins with the built-in differences of temperament, genes, family history or ethnic background. Building an emotional bridge to span the differences is the key to making a step, foster, or adoptive mother/child tie that binds. In fact many of the joys of being an adoptive, foster or stepmother have to do with the excitement about a ‘meeting of the minds’ (Aron 1996) between mother and child, which permits a recognition of differences in culture, temperament, pacing, rhythm, or skin color.<sup>3</sup>

There is no reason whatsoever that the motherhood (or fatherhood) experience cannot be had in its own way when adopting a child. There are key emotional ways to conceptualize and find emotional fulfillment in becoming a mother through non-biological means.

There was a brilliant woman, Lady Barakah, in Prophet Muhammad’s life who had been the one to deliver him, who first held him, who consoled him upon the passing of his mother, who believed in his prophethood as the second woman only to his wife Khadijah, who emigrated from Makkah to Madinah as a senior woman, and who was there upon the death of Prophet Muhammad. This woman never left his side from birth to death and he would refer to her with deep love as “my mother after my mother.”<sup>4</sup> This was the relationship between Prophet Muhammad and a woman who was not his biological

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3. Barbara Waterman, “When the Child is Delivered to You Rather Than You Delivering the Child,” in *Birth of an Adoptive, Foster or Stepmother: Beyond Biological Mothering Attachments*, (Jessica Kingsley Publishers, 2003), 13.

4. Dr. Omar Suleiman, “Umm Ayman (ra): The Woman Who Never Stopped Caring,” YouTube Video, 39:22, December 19, 2019. <https://www.youtube.com/watch?v=QrrIdK5AjlI>.

mother and she never replaced his biological mother in any fashion, but still provided a level of intimacy and love that is present perhaps in the parent-child relationship and none other.

### **Facing Race**

Originally, Lady Barakah was a slave girl from Abyssinia, the general area of Ethiopia where the skin color of those there was very different from those in Arabia.<sup>5</sup> However, it was not something that stood between the understanding among the community as to the status of this woman due to her relationship with Prophet Muhammad. Unfortunately, the color of skin is a point of concern and one to take seriously. In America, 28% of Muslims identify as Black or African Americans, granting a great diversity to the Muslim population, however a third of Black Muslims and Black Christians “said a fellow believer discriminated against them because of their race in the past year at least once.”<sup>6</sup> This abhorrent situation cannot be resolved overnight but steps can be taken within one’s own family, with one’s own children to do better and proceed from there into the rest of society.

Therefore, before continuing into the practice of adoption, it is important to take a moment to understand the depth of the story of Prophet Muhammad and Zayd ibn Haritha, which is the fact that the *ayaat* of the Qur’an which were revealed restored Zayd ibn Haritha’s identity in terms of his lineage but also all that comes with having a unique a distinct lineage, which will be covered further soon. An example of this is seen in the

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5. Yaqeen Institute, “The Woman Who Never Stopped Caring.”

6. “Research on Racism and the Experiences and Responses of American Muslims,” *ISPU*, <https://www.ispu.org/research-on-racism-and-the-experiences-and-responses-of-american-muslims/>.

trans-Atlantic slave trade where the enslaved were ripped from what they knew as their heritage and religion, entered into slavery and a couple or few generations later, the heritage and religion was lost.<sup>7</sup> Though, true, adopting a child of another race is nothing like slavery, the trauma that has pervaded the Black/African American community should not be cast aside and should be remembered from a perspective of honoring a person's whole identity.

With 40% of adoptions being transracial, a statistic that is growing each year, it is important to actively think of how to help an adopted child in a transracial family.<sup>8</sup> A *Time* article shed light on a few items:

- Talk about the difference in the child's race from those immediately around the child to help empower and prepare them for the world beyond the home. Putting one's head in the sand is not going to protect the child from the racism or abuse that may follow in life.<sup>9</sup>
- Take the child to their birth country of origin to connect and learn there.<sup>10</sup>
- In the States, surround the child with people who look like them, such as by transferring to a school that is more diverse or moving to a neighborhood with

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7. Yusuf Nuruddin, "African-American Muslims and the Question of identity," in *Muslims on the Americanization Path?*, ed. Yvonne Yazbeck Haddad, (New York: Oxford University Press, 1998), 216.

8. Karen Valby, "The Reality of Raising Kids of a Different Race," <https://time.com/the-realities-of-raising-a-kid-of-a-different-race/>.

9. Valby, "The Reality of Raising Kids of a Different Race."

10. Valby, "The Reality of Raising Kids of a Different Race."

greater diversity or at least a greater population of the race to which the child belongs.<sup>11</sup>

In turning to the works of identity theories, the following distinct passage is all-encompassing of this section on race:

A social identity becomes relevant or active in a situation through two processes: accessibility and fit (Oakes, 1987). Accessibility has to do with readily available social categories such as gender, race, age, or other categories that are important to individuals and that are chronically accessible in memory or are easily accessible in situations. People use these accessible categories to make sense of immediate situations. For example, they may ask themselves how well these accessible categories account for similarities and differences among individuals in the situation (comparative fit) or how well these accessible categories help account for people's behavior in the situation (normative fit). If the fit is not good—for example, gender, race, or age do not account for the similarities and differences among individuals in the situation—or if they do not help account for people's behavior in the situation, then people will turn to other social categories until they find one that best fits the situation. Perhaps religion or political affiliation is a better fit with the situation and best explains people's behavior. The category that best fits the situation becomes the activated category.<sup>12</sup>

This applies to what Black scholars referred to as “triple consciousness” where a Black individual is struggling to find a way to exist in their American-ness, Black-ness, and Muslim-ness.<sup>13</sup> Given this information on identity, it is imperative for parents of a Black Muslim child to provide the tools to move about in a society which has a couple of centuries of racism and abuse.

Again, this is not to say that due to the difficulties in dealing with race, one simply not deal with it. But it is to say that there is a deep history in society that will

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11. Valby, “The Reality of Raising Kids of a Different Race.”

12. Peter J. Burke and Jan E. Stets, *Bases of Identities: Role, Group, and Person*, (Oxford University Press, 2009), 120, doi:10.1093/acprof:oso/9780195388275.003.0024.

13. Osman Umarji and Husain Lateef, “Being Black and Muslim in America: A Study on Identity and Well-Being,” Yaqeen Institute for Islamic Research, last modified January 13, 2023, <https://yaqeeninstitute.org/read/paper/being-black-and-muslim-in-america>.

touch minorities such as Black people, Muslim people, and on, regardless of what their skin color or beliefs may be.

As Muslims, the above is extremely important in understanding a child's association with those around him/herself because of prevalence of people who believe like the child, in addition to looking like the child. Ensuring the child fits in racially is one step towards making sure s/he does religiously too with people who believe like him/her and also look like him/her. That is a powerful image for the child to have forged in his/her mind as s/he continues to explore his/her identity and place in the world.

These points are integral as the child having access to these different parts of his/her identity lead to the child to form identity salience where s/he connects more with some parts of his/her identity than others and that shapes who the child grows to become.<sup>14</sup> Similarly, there is also racial salience which “refers to how much a person's race is a relevant part of their self-concept.”<sup>15</sup> An example of this is that if a child's identity is associated with being a basketball player on the school team, enjoying coding online, helping his dad with dinner each night, and taking care of his pet gecko, then the child's identity is (1) basketball player, (2) coder, (3) cook, (4) son, and (5) caretaker, in no specific order. However, whichever identities he associates with the most will rank higher in his identity salience, such as (1) son, (2) basketball player, (3) cook, (4) caretaker, (5) coder.

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14. Peter J. Burke and Jan E. Stets, “Identities and Their Operations” in *Identity Theory*, (Oxford University Press, 2009), 75.

15. Umarji and Lateef, “Being Black and Muslim in America.”

As he gets older, he will build upon this list and swap some items out as they lack importance to him. For example, a younger sibling may be born so “big brother” is something he adds but he loses interest in coding. Another example may be that in addition to being a basketball player, he also takes up soccer and may put one of those above the other. One day, race, religion, and his role in society will matter more. For example, he may marry a woman and have a daughter so now he is also a husband and a father – he may even call himself a “girl dad.”

Over the years, he may have come into the profession of teaching and become a more religious so he may add teacher and Muslim to the list. What is missing here is that, even from a very young age, he probably also had the identity of being Black and was not sure where he stood with it. The steps his adoptive parents took to help him grow comfortable with, even prideful of, his racial identity will affect this. In the case of the Muslim family, increasing the child’s sense of religiosity is one researched way in which to ensure “higher levels of self-esteem, life satisfaction, and perceived self-control than those who were lower in daily religious adherence.”<sup>16</sup>

In studying self-esteem, there are concepts of contingent self-esteem and true self-esteem. A contingent self-esteem is having a strong self-esteem but only when the person is meeting society’s expectations, which is a lot of pressure for anyone, especially an adoptive child, to place on him/herself. In contrast, true self-esteem is feeling worthy despite any actions or achievements. There is no situation of proving one’s self.<sup>17</sup> As a

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16. Umarji and Lateef, “Being Black and Muslim in America.”

17. Richard M. Ryan and Edward L. Deci. “Identity, Development, Self Esteem, and Authenticity” in *Self-Determination Theory: Basic Psychological Needs in Motivation, Development, and Wellness* (New York: The Guilford Press, 2017), 393.



Black male child, he may choose to dress in professional clothing to never alarm others that he may commit a crime or be violent or, in other words, seek a certain approval that his self-esteem is contingent upon.

Alternatively, he may choose to wear a hoodie every day but he intrinsically knows he is a good student who gets good grades, has a good circle of friends, and so forth, and that is all he needs to have a strong self-esteem. In the first situation, the child is unsure of his own skin, whereas in the second situation, he is comfortable in his skin (not without knowledge that there will be very challenging days, sometimes most days) and he knows himself well enough, and has people around him who have helped him grow into being such a child, that he does not rely on positive comments from others to make him feel he fits in his environment.

There is no perfect way to go about facing race and all of the ugliness and beauty that comes in the package though through some basic understandings and widely available resources, there can be a setup that best suits the child and ensure s/he thrive. The important part is to make sure to not allow this factor to keep one from taking up the mantle to adopt a child.

## CHAPTER 3

### BEING A *KHALIFA* AND PRACTICING *KAFALA* AS *FARD KIFAYA*

#### The Honor of *Kafala*

Zainab Alwani states that the covenant humans took with Allah is one in which He positioned humans to be the *khulafa*, or trustees, on this Earth to care for all that happens on this Earth.<sup>1</sup> Thus, when there are needs in the community, it is the community that must respond, such as orphans losing their parents and the community responding by arranging for their care.<sup>2</sup>

In *ayah* 2:83 of the Qur'an, the believers are commanded to be good towards orphans and the commentary explains an orphan is considered to be a minor who has lost his/her father as he is the main provider for the child.<sup>3</sup> *Kafala*, in proper context, refers to being liable for orphans, sponsoring them, and giving them security with the purpose of *kafala* being "making oneself responsible for preserving someone else's dignity by removing his/her burden(s)."<sup>4</sup>

With the appearance of Islam, the covenant with God and the social norms of the Arab society were challenged, such as the commandments to protect and care for orphans because "[i]t is one's status as a believer and as a person of piety that alone determines worth."<sup>5</sup> With it being clarified that an orphan is someone of honor and dignity, providing

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1. Alwani, "Kafāla: The Qur'anic-Prophetic Model of Orphan Care," 8.

2. Alwani, "Kafāla: The Qur'anic-Prophetic Model of Orphan Care," 10.

3. *The Study Quran*, 40.

4. Alwani, "Kafāla: The Qur'anic-Prophetic Model of Orphan Care," 16-17.

5. *The Study Quran*, 1788.

and supporting them is “a moral and legal responsibility, not to mention a great and rewarding task” in Islam.<sup>6</sup>

Prophet Muhammad emphasized the importance of *kafala* in the oft-quoted *hadith*, “I and the one who cares for an orphan will be together in Paradise like this,” then held his two fingers together.<sup>7</sup> Prophet Muhammad is referred to as an orphan in Surah ad-Duha confirming that part of his identity and also reflecting that the word is one of honor and dignity.<sup>8</sup> Another honored orphan in the Qur’an who is spoken of as such less often is Maryam, the mother of Prophet Eesa, who was taken in by her maternal aunt and Zakariya and the *ayaat* surrounding this model *kafala*.<sup>9</sup> These are two of the most revered, greatest tested figures in Islam and both were orphans.

#### **Adoption as a *Fard Kifaya***

Of the six *maqasid* (foundational elements that must exist for a society to function) the *maqasid* of property, lineage, and dignity are directly affected by the matter of adopting a child. Doing so will protect the child’s wealth and property, assist the child’s lineage to continue, and help maintain the dignity of the child and of the community through taking responsibility. *Fard kifaya* is often translated as “communal obligation” and means that whatever gap exists in society for a member, the society should remedy.<sup>10</sup> This is unlike *fard ‘ayn* where it is one’s individual obligation to fulfill

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6. Alwani, “Kafāla: The Qur’anic-Prophetic Model of Orphan Care,” 14.

7. Alwani, “Kafāla: The Qur’anic-Prophetic Model of Orphan Care,” 22.

8. Alwani, “Kafāla: The Qur’anic-Prophetic Model of Orphan Care,” 13.

9. Alwani, “Kafāla: The Qur’anic-Prophetic Model of Orphan Care,” 17.

10. Sonbol, "Adoption in Islamic Society," 63.

a role, such as paying *zakat-ul-mal* (individual obligatory charity paid on a percentage of one's wealth) as opposed to some people, not all, paying *zakat-ul-fitr* (charity to feed a meal to a person in that locality) for the collective.

In the aftermath of the grievous Battle of Uhud, the Muslim community was suddenly faced with a large number of orphans and caring for them was a communal responsibility.<sup>11</sup> In the Qur'an, *ayaat* continuously list warnings against immoral deeds and included in the short list is to treat orphans with justice and care, making it a "primary moral obligation for Muslims."<sup>12</sup> Then who does the caring for orphans fall upon? The answer is in everyone caring for them is a *fard kifaya*.<sup>13</sup>

However, there does seem to be some confusion for Muslim Americans. Living in America, a land not governed by Islamic law, it is a communal obligation to address issues of the public interest (*maslahah*), such as adoption, according to the custom (*'urf*) of the land.<sup>14</sup> The *maslahah* applicable to adoption is that it is serving the community (a word that is being used loosely as it can be applied from local to global) with benefit outweighing any harm and it does not conflict with the understanding or teachings of the Qur'an or the *Sunnah*. Thus, there needs not be any fear in going through the adoption process in the American system, whether adopting domestically or internationally, as it can still be done following Islamic guidelines with the benefits outweighing any potential harm.

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11. Sonbol, "Adoption in Islamic Society," 54.

12. Sonbol, "Adoption in Islamic Society," 55.

13. Wahb, "Fard Kifayah."

14. Wahb, "Fard Kifayah."

There are even adoption facilitation organizations such as American Adoptions which take into consideration the religious beliefs of the parent(s) putting his or her child up for adoption, including explaining the benefit of putting one's child up for adoption and allowing another Muslim family to adopt him or her.<sup>15</sup> The website even has a feature to help parents find Muslim adoptive families. This is one example of recognition of the need for Muslim adoptive parents and catering to the desires of each. With these avenues to successfully adopting known, the next step is to address the hindrances, often misinterpretations or misconceptions, to adopting a child in America.

### **Theory of Planned Behavior**

In the Theory of Planned Behavior (TPB), one acts according to three points.<sup>16</sup> First is what a person feels or has an attitude toward a situation or action that can be taken. Second is what is believed those of greatest importance will believe in pursuing this norm of adoption. Third is one feeling some idea of control that may or may not be there. With adoption, a person is dealing with one's own feelings then also the feelings of those around them who hold great importance in their hearts. It is no wonder that the decision and stigmas surrounding adoption of from another bloodline and not having children of one's own, biologically.

In the Qur'an, Allah states:

Say, O Prophet, "If your parents and children and siblings and spouses and extended family and the wealth you have acquired and the trade you fear will decline and the homes you cherish—if all these are more beloved to you than

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15. "Giving Your Child Up for Adoption in Islam," *American Adoptions*, accessed November 1, 2022, <https://www.americanadoptions.com/pregnant/islam-can-i-give-a-child-up-for-adoption>.

16. Rasheed and Padela, "Religious Leaders and Organ Donation," 640.

Allah and His Messenger and struggling in His Way, then wait until Allah brings about His Will. Allah does not guide the rebellious people.”<sup>17</sup>

When it comes to TPB, “this means that the Quran is establishing that God’s view regarding the actions a person chooses to perform have a place within the domain of Subjective Norm”<sup>18</sup> which refers to how much a person feels others will approve or not on a given subject and then also how much that person cares about those feelings – are they enough to push toward or pull away from adoption? That *ayah* in the Qur’an continues to be described as stating “that if one’s familial, social, or economical motivations regarding a certain action clash with God’s will, one should comply with God’s decree at the expense of those other motivations.”<sup>19</sup> As it was broken down in the explanations of *maqasid-e-sharia*, when dealing with the parts of Islamic law and life that pertain to upholding a society and taking care of all those who require care, then it is difficult to say that taking care of orphans is not as a struggle in Allah’s cause and something to work toward regardless of feelings or lack of motivation coming from one’s personal environment.

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17. *Quran* 9:24, all citations from the Qur’an are drawn from the Dr. Mustafa Khattab translation.

18. Rasheed and Padela, “Religious Leaders and Organ Donation,” 641.

19. Rasheed and Padela, “Religious Leaders and Organ Donation,” 641.

## CHAPTER 4

### POINTS OF HINDRANCES IN ADOPTION AND POTENTIAL SOLUTIONS

In the Qur'an, Allah states:

“It is out of Allah’s mercy that you O Prophet have been lenient with them. Had you been cruel or hard-hearted, they would have certainly abandoned you. So pardon them, ask Allah’s forgiveness for them, and consult with them in conducting matters. Once you make a decision, put your trust in Allah. Surely Allah loves those who trust in Him. If Allah helps you, none can defeat you. But if He denies you help, then who else can help you? So in Allah let the believers put their trust.”<sup>1</sup>

In these two *ayaat*, Allah covered the matters of consulting and making decisions and then putting one’s trust in Allah, knowing that whatever may come, Allah will aid perfectly and wholly. Allah creates a win-win situation where a Muslim should know that they did all they could and also relied upon Allah so that covers all the bases. Taking the next step forward will involve ease from Allah and a guarantee that the matters being struggled with will come to rest in ease.

#### Financial Means to Adopt

The best way to begin is to refer to these two *ayaat*:

Say, O Prophet, “Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him in worship. Do not fail to honour your parents. Do not kill your children for fear of poverty. We provide for you and for them. Do not come near indecencies, openly or secretly. Do not take a human life—made sacred by Allah—except with legal right.<sup>1</sup> This is what He has commanded you, so perhaps you will understand. And do not come near the wealth of the orphan—unless intending to enhance it—until they attain maturity. Give full measure and weigh with justice. We never require of any soul more than what it can afford. Whenever you speak, maintain justice—even regarding a close relative. And fulfil your covenant with Allah. This is what He has commanded you, so perhaps you will be mindful.”<sup>2</sup>

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1. *Quran*, 3:159-160.

2. *Quran*, 3:151-152.

An understandable hindrance to adoption may be the matter of one not having the financial means to do so. In the Qur'an, Allah is constantly affirming that He will take care of the orphan and in doing so, Allah is saying that He will provide for the one who cares for the orphans to have the ability.<sup>3</sup> Additionally, in the above *ayaat*, Allah even mercifully revealed, despite every warning against touching an orphan's wealth, that the one who is poor may use the orphan's wealth to help care for her or him.<sup>4</sup> It is in the child's best interest so it is allowed.

Additionally, caring for orphans is also a means of giving charity in Islam.<sup>5</sup> This is not only orphans being sponsored financially but also ones being cared for through adoption. In a *hadith*, Prophet Muhammad said, "Allah is helping as long as the (His) slave is helping his brother,"<sup>6</sup> meaning that as a person continues to be in service in communal obligations, Allah will serve that person.

Taking care of an orphan is even considered charity as Allah explains:

Do you think you will be admitted into Paradise without being tested like those before you? They were afflicted with suffering and adversity and were so violently shaken that even the Messenger and the believers with him cried out, "When will Allah's help come?" Indeed, Allah's help is always near. They ask you O Prophet in what way they should donate. Say, "Whatever donations you give are for parents, relatives, orphans, the poor, and needy travelers. Whatever good you do is certainly well known to Allah."<sup>7</sup>

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3. Alwani, "Kafāla: The Qur'anic-Prophetic Model of Orphan Care," 18.

4. Sonbol, "Adoption in Islamic Society," 56.

5. *The Study Quran*, 1799.

6. Wahb, "Fard Kifayah."

7. *Quran*, 2:214-215.



This life is described as a test but one in which Allah is readily available to assist those who persevere by doing good deeds such as financially caring for family, for the poor, and even for the orphans. It further stands that one will be alleviated on the Day of Judgment, the worst day of all, due to his/her acts of caring for an orphan:

Indeed, the virtuous will have a drink of pure wine—flavored with camphor—from a spring where Allah’s servants will drink, flowing at their will. They are those who fulfil their vows and fear a Day of sweeping horror, and give food—despite their desire for it—to the poor, the orphan, and the captive, saying to themselves, “We feed you only for the sake of Allah, seeking neither reward nor thanks from you. We fear from our Lord a horribly distressful Day.” So Allah will deliver them from the horror of that Day, and grant them radiance and joy.<sup>8</sup>

In the aforementioned *ayaat* it is also stated that being in poverty should not be a reason to not have children who have already been conceived, and though this is not the same situation as children who are already on this Earth and are in need of being adopted, an analogical reasoning can be made that not having a child and wanting to abort (or even kill after birth) is similar to not having a child or adopting a child because of the financial hardships that come with caring for one.

A fascinating part about the above *ayaat* is that it says “on account of poverty” because that even means that if one is already in poverty, not even only fearing it, then even then Allah is providing words of ease.<sup>9</sup> Furthermore, the way in which it states that Allah provides “for you” and “for them” is an indication that Allah gives to the parents first and *then* to the children in the case of being an in actual impoverished state, let alone becoming impoverished.<sup>10</sup>

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8. *Quran*, 76:5-11.

9. Hamza Yusuf, “When Does A Human Fetus Become Human?” *Renovatio*, <https://renovatio.zaytuna.edu/article/when-does-a-human-fetus-become-human>, 8.

10. Hamza Yusuf, “Fetus Become Human,” 8.

Later in the Qur'an it states, "Do not kill your children for fear of poverty. We provide for them and for you. Surely killing them is a heinous sin."<sup>11</sup> In this situation, it first says "them" and then "you" in an effort for Allah to inform the addition of children will not reduce them to poverty even if they are in good standing, so Allah will care for them Himself and then also the parents.<sup>12</sup>

### ***Barakah***

Prophet Muhammad emphasized as part of a lengthier *hadith* on wealth and staying away from temptations that, "Blessed is the wealth of a Muslim from which he gives to a Muslim from which he gives to orphans, the poor and wayfarers."<sup>13</sup>

In Islam, there is also a grand concept of *barakah*, or the increase in blessings due to acts for less than them. For example, Allah states in the Qur'an, "The example of those who spend their wealth in the cause of Allah is that of a grain that sprouts into seven ears, each bearing one hundred grains. And Allah multiplies the reward even more to whoever He wills. For Allah is All-Bountiful, All-Knowing."<sup>14</sup> This emphasizes that from one deed of charity, God will multiply. For every dollar spent on an orphan, that is a dollar that will multiply and come back in one's favor in this life and/or the Next.

In addition to the *barakah* increasing wealth, there is protection against decreasing as Prophet Muhammad stated, "Charity does not decrease wealth, no one forgives another except that Allah increases his honor, and no one humbles himself for

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11. *Quran*, 17:31.

12. Hamza Yusuf, "Fetus Become Human," 8.

13. Sahih Sunan an-Nasa'i, *hadith* 2581.

14. *Quran*, 2:261.

the sake of Allah except that Allah raises his status.”<sup>15</sup> Doing the good deed only leads to more goodness and opportunity, not less. This reflects back to the points of being protected from poverty even when wealth is spent on the child.

### **Feeding of Breastmilk**

Nursing the babies of other women was a cultural custom in Makkan society that Aminah, the mother of Prophet Muhammad, wished to take part in and a bedouin woman, Halimah, agreed to nurse him even though he was an orphan<sup>16</sup> – which made him mahram to both his mother and Halimah. It is explained through commentary of *ayah* 4:23 that when a woman nurses a child, they become unmarriageable to one another in that she can be seen without her covering, and she cannot marry the child, and a child she nursed is unmarriageable to her husband, milk-siblings, and biological siblings as well.<sup>17</sup>

Dr. Omar Suleiman, a world-renown Muslim scholar in America of various areas of Islamic knowledge who can also be seen as an *islahi*, speaks about the feeding five feeds by the age of two or around there in order to make the adopted child one’s child by breastmilk such that the child will be unmarriageable to the adoptive family. In Surah an-Nisa, the “age of maturity” is referred to in regard to orphans and the commentary describes this to be eighteen for males but some jurists indicating it may be fifteen or seventeen.<sup>18</sup> However, this need not deter a family from adopting an older child as Sahla

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15. Sahih Muslim, *hadith* 2588.

16. Lings, *Muhammad*, 24-25.

17. *The Study Quran*, 199.

18. *The Study Quran*, 191.

and Abu Hudhayfa had adopted a child older than two years and had not been fed so Prophet Muhammad had Sahla put her breastmilk in a cup and had her adopted son drink five separate times from it.<sup>19</sup>

Nowadays, other than a woman expecting child, she can also lactate through production of breastmilk from hormone injections, or otherwise if a woman is not pregnant and chooses to not take hormones to lactate, she can opt for a female relative such as the husband or wife's sisters, for example, to feed the child and accomplish the same goal.<sup>20</sup> It is important to note though that if the husband's sister feeds a male child then the child will still not be *mahram* to the wife because she does not have blood ties to her husband's sister. In this case, it is best for the wife's sister to feed the male child. The same is true in the opposite. If the child is female, it is best for the husband's sister to feed her because that would be the equivalent to the nieces he has from his sister who are *mahram* to him, and there are no concerns for the wife since they are both female. Having this discretion (*ih-ti-san*) in the matter of feeding a child to breastmilk beyond two years of age or causing milk to flow and assimilating to the custom (*'urf*)<sup>21</sup> of the matter of sharing surnames in America is part of what simplifies this *sunnah* in present day United States.

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19. Sh Omar Suleiman, "Fiqh of Adoption and Fostering with Sh Omar Suleiman," YouTube Video, 31:05, May 17, 2017. <https://youtu.be/v3JoPqmQPfO>.

20. "Fiqh of Adoption and Fostering with Sh Omar Suleiman."

21. Muhammad Abu Zahra, *The Four Imams: The Lives and Teaching of their Founders*, (Dar Al Taqwa, 2001), 252-253.

## Naming Adopted Children

In an information session with Dr. Omar Suleiman, Islamic scholar and founder of Yaqeen Institute, and Sarah Haider Alam, then Vice President of New Star *Kafala*, the *fiqh* behind adopting today in America and getting past hurdles that may make one averse to adopting is explained.

First, it is important to be honest with the child and the community about her or his being adopted. This allows for it to be clear this child's lineage is other than that of the adoptive parents and that the child is adopted even if the surname is shared. The purpose of giving the adopted child the same surname as the adoptive family is to help create an environment of belongingness for the child with the rest of the family. It also facilitates legal matters, travel, schooling, and so on, things that are known to be otherwise more difficult in America. The culture of where a family life is important. This comes from the same aspect of Islamic law that states the importance of making relationships known to the public, such as marriages, because in secrecy there can be wrongdoing, whereas in public there is an honor and protection of the relationship.<sup>22</sup>

In pre-modern times, people did not have surnames. They were referred through their lineage and patronymic naming, such as Muhammad ibn Abdullah for the Messenger or even where the individual was from such as Imam al-Bukhari being from Bukhara, Uzbekistan but his true name being Muhammad ibn Ismail. It is allowed and important to operate in the context of American society for Muslims here.

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22. Muhammad Al-Tahir Ibn Ashur and Mohamed El-Tahir El-Mesawi, "Maqasid Al-Shari'ah: Family," in *Ibn Ashur: Treatise on Maqasid al-Shari'ah*, (International Institute of Islamic Thought, 2006), <https://doi.org/10.2307/j.ctvkc673b.39>, 257.

It was mentioned that the American Pediatric Association emphasized for the emotional well-being of the adopted child the adoption must never be kept a secret. For the sake of the child, the adoptive family probably should not unnecessarily share that the child was born out of wedlock or anything that may cause the child undue grief or shame.

Regardless of whether the child shares the surname of the adoptive family, the child should always know of their unique lineage or at least that it is not the same as through the adoptive parents. In Islam, there is no discrimination between an orphan with known lineage, such as parentage, and one with no known lineage.<sup>23</sup> It is permissible that if the child's surname is known, due to the same reasons of facilitating situations in American culture and law, the surname can be changed to that of the adoptive family but simply to take the surname the child currently has and make it her or his middle name. This preserves the child's surname, makes easy to carry on with societal norms, and allows the child to feel belongingness with the rest of the family. It is the same Western concept as when a wife changes her last name to that of her husband's for ease, but not to change knowledge of her lineage.<sup>24</sup>

### **Inheritance for an Adopted Child**

In several *ayaat* that speak to the adopted child not allowed to take on the adoptive parent's surname and not being allowed inheritance as biological children, it is missed what is, in fact, allowed. The only reason for not taking the adoptive parent's surname is for the child to be true to his or her identity and be cognizant that this child is

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23. "Children in Islam: Their Care, Development, and Protection. Summary," *UNICEF*, Al-Azhar University (2005): 8, <https://www.oxfordbibliographies.com/display/document/obo-9780195390155/obo-9780195390155-0226.xml#obo-9780195390155-0226-bibItem-0007>

24. "Fiqh of Adoption and Fostering with Sh. Omar Suleiman."

coming from of his or her own background. Just like protecting adoptive children in their lineage, the *ayaat* that led to Prophet Muhammad reverting to his adoptive son's name to Zayd ibn Haritha were revealed also to protect the adoptive child's wealth, property, and inheritance.<sup>25</sup> This also meant that the inheritance intended for Prophet Muhammad's daughters by Islamic inheritance laws would be protected, not just those directly involved in the adoptive relationship.

In the Qur'an, a number of *ayaat* were revealed that all brought warnings for the one who may try to encroach upon an adopted child's ownerships and wealth. It is true that at the same time as discussing this about surnames, it was stated that one's will should divide their wealth so fractions of it are going to a man's daughters, sons, wives, and so forth but that adopted children are not to be included in that. However, once again, this was to protect and preserve the rights of biological children, wives who need to be cared for after a man's passing, and so on. Again, it was not to exclude their adoptive children. Along with the fractions of one's wealth to allocate towards specific family members by blood, Allah also left an entire third of one's wealth to be written in the will to give of one's wealth as one personally desires. In Surah an-Nisa, Allah revealed that orphans and others who are not related to the deceased by blood, and thus a natural heir, can inherit from within the third of one's wealth that is not apportioned to anyone else that has right to the wealth of the deceased.<sup>26</sup>

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25. Fadel et. al., "Classical Religious Perspectives of Adoption Law," 734.

26. *The Study Quran*, 192.

One can even make investments during their lifetime, such as opening a trust for one's children, which is separate from the laws of inheritance as it is money spent in this lifetime, not left after one's death. Any such money in an adoptive child's trust would be given to the child eventually regardless of what else is or is not given from the will of the deceased.

Oftentimes, one may choose to donate to charities, give to more extended family members, and so on, but here is a crucial mercy. Prophet Muhammad stated that it is better to give of that third to one's family.<sup>27</sup> If one wishes, that third of the wealth, or part of it, can be given to one's adopted child(ren). In fact, in the event that one left the entire third of one's wealth to an adopted child, the biological child(ren) may end up inheriting less. That should not be a goal but is an interesting note. This example is mentioned to illustrate that even within numerous *ayaat* packed with details of Islamic inheritance laws, the exclusion of something does not have to mean a restriction or an absence. It could mean an open door to another possibility that fulfills the rights and desires of all, God willing.

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27. "Fiqh of Adoption and Fostering with Sh Omar Suleiman."



## CHAPTER 5

### CONTINUING THE CONVERSATION

In this thesis, there was a breakdown of the hindrances that exist in Muslim American society to adopt considering the ease and mercies created through introspection of Islamic law to facilitate and promote adoption. In writing this paper, so many more topics with abundant discourse were found in scholarly literatures, referenced in lectures, and adoption organization websites. From here, there are a number of topics to continue the conversation. For example:

- The actual adoption process per American or state laws, the challenges of domestic and international adoption alike, and the cultural stigmas associated with adopting, being unable to conceive, and adopting as a single parent.
- Adopting as a single parent, it is not lost that while a woman can bring herself to lactate and feed her adopted child, a man cannot do the same and would be reliant upon a woman related to him directly by blood to do so. Given this, there may still be a boundary that makes it more difficult for an unmarried Muslim man than an unmarried Muslim woman to adopt.
- Stigma on how to manage the emotional conflict of needing to put one's child up for adoption in Muslim American society and when it is appropriate to do so.
- The American concept of open and closed adoptions and how that affects, if at all, Islamic parameters of adoption.
- Continuing in the line of having children without intercourse between a husband and a wife, more and more single Muslim American women are questioning if they can have a child through use of sperm donation or a surrogate mother are two

options used by non-Muslim Americans. The rulings around foundlings would address this as the necessity to know both parents, to ensure children are not born out of wedlock or to a relationship of adultery, and so on. Arguments could be made about what is truly considered “out of wedlock” or adultery in this situation.

- Fostering children and the unique challenges relating to it and how to overcome them through both an understanding of what it means to foster and Islamic jurisprudence concerning it.

This listing is here to give thought to more issues that branch from this topic and to promote the research of the answers to them or seek counsel from learned individuals who can provide the spiritual guidance through the process of having a child and raising him/her in accordance to the Qur’an and *sunnah*.

## CONCLUDING REMARKS

Where there is a will, there is a way, and the path to adoption is clearer and easier than Muslims may originally think. There is no reason for the beauty of caring for an orphan, as Prophet Muhammad once was, to be a lost *sunnah* today.

First, it is established that adopting is not at all prohibited beyond taking on a fictive relationship that muddies the rights of all individuals in the relationship and around that adoptive relationship.

Second, it is absolutely necessary that the obligations of all Muslim Americans hold to do the communal right to take care of all those on Earth and, in extension, children in need of adoptive parents and caretakers.

Third, financial means will come through God's promise in taking care of one's family.

Fourth, sorting through the matter of "making" a child mahram to opposite gender family members through breastfeeding, even as a young child, so there need not be physical barriers between the child and members of the opposite sex in the immediate family.

Fifth, allowing or giving the child an honorable first, middle, and last name as desired but enforcing to the child and the community that he/she is adopted, has his/her own lineage, but the adoptive parents will assume the role of the child's parents with those details known and understood. Sixth and finally, leaving the adopted child inheritance through the one-third of inheritance that is to be allocated per the adoptive parent's choice while still fulfilling the rights of the blood-related children.

The *sunnah* can continue today through the Muslim American community reconsidering the level of difficulty from the viewpoint of the very Islamic law they often find restrictive. It is also easy to get wrapped up in rulings and the black and white matters but remember naming “[a]t the same time, God in His mercy has not made knowledge the be-all and end-all of man’s existence; rather, he has given man another possibility that of formulating sound, acceptable opinion through the exercise of his utmost energies.” By choosing to take on the endeavor of adopting a child, one can lean into the mercy and ease granted by Allah to those who seek to do righteous deeds. After all, perhaps when adopting a child, it may feel like falling in line after a succession of people who once cared for the Prophet, except adopting Muhammad today in America.

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