

THE ISLAMIC VIEW OF ADOPTION AND CARING FOR HOMELESS CHILDREN

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The most famous orphan in Islamic culture is, without doubt, the Prophet Muhammad, peace be upon him. His father died before he was born and by the time he was eight he had lost both his mother and the grandfather who named him. He was subsequently raised by his Uncle Abu Talib who continued to be his protector until his own death, when Muhammad was an adult of almost fifty years of age.

When Muhammad's wife Khadijah gave to him a slave named Zaid, Muhammad freed the boy and raised him as if he were his own son. The importance of taking homeless children to care for them is well-established in Islam. Given these facts, it is somewhat startling to hear Muslims assert that adoption is prohibited in Islam. The confusion is over the precise definition of the term adoption. We shall seek to clarify the issue here.

The Islam form of "adoption" is called *kafāla*, which literally means sponsorship, but comes from the root word meaning "to feed." It is best translated as "foster parenting." Algerian family law defines the concept thusly: "Kafala, or legal fostering, is the promise to undertake without payment the upkeep, education and protection of a minor, in the same way as a father would do for his son".

If "legal fostering" in Islam requires fulfilling these parental duties "in the same way as a father would do for his son," then how does it differ from legal adoption as understood in the United States? There are three significant differences: denial or acknowledgement of identity by blood lineage, inheritance, and implications for the possibilities of marriage partners. I shall discuss these in reverse order.

Although the specifics differ in the two cases, both American law and Islamic law use proximity of relation as a criterion for the permissibility of marriage. Under Islamic law and in some states first cousins may marry, but under neither law could a father marry his daughter. Under Islamic law a man may not marry his son's ex-wife, but he may marry his adopted son's ex-wife. This fact does not mean that adoption is illegal, it only means that a legal system that imposes a prohibition on marriage to the ex-wife of an adopted son is imposing an additional constraint beyond that imposed by Islamic law. An examination of the relevant Qur'anic verse clearly shows its purpose is to reform the practice of adoption by removing such prohibitions rather than to end the practice:

God has not made ... your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But God tells (you) the Truth and He shows the (right) Way. Call them by (the names) of their fathers: that is more just in the sight of God but if ye know not their father's (names call them) your Brothers in faith or your *Maulās*. But there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts: and God is Oft-Returning Most Merciful. The Prophet is closer to the Believers than their own selves and his wives are their mothers. Blood-relations among each other have closer personal ties in the Decree of God than (the Brotherhood of) Believers and Muhajirs: nevertheless do ye what is just to your closest friends: such is the writing in the Decree (of God).

The wording is very significant here. The text does not ban adoption, but only says that the use of the word "son" with respect to an adoptee is just a phrase and not a blood (or genetic) fact. Nor should it be inferred that it is prohibiting the use of the word son (in a metaphorical sense), since it should then logically follow that the term brother (explicitly approved in the text) would also have to be prohibited for the same reasons. Our adopted sons are not our genetic sons any more than our brothers in faith are our genetic brothers. The purpose of the verse is clearly to prevent drawing legal restrictions from the metaphorical use of the word "son" in describing a foster relationship. Thus one might marry the ex-wife of one's foster son (as one might marry the ex-wife of a blood brother), but one can no more marry a daughter than one could marry a sister.

Analogy to blood relations is not the only relevant issue here. Islamic law forbids a man to marry a woman who had been suckled by the same wet nurse as the man, regardless of whether either was adopted by the wet nurse. Here, too, we see that the issue is not adoption, but how social relationships bear on the question of marriageability.

The issue of inheritance may be dealt with briefly. In most American states, an adopted child has the same automatic rights of inheritance as a genetic child. In a few states, as under Islamic law, inheritance is not automatic but needs to be specified in the will. American law recognizes the validity of wills that specify an inheritance distribution based on Islamic law, so this constitutes no objection to adoption by American Muslims.

Finally, we consider the issue of identity by blood lineage. It has been the custom in America to downplay (or even) hide the identity of blood parents in cases of adoption. Recently there has been a welcome trend giving adopted children some rights to discovery in this matter. In this respect American laws are moving in an Islamic direction. The advantages from a medical point of view to such knowledge are obvious, but there are also issues of the subjective importance of knowing one's own identity. The verses of the Qur'an quoted above makes it clear that identity is defined by blood. Experience shows that openness about the true identity of children need not be an obstacle to love and caring between foster parents and adoptees. This is an especially important issue for American Muslims adopting children from abroad. It is neither necessary nor desirable to deny the cultural heritage of these children.