



*FOR A HALAL MEDICINE:
MUSLIM APPROACHES TO NEW REPRODUCTIVE
TECHNIQUES.*

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Introduction

- The issue of *halal* in Islam, often reduced to food turns out to be more extensive than the simple list of foods authorized to the consumption by Muslims or the way of slaughtering animals.
- Exploring the issue of halal as an object of research can amaze by the variety of approaches it allows, particularly because new realities covered today by the word *halal*.
- *It is in this context that I explore here a new space where the issue of of halal, that of biomedicine particularly new reproductive techniques. This is is part of my PhD research on biomedicine in Monotheistic contexts where the interaction between positive law rules derived from international texts and religious rules create very interesting situations.*



What are New Reproductive Techniques (NRT)

- Also known as medical assistance to procreation, New reproductive techniques, it mainly means in vitro fertilization, artificial insemination and surrogacy.
- Each one of these techniques responds to a particular cause of infertility.



Faced with these new techniques, Muslim infertile couples needed a clear answer to their questions:


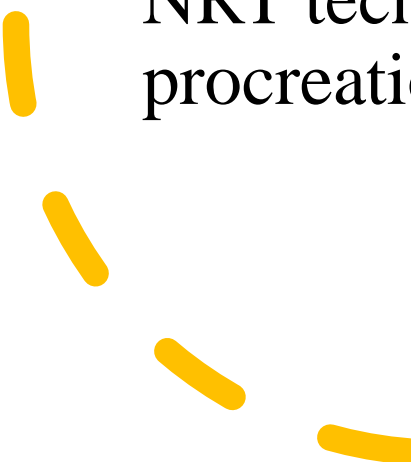
For a religion where it is essential to accept one's fate,

- Is it contrary to the divine will to resort to NRTs techniques?
- Are all the techniques for having a child halal?
- Can technology intervene in a natural creation and private matters?



Procreation as a duty

- Just like other monotheisms, Islam is a natalist religion.
- Procreation is an obligation and a divine blessing,
- «تزوجوا الوُدُودَ الولُودَ فَإِنِّي مَكَاثِرٌ بِكُمْ الْأُمَمِ يَوْمَ الْقِيَامَةِ»
- “*get married with the sweet and fertile woman because I will boast of your number among nations in the judgement day*” (Hadith). In this sense, several muslim authorities are against contraception or abortion considered as an act contrary to divine will.
- We can mention, the position of al-Ghazali considered as the strongest as he refuse abortion even before the insufflation of the soul.

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- Consulted on the *hokm* of NTR in Islam, the world Islamic league concluded in 1985 that “the need for children for a married woman who cannot procreate is considered a legitimate aim” justifying the recourse to NRT techniques.
 - Although generally favorably accepted throughout the muslim world , NRT techniques remain subject to the rules of *nasab* like “classic” procreation.
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Sunnism and Shiism admit the use of artificial insemination or fertilization

THE PRINCIPLE:

- Only intramarital techniques are permitted
- During the marriage and life of the couple





• THE EXCEPTION :

- Shiism is distinguished by its positions regarding the possibility of intervention of a third
- Possibility of recourse to NRT techniques after the dissolution of the marital bond by divorce or the death of the husband








Intra-marital material only



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- Starting from the principle that Islam is a religion which encourages scientific progress, the NTR are well accepted as long as it remains respectful to the *nasab* rules.
 - This means that science should intervene where the couple have problems in conceiving naturally without breaking the circle of legality. Only intra-marital techniques are allowed.
 - NTR become very problematic from a religious point of view when the cause of infertility cannot be palliated by an intramarital technique.
 - In this case, the response to the child request will not could be done without a third person, either by donating gametes or embryo or surrogacy.
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During the marriage only

- Sharia law and in particular the so-called *Ida* rules impose on the divorced or widowed Muslim woman a period of four months during which they cannot remarry in order to preserve the rights of the child and the husband regarding lineage to property rights.
- In applying the *ida* rules to the NTR and with the possibility of retaining the gametes, Sunni jurists believe that once marriage is dissolved by divorce or death of the husband, the wife cannot use the gametes or preserved embryos and orders their destruction.


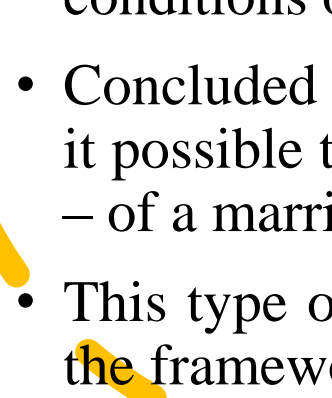
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- Most Muslim jurists make the analogy between the child born of a NRT with a third donor and the adulterous child “*ibn al zina*” to whom apply specific Sharaic rules regarding the establishment of its parentage, social status and property rights.
 - In fact, filiation cannot be conceived in Islam outside of a legitimate link between the parents of the child.
 - According to the principle of “*firash*”, the parentage of a child is established in function of the bed (understood as the place of conception) which unites his parents.
 - “Zina is considered a crime against the principle of filiation because it creates confusion among lineages, undermines the order of the world and its The result is undifferentiation and chaos” (Destremau, 2004).
 - Conceived outside of a marital bed, an adulterous child cannot have any parental filiation. He/she will only be able to register in the maternal line and may claim no patronymic or inheritance rights from his or her father.
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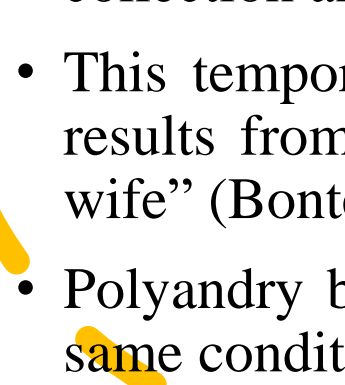
- We find the same principle of *nasab* in the rejection of full adoption by Islam. It is only possible to take care of the child within the framework of the kafala (care for the child without surname rights).
- If adultery of a married woman remains, in principle, very difficult to prove according to the rules of Muslim law, the intervention of sperm donation from a third party in the context of artificial insemination would be assimilated to a medically assisted adultery.
- This would have the same consequences as “classic” adultery even without its material element. Presumption of innocence from which the wife benefits under Muslim law will no longer be able have an effect.
- Adding to the possibilities of possible incestuous relationships for the child born by anonymous donation, the third party donor becomes doubly problematic for the Muslim authorities who led to the rejection of all third based techniques.




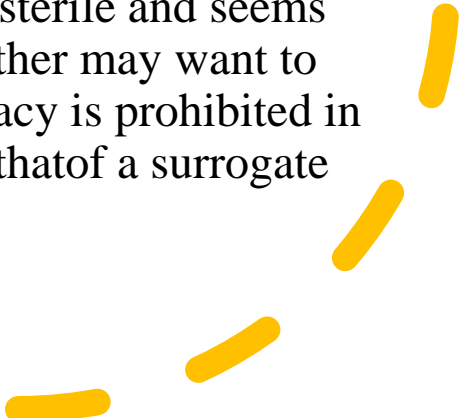
Originalities of Shiism

- Although the majority of Shiite authorities agree in principle with the Sunni position regarding the prohibition of any third party intervention in a procreative project with NTRs (Atighetchi, 2010), the Shiite school knows original positions regarding the third party donor since certain ayatollahs admit the use of a third party donor, particularly in Iran and Lebanon.
- Ex : Shiite jurists, for their part, believe that as long as the ida period runs, it is possible for the woman to use the preserved gametes or implant them fertilized embryos.

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- Shiism seems to have found the way to circumvent the appearance of adultery implied by egg donation.
 - Indeed, Shiism admits in addition to classic marriage, marriage known as mutaa (of enjoyment or pleasure). Any single or married man who wants to have sexual intercourse with a woman can enter into a temporary marriage.
 - This very Shiite institution—contested by Sunnism—is subject, like classic marriage, to conditions of witnesses and dowry but not to that of ish'har (advertising).
 - Concluded for a given period, it is not necessary to make it public. This alternative makes it possible to avoid adultery while remaining within the legal framework—even temporary—of a marriage.
 - This type of marriage above all guarantees rights of a possible future child. Born within the framework of a marriage, the child will not suffer from the status of illegitimate child.
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- The analogy made from the mutaa contracts allowed Ayatollah Ali Khamenei to find a legal base to authorize egg donation.
 - Spiritual leader for the Shiites of Iran, he is also the reference authority for the leaders of Hezbollah Lebanese who consider him as marjaa taqlid (Inhorn, 2006).
 - According to Ayatollah Khamenei, the husband of the infertile couple will be able to conclude a mutaa marriage with the egg donor, the marriage will last for the duration of collection and transfer of the embryo after fertilization to the first ‘infertile’ wife.
 - This temporary marriage “constitutes a means of making lawful the sexual union that results from the contact of a man's semen with the oocyte of a woman other than her wife” (Bonte et al., 2011)
 - Polyandry being prohibited, married women cannot take part in a mutaa marriage. The same conditions apply to donors of oocytes who must be single or widowed.
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- Egg donation within the framework of a mutaa marriage is therefore legal in Iran since 2003. The Ayatollah's fatwa became a law passed by the Iranian parliament specifying all the modalities of egg donation.
- If Ayatollah Muhammad Husayn Fadlallah, another Shiite authority in Lebanon, also authorizes this type of donation, it is widely disapproved by the Iraqi Shiite authorities, namely Ayatollah Ali al-Sistani and Ayatollah Muhammad Sa'id al-Hakim.
- Despite these criticisms, the Ayatollah's fatwa allows several infertile Muslim couples in Iran and elsewhere in the Muslim world to resort to third-party donors in order to have a child.
- “In Lebanon, several reproductive doctors display the Khamanei's fatwa to show the permissibility of procedures involving a third-party donor to skeptical Muslim patients.
- Several patients in have also taken the opportunity to resort to sperm or egg donation and even from a surrogate mother” (Clarke, 2006).

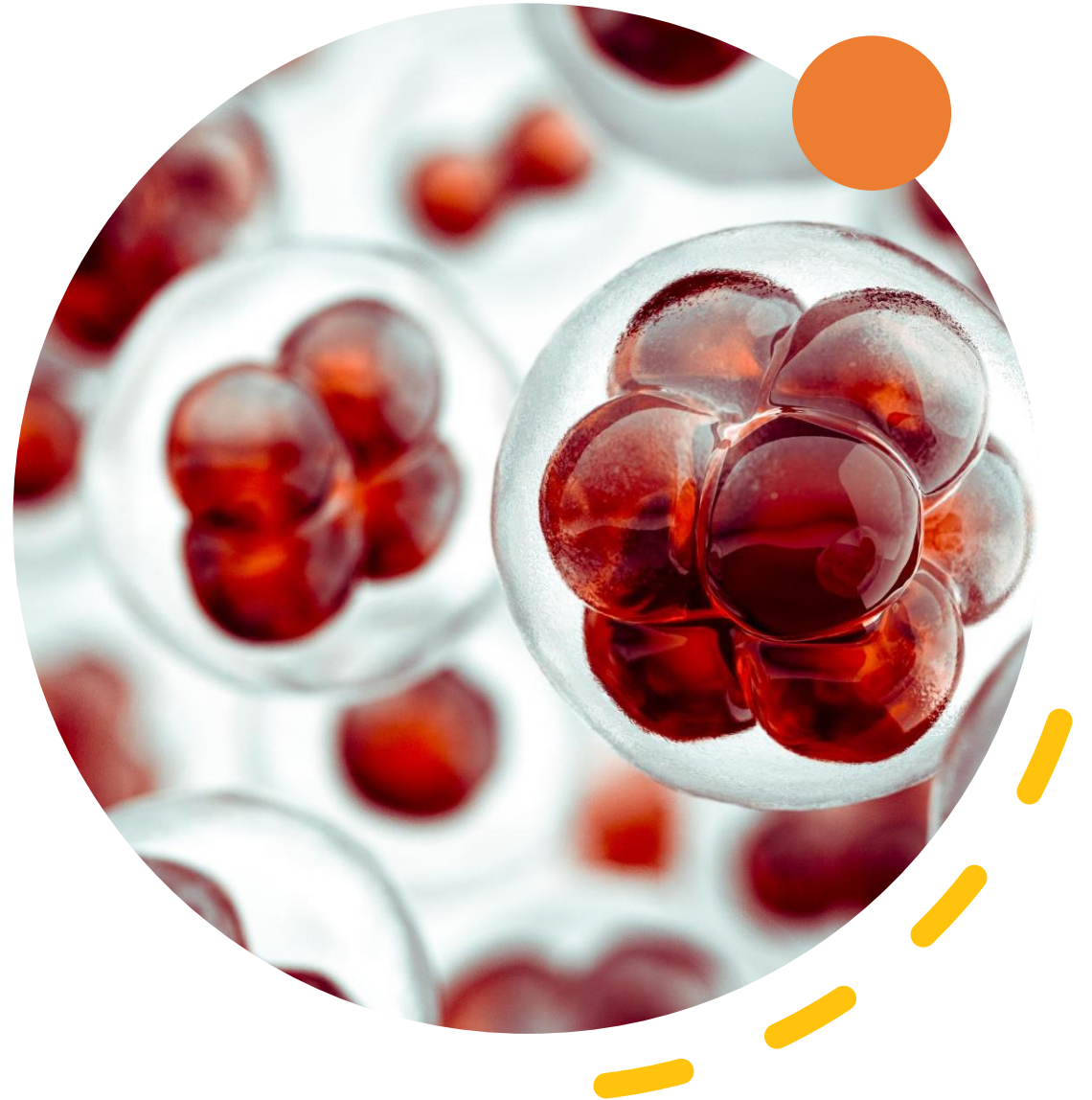
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- Shiite originality does not stop at egg donation within the framework of mutaa marriage. Indeed, there is talk of authorizing certain couple infertile people to resort to embryo donation.
 - Embryo donation is problematic because it is comparable to a plenary adoption. Embryo donation seems to be accepted because it is less problematic in terms of consequences than sperm donation or egg donation outside of marriage mutaa.
 - This conditioned donation helps avoid consequences of adultery. “Because the embryo comes from a married couple, who donates it to another married couple, the donation is considered halal or religiously permitted” (Inhorn Mc, 2006).
 - Acceptance of embryo donation nevertheless seems unequal.
 - This solution is aimed at couples whose husband is sterile and seems not to not take into consideration that the fertile mother may want to have biological ties with the child. Although surrogacy is prohibited in Islam, the wife will be in a situation comparable to that of a surrogate mother. Carrying a child destined to be hers.
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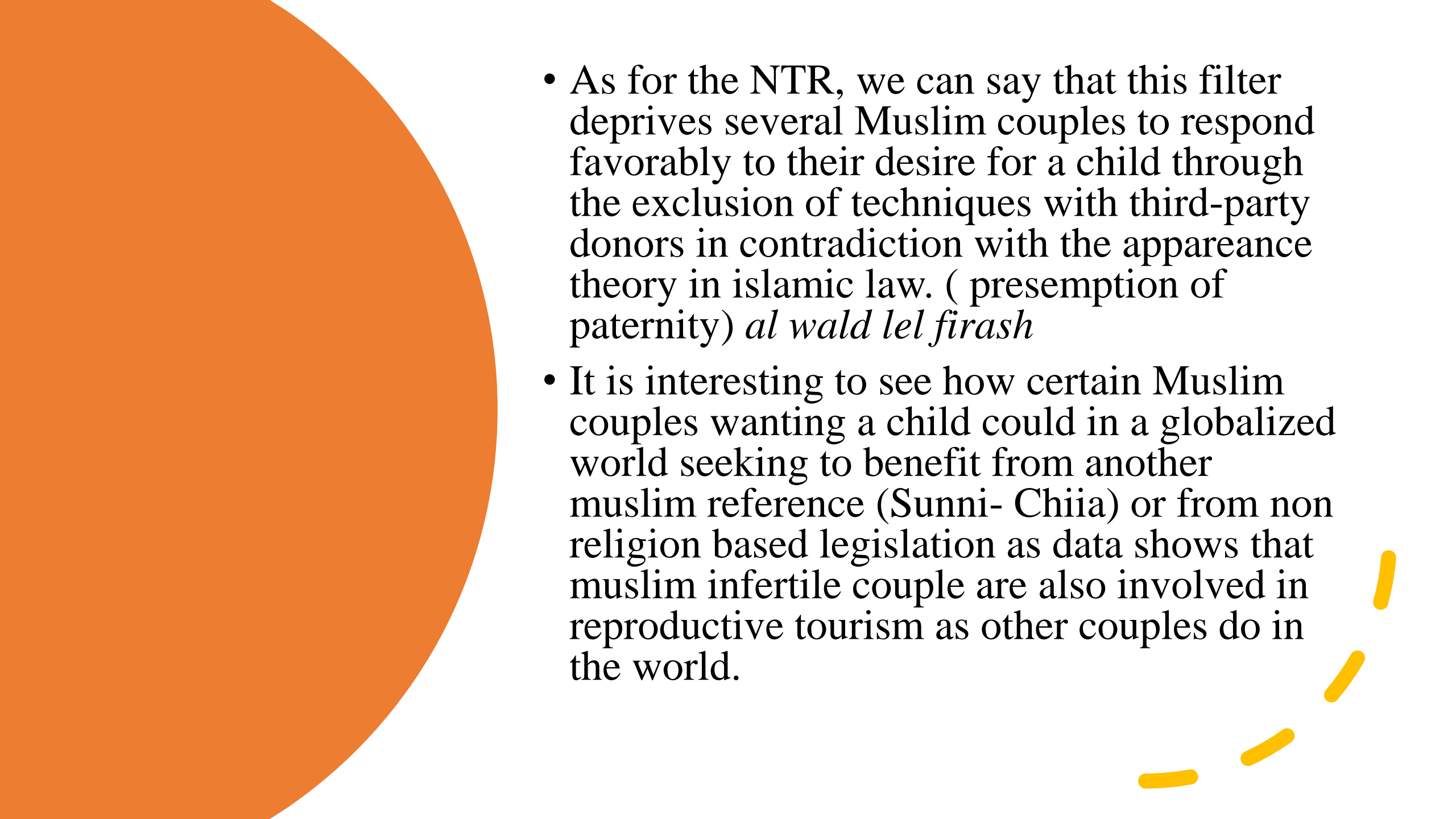


Conclusion

- To conclude, we could say that there is a real religious and also political will to submit Biomedicine in general and reproductive techniques to a “halality” filter in Muslim countries.
- The observation of biomedical techniques available today in Muslim countries allows us to see that only religiously compliant techniques are integrated into the health systems of these countries.
- State religion and first source of law in most of the muslim countries, Islamic authorities are political actors with an impact on health related policies. Ex : Law of 2001 of Tunisia.
- But it seems difficult to say categorically if this filtering comes only from political will or if it responds to a social demand.
- We could nevertheless observe several problematic situations linked to this filter and the logic upstream of the latter.

- The Islamic definition of the embryo could allow several discrepancies in the use of embryonic stem cells. In this meaning, we can cite the Egyptian law on organ transplantation of 2010 which takes up the idea of deferred animation of the embryo and which, on this basis, allows parents to use them for themselves or other members of the the family without any ethical constraints.



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- As for the NTR, we can say that this filter deprives several Muslim couples to respond favorably to their desire for a child through the exclusion of techniques with third-party donors in contradiction with the appearance theory in Islamic law. (presumption of paternity) *al wald lel firash*
 - It is interesting to see how certain Muslim couples wanting a child could in a globalized world seeking to benefit from another Muslim reference (Sunni- Shia) or from non-religion based legislation as data shows that Muslim infertile couples are also involved in reproductive tourism as other couples do in the world.