

DISABILITY IN ISLAMIC LAW

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DISABILITY IN ISLAMIC LAW

by

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*The book is dedicated to my husband Rachman, to my sons
Netanel and Avner, and to the memory of my parents.*

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FOREWORD

When I completed my book *Islamic Medical Ethics in the Twentieth Century*¹, I was aware that I had omitted certain topics that I would have to return to. One of these was the ethical treatment of disabilities and the disabled, and of handicaps and the handicapped.

Since responses to burning medical dilemmas within the wide field of medical ethics was the main focus of that book, it addressed ethical aspects of the doctor-patient relationship, and contemporary Islamic debates on issues such as birth control and abortion, artificial insemination, organ transplants, postmortem examinations and euthanasia. The main source material was 20th-century fatwas (legal responses) issued by various Middle Eastern muftis.

In this book I now wish to survey attitudes to the disabled and their disabilities as evinced by selected Sunni and Shi'i legal compilations throughout 1400 years of scholarly Islamic activity, but also through contemporary fatwas. The sources used for this book are a selection of medieval as well as modern legal writings, medical books and articles in Arabic, books and articles on medicine from an Islamic religious point of view, Prophetic medicine, and the Qur'an and medicine. I have scrutinized all these for their consideration of people with disabilities, and for the behavioral or social adjustments these people were offered, mainly through legal rulings.

From the texts of Islamic law I hope to be able to evoke the social atmosphere and the role or status that Islamic societies have assigned to their physically and mentally less fortunate members. As much as the Muslim world has always been versatile, comprised of a variety of ethnic and cultural communities, the Shari'a has nevertheless been a unifying force, and a source of guidance for all.

True, the interpretations and applications of the Shari'a have been influenced by time and place, and local circumstances have often left their imprints on the legal product, namely the fiqh (positive law). The Shari'a, as the core and ideal of normative Muslims' conduct and morals, was cherished in all Islamic societies as the foundation for all later legal developments. For the distinction between Shari'a and fiqh,

a complicated task that many jurists down Islamic history have debated, I find Abou El Fadl's summary quite helpful.

Shari'a, it was argued, is the Divine ideal, positioned as if suspended in mid-air, unaffected and uncorrupted by the vagaries of life. The fiqh is the human attempt to understand and apply the ideal. Therefore, Shari'a is immutable, immaculate, and flawless- fiqh is not.²

When I approached modern Islamic legal books or fatwas, I limited my research to those originating in the countries of the Middle East. This book's conclusions, therefore, depict attitudes to disabilities and the disabled as they emerge from legal literature in the larger Middle East. I have not attempted to cover the vast Islamic legal scholarship of Southeast Asia and Africa.

My study stems from an understanding that being "healthy" is the preferred human condition. Any deviation from the "healthy" is a disease, at times causing a certain degree of dysfunction (temporary or permanent, minor or major). Compared with "proper function", this "dysfunction", should it persist over time, may become an added characteristic of the person who bears it. Then, that part of society comprised of the "healthy" is called upon to relate to the "irregular" person. Social studies have observed that the "irregular" can be treated as a "regular", or with special care, or both combined. This was my goal in this research: to depict the Islamic social attitudes to the "irregular" person in terms of health, as manifested in various expressions of Islamic law from its infancy to the present. I could not tackle the main subject before devoting thought to basic terminology, in Arabic, the language of most of my sources, as well as English, the language of this monograph. Accordingly, a large portion of the "Introduction" to this book concerns terminology.

ACKNOWLEDGMENTS

It has taken just over three years to write this book, but research and collecting the material beforehand stretched over more than ten years. The book is my own work, and I alone am responsible for its content. But some people helped me along the way and I wish to extend to them my sincere gratitude.

The English text would never have reached its present form without the intelligent editing work of Mr. Murray Rosovsky, and I thank him for that. I am grateful also to Mr. Haim Gal, director of the archives of the Arabic periodicals at the Moshe Dayan Center for Middle Eastern and African Studies at Tel Aviv University, who helped me through the abundance of periodicals and newspapers, and opened for me new avenues for research.

My brother, Dr. Shmuel Rispler M.D., was always willing to help in finding relevant medical data and the appropriate terminology. I thank him for that, and am happy that our seemingly remote fields of scholarship do have some meeting points.

I am grateful to the University of Haifa, my academic home, which allowed me a sabbatical leave in 2001/02, when most of the first draft was written, and to my own department, Arabic Language and Literature, which let me teach our students courses on people with disabilities in Islamic law. From that experience I became certain that the field was worth studying, extremely interesting, and deserving of a book.

I am indebted to the Department of Near Eastern Studies at the University of California at Berkeley, which hosted me during my sabbatical leave. Special thanks go to my esteemed teacher and advisor, Prof. W. Brinner of the University of California at Berkeley, who generously left me the keys to his office and provided me the perfect conditions for immersing myself in the writing of this book. Thereafter I could have no more excuses.

BIOGRAPHY

Dr. Vardit Rispler-Chaim is a graduate of UC Berkeley (Ph.D. 1985).

Since 1985 she has been teaching in the Department of Arabic Language and Literature at the University of Haifa, Israel. Her main fields of research and publication are human rights in Islam, Islamic medical ethics, Islamic law, and the status of women in Islamic law and society.

She is the author of *Islamic Medical Ethics in the Twentieth Century* (Leiden: E. J. Brill, 1993). She was a visiting scholar at Lehigh University, Bethlehem, Pennsylvania, and at the University of California at Berkeley.

INTRODUCTION

TERMINOLOGY, THE ORIGINS OF DISABILITY AND HUMAN RIGHTS

GENERAL TERMINOLOGY

What is meant by “disability” and who is considered “disabled”? The complexity shrouding the import of the terms “disability” and “disabled” and other related terminology in use, renders a brief reference to terms inevitable.

In English, several terms relate to a person who is unable to perform the normative physical and mental functions expected of a “healthy” human being.

According to the World Health Organization (WHO), “the concept of disability is classified as one of three: impairment, disability, and handicap. *Impairment* refers to the reduction or loss of normally existing physical, psychological or behavioral structures. *Disability* refers to the functional impairments resulting from primary damage, and the effect of the loss of function in daily life is thus the *handicap*”.³

According to the United Nations Declaration on the Rights of Disabled Persons, proclaimed by the Geneva Assembly’s Resolution 3447 of December 9, 1975, the term “disabled person” means “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities”.⁴

The International Labor Organization, on the other hand, asserts that “a disabled person means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment”.⁵

The definition of the ADA (The Americans with Disabilities Act, signed into law in 1990) of disability is this: “A person with disability is defined as

1. having a physical or mental impairment that substantially limits him or her in some major life activity, and
2. having experienced discrimination resulting from this physical or mental impairment”.⁶

In traditional medical views, “the long term or permanent functional limitations produced by physical impairments are called disability”.⁷

A similar definition states that: impairment is “lacking part or all of a limb, or having a defective limb, organ or mechanism of the body. Disablement is the loss or reduction of functional ability, and handicap is the disadvantage or restriction of activity caused by disability”.⁸

According to the British Discrimination Act 1995, a person must have four elements to be considered “disabled”:

- a. There must be a physical or mental impairment.
- b. The impairment must adversely affect the individual’s capacity to carry out normal day to day activities.
- c. The adverse affect must be substantial.
- d. The adverse affect must be “long term”.⁹

In a recent article by Jones,¹⁰ the author, a retired pediatrician from London, challenges the usage of the three commonly applied terms: impairment, disability, and handicap. Handicap in his opinion is a discriminative term as it derives from “cap in hand”, “implying that the disabled are expected to beg favors of the able”. He blames the source of handicap on “the response of the able community to those with impairments and disabilities”. He prefers the term disability, as adopted in a recent revision of the WHO classification, and combines the notions of disability and impairment. For Jones, handicap is the impairment in the attitude to disability which individuals in a society may have. He realizes that his view is somewhat revolutionary, but he believes this will lead to a holistic view towards people with disabilities, rather than to a stigmatized pitiful one.

Undoubtedly, the search for definition is primarily aimed at defining policies on the “disabled”. In many societies and countries today, being disabled entails social and legal alleviations, and economic assistance by the state, either as direct financial support or as discounted services offered to the disabled but not to “healthy” persons. The definition of “who is disabled” is also utilized by politicians and against politicians in various political scenarios.¹¹ However, the definition of “what is disability” must always remain relative. In a society where the majority of girls are circumcised she who is not is “disabled”, while in other societies to be circumcised equals being mutilated. In a society where many are undernourished, undernourishment is not considered a disability.¹² Women in sexist societies “are physically handicapped”, in Iris Marion Young’s assertion, since women in sexist societies are expected to lack the strength, skills and physical mobility that men are expected to have.¹³ Of the many more examples of the relativity of disability, here we will briefly mention only cultural relativism.

Although impairments and disabilities in humans are recognized by archeologists to have existed ever since the Neanderthal period, each culture perceived of these disabilities in a different manner, and treated its disabled members accordingly. Therefore, what is and is not viewed as disability also depends on cultural criteria. Western society, including its Judeo-Christian offshoots, manifested clear bias against people with impairments before the introduction of capitalism. It is alleged that since Western civilization was built on Greek foundations, the Greeks’ admiration for physical and mental fitness and the perfect body rendered all “imperfect”

persons doomed and social outcasts. Only the rise of capitalism in the 19th century improved social attitudes to the disabled.¹⁴ From the foregoing, the rise of capitalism did not succeed in erasing discriminative attitudes to the disabled, although great progress in that direction was certainly made.

Butler and Parr (1999) have depicted two major models in the perception of disability: the medical and the social. The medical model grew out of the rise of medical science. It utilizes specific bodily and sensory “technologies” that can improve aspects of daily life for some people with impairments. But this model, they claim, has seldom paid attention to the complexity of disabled people’s lives. The newly devised social model of disability tries to address the social issues that disabled people encounter, and it is “closely allied to political fights for anti-discrimination legislation and civil rights”.¹⁵ Following Dear et al. (1997), Butler and Parr welcome the expansion of the category of “disability” to include also substance abuse, HIV, psychological conditions and arthritis, as these imply that the human experiences of disability are “open to reinterpretation”.¹⁶ Butler and Parr do not see the “body space” as totally separated from the “mind space”, but regard the two as interrelated and mutually important.¹⁷ They conclude that any study of disability should follow a multidimensional view of disability, and would like to see the term “disability” as a catch-all category abandoned.¹⁸ As will be shown later, it appears that Islamic law in most of its references to various disabilities, and naturally unaware of contemporary social theories, has always addressed each disability in respect of a specific, recognizable human action or behavior, never as a “catch-all category”.

As for medical terminology, the medical textbooks contain many names for specific impairments and dysfunctions that lay persons are hardly aware of, or have never heard. For the purpose of the present survey I refer to the disabilities as they are recognized by the general public, using the term “disability” for most dysfunctional problems people may experience, and “impairment” for damages in an organ or a bodily mechanism that may lead to a disability. Scientific definitions are used only when necessary for clarification, to distinguish close terms, or in quotations.

TERMINOLOGY IN ARABIC

Turning now to examine Arabic terminology, we may often come across labels for bearers of specific disabilities such as the *a‘ma* (blind), the *asamm* (deaf), the *abkam* or *akhras* (dumb, mute), the *a‘raj* (lame), the *majnun* (insane) and the *khuntha* (hermaphrodite). There are also feminine forms for the same adjectives, such as *‘amya’* (blind), *‘arja’* (lame), *majnuna* (insane), etc., to indicate that the disabled person is a woman.

In classical Islamic sources I could not identify any single general term that would combine all people with disabilities as a group. This rendered my survey, as proposed, more difficult, but more interesting and challenging as well. The fact that no single term in Islamic law encompasses all disabilities might in itself teach us something about attitudes to the disabled in Islamic societies. I am reluctant, though, to jump to conclusions at this early stage of research. It is only in contemporary literature that we find somewhat generalized terms, such as *ashab al-‘ahat* or *dhawu al-‘ahat* (“owners” or bearers of impairments, defects), *mu‘awwaqun* or *mu‘aqun*

(literally, those held back by difficulty and limitations on their mental or physical functions¹⁹), and *'ajaza* or *'ajizun*, pl. of *'ajiz* (a weak person, unable to do things, like the old²⁰).

The Arabic root *'a-j-z* was well known in early Islam, and often used in the Qur'an and in medieval texts in the sense of someone who is unable or caused to be unable to do something.²¹ In a more specific usage it denoted a man "unable to perform sexual intercourse with women".²² The latter is a reference to a real handicap that men may experience. But *'ajaza* or *'ajizun* as a social classification of a group of people, which might equal today's "the disabled", cannot be found in the Qur'an or in the fiqh. Even today *ashab al-'ahat*, *mu'aqun* or *mu'awwaqun* are more likely to appear. Seldom would severely handicapped or deformed persons be named *mushawwahun* (deformed). This adjective is reserved for impaired fetuses still in the womb (*ajinna mushawwaha*) or for newborns who suffer severe malformation or mental retardation.²³

Only with regard to marriage do medieval fiqh scholars speak in a generalized manner of the *'uyub* (pl. of *'ayb*, translated as impairments, defects, deformities) which interfere with the proper flow of marital life. These are meticulously listed in the legal literature, and can befall the husband, the wife, or both. Separate chapters in almost all the fiqh compilations are allotted to these *'uyub*, adjacent to the chapters on marriage and divorce.

The *'uyub* there are discussed at length, because they are considered impediments to the contracting, consummation, or maintaining of a healthy marriage. I elaborate on these *'uyub* later in this book, in a separate chapter too. To my knowledge, this is the only generalization made in medieval fiqh for several disabilities which are distinctly grouped. It is worth pointing out here that the *'uyub* that are grouped as interfering with the course of marriage differ significantly. They are of mental, sexual or dermatological origin, but they all are bundled together in one group in the legal literature. To the contemporary person, who is accustomed to classified Western medicine, wherein diseases are usually addressed according to the organs they attack, this is a completely new mode of thinking. The Western medical classification of diseases by the damaged organ is thus challenged by another perception, the Islamic legal method, which classifies at least one group of disabilities by their overall social impacts.

Another term that could be considered to some extent inclusive of a wide range of disabilities is that of the *majnun* (madman).²⁴ Dols perceives of the *majnun* as encompassing the insane, the mentally disordered, the mentally deficient, the mentally disturbed, the mentally deranged, the lunatic, the imbecile, and the idiot. All the above disabilities belong to the range of mental health. I will return to address the *majnun* later.

One reservation about the above observation, that no one term in Arabic covers all persons with disabilities, must be made here. It has to do with the vague term *marid* pl. *marda* (in common use it implies a sick, or ill person) and *marad* (disease). In the Qur'an the term *marid* is used many times to mark the opposite of healthy, whole, in both the physical and the mental aspects. Infidels and hypocrites, for example are described as having a disease in their hearts (Qur'an 2,10; 8,49; 9,125; 22,53; 24,50; 33,12,32,60; 47,20,29; 74,31).

In the fiqh, the *marid* is mentioned almost in every chapter of the law; occasionally *marid* appears in the titles of subdivisions of legal chapters. We find, for example, *salat al-marid* (the prayer of the *marid*), *talaq al-marid* (the repudiation of the *marid*), *iqrar al-marid* (the testimony of the *marid*), *sawm al-marid* (the fasting of the *marid*), *hajj al-marid* (the pilgrimage of the *marid*), *jihad al-marid* (the holy war of the *marid*), and more.

But what exactly the semantic field of the *marid* is in the fiqh remains obscure. Questions that may be asked with regard to the import of the term “*marid*”, but that for the time being remain pending, are

1. Is it a short-term illness, or a permanent, chronic illness, hence bordering on what today would qualify as “disability”?
2. Does it refer to a disease that is curable, or to a terminal disease? The latter is sometimes specifically labeled “*marad al-mawt*” (“a disease of death”), to indicate an incurable disease which destines the ill person for death, or the state of dying.
3. Is the term restricted to physical difficulties only, or does it expand to include mental and emotional problems as well?

I find it worthwhile to raise these questions, because from examining several discussions in the fiqh I have come to suspect that the term *marid* was used more in a general manner that covers both the sick and the disabled. Certain aspects of *salat al-marid*, or *hajj al-marid*, for example, acknowledge human difficulties to bend over, to sit down and to stand up straight, and to walk. As much as these phenomena may be symptoms of a bad flu or a terminal illness, they can also be manifestations of severe spinal damage, paralysis, and so forth. In such disabling circumstances *marad*, I suggest, could qualify as disability, as impairment, and even as permanent handicap. If this hypothesis is true, then *marad* is the closest one can get to suggesting, within the canonical sources of Islamic law, a general term for a wide range of disabilities.

THE ORIGINS AND REASONS FOR DISEASES AND DISABILITIES

In the Greek world, obsessed with the beauty and strength of the human body, the birth of a child with a disability was interpreted as a punishment for his or her parents’ sin. The parents were then pressured to “expose” the infant (to leave it unattended, far away from the community, to meet its fate).²⁵

The Roman military society tended to see in any “irregular natural phenomenon” a bad omen for an impending disaster. “Monstrous births were a sign that the ‘holy covenant’ with the gods was broken. Monstrous births were interpreted as the wrath of the gods.”²⁶ There too, handicapped babies had to be exposed, although there is no evidence that if parents chose to keep a handicapped infant they were punishable by the law. This unforgiving attitude to the disadvantaged eased toward the Christian era, probably with the growing influence of more humanitarian ideas based on Judeo-Christian teachings on the sanctity of human life.

The Mishna, the first part of the Talmud, the compilation of Jewish law, completed around 200 CE, portrays disability as “part of the grand order of God’s creation”, so no fault is attributed to the disabled persons themselves and the disability is not a punitive measure from God. Alternatively it is suggested in the Mishna that “sin leads to disability in that faculty which committed the sin”. The reciprocity is explained as “measure for measure”.²⁷ Since it is the sin that causes the disability in the sinning faculty, all that is needed is to know what the origins of the sin are, to conclude who is to blame (man, or God, or ...?). This is a topic for lengthy theological debates in all monotheistic religions, and beyond the scope of the present work, except for a short reference to what is relevant to Islam’s attitude to the origins of sickness and disability, as follows below.

In several Christian writings disabilities are explained as manifestations of a battle between good and evil.²⁸ Other Christians interpreted disabilities as evidence of sin, and the disabled as sinners or offspring of sinners. Church officials were often involved in diagnosing mental illnesses and other disabilities. At times they proceeded to punish and isolate the disabled persons from society and from the activities of the Church. Disabled persons could not be buried in church grounds, get married, or become priests and monks.²⁹

If one was born without disabilities and later developed them, this was viewed as a punishment from God. Far harder to explain by the sin/punishment pattern was a disability from birth, for how could a newborn child have sinned?! Instead, this was viewed as an example of the variations in God’s creation.³⁰ Some explained the birth of deformed infants as due to demons that conducted sexual encounters with sleeping people.³¹

Others report that the handicapped in the Christian world were viewed as the outcome of a Satanic curse (*la’na shaytaniyya*), and therefore they were often tied to trees, locked in isolated places, or left to their fate. This remained their situation, roughly speaking, until the end of the 18th century and the introduction into the Christian world of the ideas of freedom and equality by the French revolution.³²

By contrast, in certain Christian sources, such as the book of Ecclesiastes, old age and the disabilities that often accompany it are portrayed as a natural process of physical decay. Roger Bacon in the thirteenth century emphasized this perception.³³ In the same spirit of theology, the Christian tradition, which is based on compassion and understanding, viewed people with disabilities as “innocent victims of misfortune”.³⁴ Consequently, the Church’s role was to be their protector and benefactor. In this regard, the Church contributed to the establishment of orphanages, hospitals, and shelters for those who had no means of sustenance.

Following clashes between the Church and the state, in which the Church was weakened and lost most of its influence over society, the status of the disabled declined, and giving charity was less viewed as a meritorious act. This was roughly the situation until the 18th century.³⁵ On the one hand, the Church saw in the disabled the example of what sin may lead to. At the same time, it offered the disabled spiritual comfort and financial support. The latter often came from charity collected from members of the parish who wished to distance themselves from that example.³⁶

A’zami, when drawing the historic border between the two major Christian approaches to the disabled in the 18th century, may have overlooked the period of the

Renaissance (15th century on), which influenced the Enlightenment of the 18th century. The Renaissance marked the change in the perception of the human body. It was filled with an increasing knowledge of the bodily functions, and it enjoyed the advantages of the being able to present that information in print. From the Renaissance on, old Church perceptions had to give way to more humanistic approaches, from which the disabled benefited as well.³⁷

Some of the disabilities in the Middle Ages were caused by lengthy bloody wars that left many people disabled and limbless. This started with the Crusaders. Those who became disabled through war won more respect and public recognition. The existence of large numbers of war-handicapped impelled the advance of battle-field surgery and the erection of hospitals.

To understand the Islamic perception of the origins of disability, it is worthwhile to dwell first on the Qur'anic stand on the origins of diseases. In the Qur'an, as mentioned above, *marad* is primarily a disease attributed to the heart and manifested in disbelief. Only in Qur'an 9,91 does *marad* denote an illness that hinders one from participating in jihad. Qur'an 24,61 emphasizes more that the disabled should not be segregated from social interactions. Other synonymous terms for illness in Arabic, but not found in the Qur'an, are *i'tilal* and *saqm*,³⁸ but the adjective *saqim* (sick) is mentioned in the Qur'an twice, in 37,89 and 37,145. Thus *marad* is the most frequent term for illness in the Qur'an. *Marad* is the opposite of *sihha* (health, wholeness, correctness). Health is one of Allah's benevolences which he commanded his servants to preserve, and forbade them to spoil or weaken by certain foods, beverages, alcohol and excessive exertion (Qur'an 5,90 and 7,157 set forth these prohibitions). In fact, the whole of human existence is a journey back and forth between the two poles of health and illness, well being and suffering. The source of both good health and recovery from illness is Allah alone. But what is the source of illness?

The traditional Islamic perception of a disease is of an unnatural condition which affects certain organs in the body. This condition is not caused by the stars, bad spirits or demons, as pre-Islamic Arabs, for example, used to believe.³⁹

Disease is not perceived by Muslims as an expression of Allah's wrath or as punishment from heaven either,⁴⁰ but as a test which can atone for one's sins. Health and sickness become part of the continuum of being, and prayer remains the salvation in both health and sickness.⁴¹ A Prophetic tradition asserts "Whoever dies in any illness is a martyr".⁴² This attests that an illness may have some redeeming powers, such as atoning for sins and the like. On the other hand, it is never proclaimed that the disease is predestined by Allah so that the ill Muslim has an opportunity to repent, or that the disease is a way of punishment for certain sins. Nowhere in the Qur'an, Sunna, or fiqh is a clear causality established between Allah and the onset of a disease, and/or a disability, in believers.

Based on Qur'anic teaching, Rahman concludes that "humans alone are endowed with free choice, which neither nature nor angels possess. The guidance of the Qur'an leads to both spiritual (and psychological) and physical health".⁴³ The Qur'an declares God's function vis-à-vis humankind to be the preservation of human integrity which disappears from both individual and collective life with the removal of God from human consciousness (Qur'an 59,18–19). The Hadith, according to Rahman, advocates pacifism and acceptance of the status quo, and discourages

activism.⁴⁴ Sunni theology, until the Mu‘tazila movement started spreading its ideology in the 8th century, Rahman continues, was that of complete determinism and denial of human will. The Shi‘a, influenced by Mu‘tazili ideas, maintained that there is neither total free will nor total determinism, but there is something between the two.⁴⁵ A well known hadith asserts, “God has sent down a treatment for every ailment” (*likull da’ dawa’*). It was never argued, claims Rahman, that since God is the source of the disease he can also send down the proper medication. What is meant by that hadith is that once the disease is present, God can bring forth the healing.

Disease, however, does exist as part of the Divine punishment for the unbelievers. However, God’s mercy and God’s justice do not contradict each other on this matter, because God’s mercy is conditioned by his justice. “God’s forgiveness, mercy and love are strictly for those who believe in Him and act aright”.⁴⁶ However, several Qur’anic verses stress that “although God is merciful, it does not mean that the defiant ones will have any share of His mercy”.⁴⁷ But the door to repentance is never totally closed. So when unbelievers are afflicted with disease it must be understood as punishment for their unbelief and for never evincing any remorse over it. But when Muslims suffer a disease its source should be sought elsewhere, not in God’s will.

But even with regard to the unbelievers, Islamic theology lays part of the responsibility for their affliction upon themselves. This theology finds its origins in the Qur’anic language itself. “In their heart is a disease. And God has increased their disease: and grievous is the penalty they (incur). Because they are false to themselves” (Qur’an 2,10).⁴⁸ In his translation Ali attributes all the destructive consequences to the insincere man himself. This is in agreement with most medieval Qur’an commentators. Ibn Kathir, for example, explains the “disease” as “doubt” (*shakk*) and “hypocrisy” (*nifaq*), not as a physical disease. Man is responsible for these, and only later does Allah add to them more “diseases”.⁴⁹ On the other hand, al-Zamakhshari maintains that the disease might be either a real one, meaning pain, or metaphorical (*majaz*), meaning bad thoughts, jealousy, cowardice, and tendency to sin. The verse should be understood, then, that as much as the Muslims were gaining power and conquests, these people were getting filled with hatred, jealousy, and cowardice.⁵⁰

From Qur’an 47,23, again, it may be suggested that Allah is responsible for the unbelievers’ disability. The verse states, “Such are the men whom God has cursed for he has made them deaf and blinded their sight” (Ali 1946). But Yusuf Ali explains, attached to his translation, that due to their misbehavior God deprived them of his grace. As a result, “what they hear is as if they had not heard and what they see is as if they had not seen”. Ali does not understand the verse as a physical handicap inflicted upon them, but as a metaphor. Pickthall translates the same verse quite similarly: “Such are they whom Allah curseth so that he deafeneth them and maketh blind their eyes”. In this translation the handicap appears indeed to be caused by Allah, but it is uncertain whether it is real or metaphorical.

Both modern translations incorporate the traditional Islamic commentaries in the respective verses.⁵¹ The commentaries themselves echo the theological discussions of successive generations of Islamic scholarship on whether Allah is the direct cause of disability, or if calamities befalling humans are invited by negative human behavior.

Qur’an 6,39 reads, “Those who reject our signs are deaf and dumb in the midst of darkness”. Again, Yusuf Ali explains that the man himself is responsible for the state

of being like the deaf and the dumb, since it is a person's limited free will that is responsible for his or her behavior. Al-Zamakhshari explains that the Mu'tazili scholars do not accept causality in evil; only the Sunni scholars do. Therefore, only the sinner is to blame for the outcome of his sin, not Allah.⁵² Ibn Kathir tries to mediate between the two poles and explains the verse as "in their ignorance and misunderstanding they are *like* the *asamm* who does not hear, *like* the *abkam* who does not speak, and *like* the *a'ma* who does not see – so what chances do they have to walk the straight path?"⁵³

In his translation of the second part of the verse, Pickthall admits causality between God's will and the disability the unbelievers incur: "Whom Allah will he sendeth astray, and whom he will he placeth on a straight path". What remains unclear from this interpretation is whether "dumbness" and "deafness" are physical or metaphorical.

In his modern commentary to Qur'an 6,39, Shaltut, Sheikh al-Azhar in the 1950s and early 1960s, explains that man has been endowed with reason, and therefore man has free will to choose how to behave. The fact that Allah knows in advance which course his servant will choose, (only) through the latter's free will, is in itself not coercion or predestination. Indeed Allah may deprive one forever of the ability to sin or the ability to obey, but this is not his habit with humans, to whom he gave reason and sent prophets.⁵⁴ The Quran attributes the source of the disease of pious Muslims to strong emotional reactions, such as fear, tension, and worries, which ensued from organic changes in the body (73,17; 33,19).

Al-'Isawi, a professor of psychology at the universities of Alexandria and Beirut, supports this attitude when he maintains that all diseases have some psychological components, just as curing diseases, both bodily and mentally, depends on certain psychological variants. This is because the human being is a whole active unit, composed of body and soul, so the soul and body both influence and are influenced by one another.⁵⁵ Spiritual strength, it is asserted, can stop a physical disorder from becoming a mental problem.⁵⁶

Natural causes of illnesses are recognized already in the early Islamic medical compilations. Early Muslim doctors, influenced by Greek medicine, explained many medical phenomena through chemistry, the balance of the elements (humors), and climatic, nutritional and environmental grounds.⁵⁷ This did not seem to contradict the fact that an illness may have also a divine purpose, such as testing people, especially if they endured their pains with patience.

Contemporary Islamic explanations for the origins of disabilities and diseases rely mainly on scientific medical literature. Dr. Abu Ghuda (1983) of the Ministry of Awqaf and Islamic Affairs in Kuwait explains that disabilities can be caused by genetic factors, health problems and diseases, traffic accidents, and war injuries. Another such scientific account of the causes of diseases is provided by a Muslim scholar from Nigeria. This is Dr. Oyebola, head of the Department of Special Education in the Faculty of Education at the University of Ibadan, Nigeria. He explains that part of the disabilities is congenital, and part is caused by neglect (hygienic, educational, or related to malnutrition and physical abuse), poverty, and religious beliefs that reject medications and immunizations. Other disabilities are caused by accidents, poor diet and climatic factors. Other reasons may be consanguineous marriages, drug consumption,

brain damage and industrial pollution. Local influences, such as the tse-tse fly bite, which causes river blindness in Central Nigeria, can be responsible for certain disabilities as well.⁵⁸ A physician explains that bodily disorders, such as paralysis, tuberculosis, blindness and malignant tumors, are caused when a bodily organ stops its function or when its ability to function diminishes, or when bacteria cause malfunction of an organ.⁵⁹ The above studies refrain from making any religious or theological assumptions on the origins of diseases. At a conference on vocational education of disabled children, held in Cairo in 1989, it was explained that physical disability is caused by lack of medical care, by complications during pregnancy or after birth, and by disturbances to bodily mechanisms due to genetic disorders, accidents, and war. Emergence of mental disabilities is attributed to genetics, chromosomal abnormality arising with the multiplication of the fertilized ovum, malnutrition, etc. Disability in one's senses is caused by an injury in the neurological system.⁶⁰

Dr. Munjid explains the reasons for disabilities in fetuses in the womb as mainly hereditary, or internal, as she calls them, and these may go back several generations, not necessarily originating with one's parents. Then fetal diseases can result from diseases that befall the pregnant mother such as German measles and syphilis, or from certain medications she has consumed during pregnancy. Also, exposure of the pregnant mother to radiation or her consumption of alcohol, drugs and cigarettes can lead to fetal deformations and diseases, and more.⁶¹

There are nevertheless two major exceptions to the above universal scientific approach to the origins of diseases. These are represented in present-day religious Islamic attitudes to AIDS on the one hand, and to disabled children born out of wedlock on the other.

With regard to AIDS, despite the well established knowledge that the disease may be transmitted through several channels,⁶² that innocent people may be inflicted, and that infants may contact the disease in the uterus through no fault of their own,⁶³ most muftis refer to AIDS as Allah's curse on sexual deviants. AIDS is believed to be God's punishment for homosexuality and adultery.⁶⁴ Regarding AIDS, Allah is definitely the source of the disease, though the "perverts", it is claimed, have sunk into misconduct beforehand, and AIDS is the inevitable punishment. AIDS, it is emphasized, should also serve as a warning for those who contemplate committing similar sins. This was the typical approach to AIDS patients until the end of the twentieth century. Since the beginning of the present century, through a few recent fatwas on the Internet, a slight change indicating more tolerance toward AIDS patients seems to be emerging.⁶⁵

In a scientific publication from Iran,⁶⁶ the author, either a sociologist or a psychologist, explains that ignoring the laws concerning proper sexual conduct leads to the birth of retarded children. She asserts that there is no harsher punishment for parents than to raise a handicapped or retarded child,⁶⁷ but she is confident that they have "earned" this punishment for introducing a miserable child into society. The Qur'an, she claims, in chapter 17,22 prohibits adultery, and those who do not follow this instruction risk giving birth to retarded children, and may even suffer mental problems themselves. The parents' genes are influenced by their emotions, thoughts, moods and actions, she continues,⁶⁸ so immoral behavior is bound to affect the fetus. She is adamant in her conclusion that extra-marital sex causes tensions, which

although unnoticed, affect the genes and bring about the birth of retarded children. Hijazi clearly sees causality between the parents' misconduct and their offspring's disability, and regards this outcome as a punishment from Allah.⁶⁹ Interestingly, she blames the religious leaders and society at large for not creating the proper atmosphere and setting the right example for licit sexual conduct, thus letting some people fall into adultery. Still, Francesca (2002) has noted that some leniency on the part of religious leaders toward HIV-positive people can already be detected in South Africa, Indonesia and Senegal, though not yet in Arab or Islamic Middle Eastern countries.

Aside from the two exceptions noted above, both related to sexual promiscuity, if we attempt to assess attitudes to those who happen to be sick, temporarily or permanently, we find that already in the Qur'an Allah grants them exemptions from or alleviations (*rukhsa pl. rukhas*)⁷⁰ in the religious duties that healthy Muslims are expected to perform. This may teach us that the state of being sick is as natural as the state of being healthy. The law addresses both states in conjunction, and often in the same sequence of verses. The overall perception is that one is sometimes well and at other times sick, but the belief in Allah and his *tawhid* (unity) is pre-eminent in both. The religious duties are essentially due and accepted from both the healthy and the sick, with the understanding that the sick may face hardship in fulfilling them. Therefore, attached to the ordinances of the law, not only in the Qur'an but also in the Sunna and the fiqh, are mentioned the alleviations (*rukhsa pl. rukhas*). These alleviations detail in what way disabled people should perform the commandments, or when they may consider themselves exempt. In a separate chapter I elaborate on the disabled as regards religious duties.

Since disease and disability of devout Muslims are not viewed as punishment for sins, and the situation of being sick is tolerated and accepted with the understanding that it is but natural, my next question would be whether this has any impact on the attitudes to them of "healthy" Muslims in society.

THE STATUS OF DISABLED PERSONS IN SOCIETY: A STUDY OF HUMAN RIGHTS

Social studies on disability emphasize that being disabled is a relative condition. Covey maintains, "culture plays an important role in defining, interpreting, and evaluating disabilities ... A disability has a social character because culture and society define, and in some cases impair or impede people with disabilities from accomplishing their goals and objectives".⁷¹ As a result of an accident some of us might find it hard to walk, to talk or to get dressed. Are we disabled? Are we not? Many people have some permanent limitation of one sort or another. Are they disabled? Thus it is appropriate to ask in what way "the disabled" are more disabled than the "healthy".⁷² Are we more tolerant of the disabled in light of the fact that we are as vulnerable as they, and the occurrence of disability is a likelihood at any moment?

In his *A History of Disability*, Henry-Jacques Stiker⁷³ says of the disabled, "they are the tear in our being that reveals its open-endedness, its incompleteness, its

precariousness ... They are the thorn in the side of the social group that prevents the folly of certainty and of identification with a single model. There is no mistaking it: the folly of the fit is exposed by the Down's syndrome child, the woman without arms, the worker in a wheelchair". If disability is indeed an "anomaly" to a norm,⁷⁴ the question is how a particular society treats its disabled. I agree with Stiker, that "whatever its effective empirical conduct, a society reveals just as much about itself by the way it speaks of a phenomenon".⁷⁵

Judith Z. Abrams studies Jewish attitudes to disability in her *Judaism and Disability*, from the Bible through the Babylonian Talmud. She learned that the human body in Jewish sources is often used as a "metaphor for society and its values and beliefs".⁷⁶ If a person or a group of people fail to match the "standard metaphorical scheme", she set out to discover in her book whether these people "become incorporated or fail to be incorporated into that society". She too agrees that "culturally determined attitudes toward illness and disabilities are manifest in all cultures, and they can readily be seen in Jewish and non-Jewish sources".⁷⁷ She discerns that certain changes in the behavior of some disabled people, observed over time, due to the advancement of medicine and technology, made certain categories of disabled irrelevant. She refers to the invention of the Braille script to aid the blind and of advanced hearing aids to assist the deaf.⁷⁸ There are many more examples of such advances, which she does not describe, but which make this change, "the incorporation", possible.

Robert Garland, in *The Eye of the Beholder: Deformity and Disability in the Graeco Roman World*,⁷⁹ claims that no society has existed that did not discriminate against its deformed and disabled in some manner. He also predicts that abnormality will always draw our attention despite our acceptance of the "marginalized", since "prejudice is still very much alive today". He too attributes the various attitudes to "the different anomalies"⁸⁰ to cultural differences. According to his observation, no culture would ignore these "anomalies" altogether. Although he detected some profound differences between the Romans' and the Greeks' attitudes to their respective disabled, in both societies they were isolated, or made a mockery of, or killed, with or without physical abuse, or confined away from public sight. Certain deformations were reported to be of ethnic origin, and his research revealed that "the variety of monstrous races is extensive".⁸¹ The Greeks are said to be those who initiated the idea of "stigma", which was at that time a physical mark intended to show that the person had something wrong and abnormal in his or her moral status. A slave, a criminal, and a traitor, for example, were tattooed so that the public would be apprised of their "faults" and would keep away from them at public events.⁸²

In his *Social Perspectives of People with Disabilities in History*, Herbert C. Covey surveys a variety of known social attitudes to people with disabilities, including their being considered the following:

- (1) "Subhuman": for example, based on the belief that speech (and reason) was what separated humans from animals, the deaf were likened to animals. People with leprosy in the Middle Ages were thought of more as animal than human. People with developmental disabilities were also deemed less than complete humans. Consequently, they were left untreated, sometimes exposed

- to the elements, outside the family dwellings, since animals were believed to need less care and to be better enduring than humans to climatic hardships.⁸³
- (2) Specifically gifted and rewarded by nature, biology, or God, with added sensory powers, abilities, musical talents, foresight, etc. Insanity, for example, was linked to creativity. There is some modern evidence that some of the best works of art are created as a result of dramatic shifts from depression to manic states of mind.⁸⁴ Al-Sha‘rawi, a famous 20th century Muslim scholar, also referred to the retarded and insane as “*hibat Allah*” (God’s gift), and attributed rare and exceptional qualities to them, which healthy people do not often enjoy.⁸⁵
 - (3) Evil: crippled individuals were portrayed as demonic. Shakespeare’s Richard the Third is also described as a disabled person with an evil personality. In reality, the king was not disabled at all, but was depicted as such because in the public perception the crippled body meant that the person was of evil character. Shakespeare chose to portray the king thus, as one way of being “politically correct”.⁸⁶
 - (4) Deserving of pity and charity: in art it is often shown that people with disabilities are offered charity, or are begging for their necessities.
 - (5) Scapegoats: societies have blamed the disabled for droughts, wars, diseases, unexplained deaths, etc. The disabled were an easy target for such accusations, as they were hardly able to defend themselves.⁸⁷
 - (6) Entertaining: shows featuring the insane or people with physical deformities were part of the common entertainment. Owners of asylums used to display their patients for a fee.⁸⁸ The exhibition of people increased in popularity from the 16th century, and reached its peak between 1850 and 1900. Especially in demand were microcephalic Africans, who were believed to embody the “missing link” between the apes and the human.⁸⁹
 - (7) Child-like: this characterization especially suited the mentally retarded and those with developmental disabilities. This led to their being treated in a condescending and patronizing way.⁹⁰
 - (8) Sinners and criminals: they were doomed and damned.
 - (9) Sexually hyperactive: restrictions on their movements and social interactions were applied.⁹¹

Regardless of the exact perception of the disabled in a particular society at a given time-period, all the above perceptions aimed to differentiate them from non-disabled people.⁹²

It might be convenient, although it is not true, to think that abuse and discrimination of disabled persons were part of a dark past that exists no more. Marks has observed⁹³ that “disabled people share much with those who experience other oppressive forms of discrimination”. Class or financial access to technical aids, she explains, may help overcome social barriers, and racial affiliation may also have an impact on the social status of a particular disabled person. Age may change the status of an individual, as children are often over-protected and sheltered from “healthy” society by an adult’s decision. This is sometimes true of the elderly too. Disabled

people may be institutionalized for their own protection and thus be denied the opportunity to make decisions about their own fate. Gender is also likely to affect one's social status. Women are perceived as weak, vulnerable, and in need of protection, and men are viewed as strong and independent. The disabled are thus often associated with "womanly vulnerability", they are denied the role of a nurturer, especially if they themselves are seen to be in need of assistance. Disabled people are often believed to be asexual. All these forms of discrimination, according to Marks, lead to setting the social hierarchy of power and status. Those who are placed low on the scale are afforded less autonomy over their lives, are less respected, and are more controlled by others. These forms of discrimination are shared by several groups and are not exclusive to the disabled, but are inseparable from the experience of disabled people.

In a recent article Jones (2001) reports on laws that are still being passed in modern states such as Germany, for example, requiring people with disabilities in a community home or holiday resorts to remain indoors except during specific hours. This is so as not to spoil the vacation of their neighbors, or cause a fall in the prices that owners can charge for holiday accommodation on account of the presence of disabled persons who may be encountered on the premises.

An article published in the United Kingdom in 2000 is titled "Abused and disabled people: Vulnerability or social difference".⁹⁴ The author examines whether "the forms of abuse experienced by disabled people result from an individual vulnerability, or as a consequence of social attitudes toward disabled people". First she proves that disabled people are indeed abused and discriminated against in the modern Western world. But she concludes her article with the statement, "many survivors of abuse have problems because they need justice not therapy". The issue of the disabled, and their social discrimination, according to Calderbank, should be treated as one of civil rights. What she actually means is that the problem will be solved only with new legislation. Hence, as much as the status of the disabled is a topic for social research, it is nowadays also a legal topic within the human rights discourse.

The Universal Declaration of Human Rights (UDHR) of 1948, and the International Covenant of Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of 1976, are considered by the United Nations as the International Bill of Rights.⁹⁵ The parts that have specific relevance for disabled persons, are the following:

Article 7 of the UDHR states that all are equal before the law and are entitled to equal protection against discrimination.

Article 23 speaks of an equal right to work and to be protected against unemployment.

Article 26 of UDHR and article 13 of ICESCR assert one's right to education.

Article 13 maintains the right to freedom of movement and residence.

Article 25 asserts the right to an adequate standard of living.

Article 16 protects the right to marry and establish a family.⁹⁶

This is only a sketch of the human rights that pertain to disabled persons in particular, in light of their apparent discrimination. But all human rights pertain to disabled persons, as "they are human beings, and humans have rights".⁹⁷

The Declaration on the Rights of Disabled Persons, proclaimed by the General Assembly of the United Nations on 9 December 1975, states, “human beings have worth just because they are human beings and not by virtue of their capacities”.⁹⁸

The Universal Islamic Declaration of Human Rights (UIDHR), issued in Paris on September 19, 1980, although using Islamic terminology, attributing authority to Allah and pledging loyalty to the Prophet Muhammad, guarantees the very same human rights as the UDHR.⁹⁹ The difference is that in Islam one is entitled to rights only if prior to claiming them one has fulfilled certain required duties.¹⁰⁰ But in content, most Muslims who well understand their religion accept the UDHR declaration.¹⁰¹ As the preservation of human dignity (*karama*) is emphasized in both the Qur’an and Hadith, and is the goal of the UIDHR, there is no discrepancy between the Islamic and Universal declarations on human rights.¹⁰² A similar claim is made by Ann Elizabeth Mayer.¹⁰³ She states, “the use of international rights standards as norms in critical examinations of Islamic human rights schemes and restrictions on human rights imposed by governments in the Muslim world does not necessarily reflect a racist assumption of Western superiority”.

When Fu’ad A’zami writes on the handicapped in the UAE (1989) he refers to “rights issued by International and UN based agencies”. Apparently he finds the International platform sufficient.

Traditional Islamic approaches to human rights contest their universality. In one such traditional approach the Islamic human rights system, as embodied by the pillar of *zakat* (duty of charity, almsgiving), is praised and highly valued, since it “equals, if not surpasses, any human rights theory developed in the West today”.¹⁰⁴ Whether one agrees or not this position definitely opens the door to scholarly comparisons. For me it is an invitation to subject the fiqh data and modern fatwas pertaining to the disabled to evaluation also for their sensitivity to human rights, overtly or implicitly. Secular legislations of nations all over the world have been subject to similar evaluations for several decades.

BETWEEN LAW AND SOCIETY

The law with all its rulings, and the legal institutions which are founded to produce justice based on the law in any given society, are bound to be products of its social structure and cultural features. The legal product is thus influenced by the beliefs, rituals and customs that are cherished and practiced by members of that society.

The interdependency of social and legal norms has been demonstrated by many scholars, and with regard to various societies, including Islamic.

In one modern rather secular and cultural assessment of the sources and nature of the law – any law – Paul W. Kahn claims that “we have to remember that the rule of law is neither a matter of revealed truth nor of natural order. It is a way of organizing a society under a set of beliefs that are constitutive of the identity of the community and of its individual members. It is a way of understanding the unity of the community through time, and of the self as bearer of that history”.¹⁰⁵ Elsewhere he maintains that “A social practice is not merely a set of prescribed actions. More importantly it

is the way of understanding self and others that makes these actions meaningful. We cannot separate action and belief when describing a social practice. Every action rests on some set of beliefs, every belief makes possible a range of actions".¹⁰⁶ Moreover, "Law creates a single identity in what would otherwise be a changing community, or communities, through time ... Law thus points backwards and forwards at once".¹⁰⁷

Devout Muslims would find it difficult to accept that Islamic law is not a "revealed truth", at least regarding the part of the Qur'an, Sunna and consensus, in setting the boundaries of the law. Others would stretch "Divine" inspiration to characterize the Shari'a too, as it is an ideal expression of the Divine will. For other scholars, the fiqh as well as modern "Islamic" legislation have been formulated by jurists (*ulama'*), and nothing is divine about them. The *ulama'*, they maintain, would like to pose as "the spokes-people for the Divine law", but they are not. They themselves create the ideas that they promote and interpret.¹⁰⁸ And even if viewed only as interpreters of Divine sources, they arrogate power to themselves, more than caring for the good of the community. According to Moosa, "the act of interpretation is an act of power (politics) in itself".¹⁰⁹

Later developments in Islamic law, and the introduction of elements such as *maslaha* (public benefit), *urf* (local custom) and fatwas (legal responsa), would better match Kahn's description of the law as projecting both backwards and forwards. Moosa, in reference to the law as a portrayal of an existing reality, shows that the law projects backwards. "Historically speaking, the general purpose of legal theory was not so much to generate new laws as it was to provide a post-hoc rationalization and justification for the legal practices that were already in circulation in the post-prophetic period".¹¹⁰ A similar process was well described by Al-Azmeh.

The science of legal theory, *usul al-fiqh* (the roots of law), was a retrospective construct which was designed from the time of Shafi'i, and with increasing theoretical refinement, to control the corpus of the detailed points of law that emerged from the Medinan, Iraqi, Syrian and other legal traditions, and to endow them with a theoretical coherence that would confer a Shar'i quality upon them. Indications are that *usul al-fiqh* was a manner of systematizing positive law that had already been arrived at largely as a result of local and other needs without necessary recourse to the *usul*.¹¹¹

All this renders the study of the law a promising source of information for social realities in the relevant periods in time, since law and society are intertwined. This has already been done for many societies. Lawrence Rosen (1981) learned about Moroccan society by attending the court sessions of a qadi; Baber Johansen in "The valorization of the human body" (1996) described the correlation between social traditional and tribal commercial norms of exchange and how they were transformed into the laws of marriage and laws of purchase/sale of slaves. He used Hanafi medieval fiqh as his research material.

Many scholars have read into the Ottoman court records (*sijill*) to learn of aspects of social life in the Ottoman Empire. Others have researched the Maliki court records of Muslim Spain and North Africa to learn about daily life in those respective societies, and so on.

Can we learn about attitudes to the disabled from reading the law? My answer is unequivocally in the affirmative. In a 1988 book on disability Liachowitz maintains that "much of the inability to function that characterizes physically impaired people is

an outcome of political and social decisions rather than medical limitations.¹¹² The author argues that “disability is a result of the various social constructions that force handicapped individuals into a position of deviance”.¹¹³ She reaches her conclusions after examining modern American legislation, mainly, but not exclusively, that of the state of Pennsylvania. She also quotes Thomas Szasz, who asserts that those with power to label people “ill” gain power over people’s lives, and by doing so they not only relieve the “ill” of responsibility for their actions, but also relieve society of the necessity to fully value them.¹¹⁴ She concludes her book by stating that social policies help to create disability, and social policies can help to erase it.¹¹⁵ In her opinion, the law is largely responsible for the social reality. Any social change is bound to start with legal reform. Contrary to Kahn’s perception of mutuality between the law and the social reality, Liachowitz blames and credits the law alone for what the social reality is.

Hubertu Stroebel, vice-president for Europe of Rehabilitation International, in his opening remarks at the International Conference on Rehabilitation of Disabled Children held in Tallinn, Estonia, on 12–26 August 1989, asserted that “society’s humanity can be judged by its attitude towards those citizens who are disabled or threatened by disability”.¹¹⁶ It is the duty of every social state based on the rule of law to create “a comprehensive legal basis which enables disabled individuals to assert their rights”.¹¹⁷ Once again we see that the finger points to state laws as being responsible for determining the status of the disabled in the society that abides by these laws and provides the atmosphere for their legislation.

True, it may be argued that not all existing laws are implemented and activated, so the fact that a law exists in the codices does not unfold the full social picture. By the same rationale, laws concerning the disabled may not portray the whole truth of their social reality. I would agree, but would add that the law as legislated, bound by time and place, is at least indicative of major social concerns, focuses and social vision.

This brings me back to the attempt to trace Islamic social attitudes to the disabled from various sources of Islamic legal scholarship.

CLASSIFICATION OF DISABILITIES

Several keys are used to classify disabilities: according to the duration of the problem, they may be classified as temporary, permanent, and intermittent (recurring on and off, such as epilepsy).¹¹⁸

The International World Health Organization classified disabilities according to the difficulties they create for their bearers: in behavior, in communication, in taking care of oneself, and in movement.¹¹⁹

Modern theories classify disabilities according to what caused them:

- a. Congenital malformation: this is responsible for 25% of the congenital defects, and it originates with the father or the mother.
- b. Genetic mutation: this is caused by radiation, medication, viral inflammations and malnutrition, and is the cause of 10% of all congenital defects.
- c. Chromosomal aberration: this occurs on fertilization, and it is responsible for 15–28% of inborn defects.
- d. Teratogenic agency.¹²⁰

Marx writes that until the nineteenth century Rabbinic sources categorized disabilities in three groups: seeing disabled, hearing disabled, and mentally disabled.¹²¹

In this book I have chosen to analyze attitudes to groups of disabled persons according to the fields of law wherein they are addressed in the fiqh. The chapters are constructed as follows:

1. Disabilities that interfere with the optimal fulfillment of the five pillars of Islam, the essential duties that guide the relationship between man and God.
2. Disabilities that interfere with the duty to participate in jihad.
3. Disabilities that interfere with marriage, a major social institution.
4. Hermaphrodites, who usually occupy a chapter of their own in the fiqh.
5. Disabilities that are intentionally caused by the legal authorities to a person as part of administering criminal justice (*hudud*, *qisas*), and unintentionally caused disabilities that entail a monetary compensation to the victim (*diyat*).

Naturally not all existing disabilities known to medicine, and not all those recognized as “disabilities” by social welfare services and contemporary legislation, will be addressed in the following chapters. The book does not aim to serve as a manual on disabilities, but to present the main attitudes to people with disabilities as expressed through Islamic law past and present. Although Islamic law has its offshoots in areas such as South-East Asia, Africa, and more, and legal activity conducted by Muslims in those places undoubtedly deserves study, the primary literature for this book was compiled by authors and jurists from the Middle East. Since the fruits of Islamic legal activity harvested in the “Middle East” have often been imported and consumed by communities of Muslims outside the region as well, I believe that the present book conveys the main attitudes in Islamic law to people with disabilities wherever that law is followed.