



## Review Article

# Ethical Issues of Organ Transplantation in Islam

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### Abstract

Scientists and clinicians must become familiar with the factors that affect the emotional, physical, and spiritual health of their patients that are outside the ken of the traditionally dominant value systems. Although many researchers have addressed the cultural and ethnical factors, very few have considered the impact of religion. Islam, as the largest and fastest-growing religion in the world, has adherents throughout the world, presents a complete moral, ethical, and medical framework, while it sometimes concurs conflicts with the conventional and secular ethical framework. This paper introduces to the Islamic principles of ethics in organ transplantation involving human subject to address issues of religion and religious ethics. Historical reflections are discussed as to why Muslim thinkers were late to consider contemporary medical issues such as organ donation. Islam respects life and values need of the living over the dead, thus allowing organ donation to be considered in certain circumstances. The sources of Islamic law are discussed in brief to see how the parameters of organ transplantation are derived. The Islamic perception, both Shiite and Sunni, is examined in relation to organ donation and its various sources. The advantages and disadvantages of brain dead and cadaveric donation are reviewed with technical and ethical considerations. The Islamic concept of brain death, informed and proxy consent are also discussed. The concept of rewarded donation as a way to alleviate the shortage of organs available for transplantation is assessed.

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### Backdrop

Organ transplantation once deemed an impossible but fantastic goal can now be observed in centers small and large, academic and private, in the developed and developing countries with greater and greater frequency. For the near future, transplantation medicine will continue to occupy a vital but sometimes morally ambiguous place among the many therapeutic modalities employed to cure illness and save life. Some of the potentially morally ambiguous aspects to organ transplantation include: the human source of the life prolonging “treatment”, the types of humans

used for organ donation (live, brain-dead, cadaveric, children, adults) and the procedures used in acquiring and distributing the organs (willing vs. non-willing donors such as prisoners and the indigent, purchase of organs vs. need-based distribution). Entwined in these moral quandaries are the legal, social and psychological aspects for the individuals involved and society at large. In order for and appropriate organ transplantation system to be successful it will be necessary to consider all these issues beyond the technical aspects of transplantation. This paper reviews the Islamic approach to these issues by

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examining direct scriptural sources as well as legal rulings by jurists of the two major branches of Islam (Shiite and Sunni) to explain the ethical, moral, and legal foundations of transplantation and associated issues.

### Medical Ethics and Islam

In the age of reason and the Renaissance in Europe, theology, philosophy and science became untwined into separate disciplines which were seen, at times, as inimical to the goals of one another<sup>1</sup>. As a result, the interest of Western theologians and philosophers in the morality of science and scientists has been a relatively new phenomenon of the last 50 years or so. In Islam, religion (*din*) encompasses all intellectual activities of man with scholastic theology (*kalam*) being but one discipline and all fields of study, such as the physical sciences, medicine, and law referred to as “sciences” in the sense that they require methodical study. Because all areas of intellectual endeavors impact on the lives of the individual and society, every science inherently has an ethical dimension to it in Islam. For that reason, the science and philosophy of ethics has been considered to be of paramount importance in all the Islamic schools of thoughts along with doctrines (*aqida*) and legal rulings (*ahkam*).<sup>2</sup> The prophet Mohammad defined his entire mission as the promulgator of Islam in an ethical light that “I was commissioned to ennoble (man’s) ethics”<sup>3</sup>

After theology, medicine has always been seen as the most important field of human endeavor in Islam due to its positive impact on societal welfare. In Islam there are three types of people that are indispensable for a society: “a knowledgeable and ascetic jurist, a good and competent ruler and discerning and trustworthy physician”<sup>4</sup>. On the other hand, the ethical behavior of physicians, their treatments and prescriptions have occupied a lofty and respected place among the areas of discussion for the physicians, philosophers and theologians many of whom have occupied two or all three of these roles simultaneously. Some examples of philosopher-physicians include: Ibn Sina (Avicenna), Ibn Rushd (Averroës) and ibn Zakariya al-Razi

(Rhazes), and among jurist-physicians one can count ibn al-Nafis among many others. With regard to the essential bioethical issues such as remuneration, indemnification, liability, patient confidentiality and informed consent, the Islamic literature in philosophy and theology is rich and varied.<sup>5</sup>

The consideration of organ transplantation and its attendant issues has lagged behind the work of Western theologians and philosophers due to a number of issues that are being rectified throughout the Islamic world. First, Islamic thought was in a period of contracture with the onset of European colonialism and the decline of the Caliphate and Monarchies.

Only in the last 100 years have serious Islamic thinkers been approaching recent issues and re-examining Islamic traditions to formulate responses. However, organ transplantation has become a practical issue in Muslim countries in the last 20 years. It should be pointed out that as early as the 1960’s both Sunni<sup>6</sup> and Shiite<sup>7</sup> thinkers were addressing the issue of organ transplantation. By the mid 1980’s discussion, debate and policy making had occurred in the Islamic world to deal with the issues surrounding organ transplantation.<sup>8</sup>

Before presenting the responses that various Shiite and Sunni theologians have given, it will be necessary to briefly discuss the source material and methods used in deriving rulings (*fatwas*) in Islam. The canon of law in Islam is called *shar’iah*. It is derived from the following sources in descending order of authenticity, hence importance: the sacred scripture (*Quran*), sayings, rulings and customs of the prophet Mohammad and other holy companions (*sunnah*), rational intellect (*‘aghl*), logic (*mantiq*), consensus opinion of jurists (*ijma’*), and analogy (*qiyas*). The local customs and mores (*‘uref*) and local habits (*‘aadah*) of the people who pose questions are also considered when deducing a legal opinion (*ijtihad*). Once a fatwa has been given, the individual who consults that theologian for guidance in daily affairs holds the decree binding in an extra-judicial manner, unless it conflicts with

local laws. Ijithad is a unique feature of Islamic jurisprudence and serves to keep Islamic practice dynamic and responsive to the contemporary needs of Muslims. We have discussed the interplay of jurisprudence and culture elsewhere.<sup>9</sup>

### **Transplantation**

The majority of Shiite and Sunni jurists consider organ transplantation to be permissible on the basis of principles that needs of the living outweigh those of the dead. Saving a life is of paramount value in Islam as the following verse from the Quran illustrates “And if any one sustains life, it would be as if he sustained the life of all mankind”<sup>10</sup>. The Islamic Jurisprudence Assembly Council in its meeting in Saudi Arabia on Feb 6-11, 1988 ratified resolution number 26.1.41 allowing the use of the living or cadaveric organs, confirming the positive and legitimate use of human organs in transplantation. The majority of Shiite jurists confirm organ transplantation especially when human life is at stake.<sup>11</sup>

### **Sources of Organs**

There are presently three sources of organs for transplantation: (a) living donors, (b) cadavers, and (c) brain dead donors. Majority of Sunni and Shia scholars with certain caveats, to be noted below, have approved all three procedures.

### **Living donors**

In the case of the living donor, the criteria for organ donation are two. Firstly, the life of a living donor should not be put at risk, as they are already alive and healthy and they have a greater right to their continued health and a greater chance at extended life than a person that is already ill. Therefore, the donations of vital organs such as the heart are not allowed in Islam, nor should a person who is physically too unstable to tolerate the process of organ harvesting volunteer for an organ. The second criterion is that the donor should donate of their own free will (discussed further below) as there is no compulsion in non-obligatory acts in Islam.<sup>12</sup> The benefit of using living donors is that in non-urgent cases, more time can be spent finding organs that are

compatible with respect to blood type and size (in case of pediatric recipients) and for the donor and recipient to become psychologically prepared for the long surgery, recovery and alteration to the physical appearance of their body. The drawback is that physical harm comes to one person for the benefit of another. However, this is considered an acceptable side effect because of the rule of choosing between the lesser of two maladies, i.e. one person dies and one lives, or, two people live, both with physical deformities.

### **Cadaveric Donors**

The underlying jurisprudential concepts for allowing donation and transplantation are that the needs of the living outweigh those of the dead and that extending the life of one is like extending the life of all mankind. The justification for using cadaveric donors is that their need for organs vital and non-vital has ceased, removing the conflict of interest presented by their personal right to the use of the organs(s) while alive. Ordinarily, the dead have a right in Islam to the sanctity and wholeness of their body,<sup>13</sup> but as we have already noted, the need to save a life overrides this injunction as it has a prima facie importance in the mundane affairs of mankind. While saving a life is of paramount importance in Islam, the family of the deceased must consent and there are in no way obliged to consent to organ donation even if it involves the death of another person who is alive but gravely ill.

The benefit of cadaveric transplantation is that no harm comes to the living in donating the organ and that multiple organs can be harvested at one session for maximal benefit to people. The drawbacks are that the organ(s) being transplanted is compromised to a certain extent by ischemia or infection, and that there is a limited time for subsequent transplantation depending on the organ in question. An important tangent to this point is that the main objection to organ transplantation by many jurists in the past had been this point of bodily mutilation (i.e. cutting the body for organ harvesting), which is forbidden in Islam. The reason that the scholars had reversed their opinion was that the question of organ

transplantation was rephrased in terms of prolonging life and not bodily mutilation, and that as his expertise became available in Muslim-majority countries, its benefits became self-evident. In addition, it has been reasoned that the “ownership” of organs, like that of property, is relative and subjective because God is the ultimate “owner” of the universe having created it. Therefore, it would be permissible to donate them because God had placed great value on saving a life.

### **Brain Dead Donors**

One of the most common sources of organs is the brain dead patient. The advantage is that the donor is (usually) in the hospital. This allows careful pre-harvesting management to optimize organ utilization and survivability out of body before transplantation and rapid re-implantation. This minimizes ischemic time, or, damage to the organ from being cut off from blood and nutrients temporarily. Disadvantages include the frequent absence of consent by the patient prior to (brain) death and the potential for patients of minority races, lower socioeconomic status or public insurance to receive inferior care to hasten a brain death state for organ removal.

Before examining the Islamic rulings on these and related issues, the more relevant issue is the consideration of legality of brain death as “true death”. “Brain death” as a type of medically and legally acceptable death was first considered in the early 1960’s; with the 1968 Harvard report becoming the “standard” definition of brain death.<sup>14</sup> In 1970 the United States President’s Council on Bioethics recommended the Harvard report to the President and from then on the majority of countries and international professional associations have accepted it. Brain death can be defined as follows:

When the brain is damaged, and its activities completely cease, brain death is present, even if it is possible for the patient to be kept alive in a vegetative state with artificial respiration and medications; even if the heart and liver are functioning. Brain death is indisputably established and is considered irreversible if, when

artificial respirations are ceased, spontaneous respiratory effort ceases within five minutes.

There are a variety of views concerning death in Islam, in part physical, in part metaphysical, but inextricably entwined. Physical death, traditionally, was when the heart stopped beating and the body grew cold,<sup>15</sup> although this was by empirical observation and not a divine or prophetic pronouncement. Metaphysical death is when the spirit (*ruh*) departs, which is evidenced when the body is no longer animated. As a consequence, the soul (*nafs*), the conscience and essence of personhood, separates from the body. As long as the body contains the soul, to bring harm to it is a sin and to remove life support while the heart beats has been considered tantamount to murder. Hence, Islamic scholars initially had trepidations in considering death to be other than the cessation of cardiac activity. Even with the acceptance of brain death, it is not considered to be death in terms of jurisprudence because the heart has not stopped beating, nor has the body grown cold. It is accepted as an indication to deescalate intensive medical support because of the profound and irreversible nature of physiologic damage. Ayatollah Khomeini in the early 1980’s issued an edict equating brain death with cardiac arrest based on the medical evidence that was presented before him. Nearly all contemporary Shiite jurists have followed suit, allowing the harvesting of brain dead patients provided that the definite brain death would be pronounced by experts and there would be no revival of the vitals.<sup>16</sup> It has been interesting to note that at least in the Islamic Republic of Iran, the response of the jurists to this issue has preceded that of the legislature. It was an edict (*fatwa*) by the spiritual leader of the government, Ayatollah Khamenei that helped spur on the legal mechanisms to allow for a transparent system for organ donation and remove it from black market influence.<sup>17</sup> In such a case making use of organs of the dead has been allowed by Shiite and Sunni jurisprudence. It should be reemphasized that while many scholars have accepted brain death as a valid pronouncement of death it has not attained the level of consensus among the jurisprudents.

## Shortage of Organ

There continues to be a significant need for organs with thousands dying each year while wait-listed. Some of the reasons for this include technical issues of preservation and transport, limited transplantation centers, inequitable distribution schemes, black market trafficking, prohibitive costs in developing countries and misunderstanding and concerns among the public about organ transplantation.<sup>18</sup> Public education would go a long way in making more organs available for harvesting and transplantation, granted that it is presented in a religiously and culturally appropriate framework.<sup>19</sup>

The jurists have encouraged organ donation in their public pronouncements, and exhorted the virtues of sympathy and altruism that Islam favors so much. For example, the prophet Muhammad described the community of pious believers as being part of one body in their mercy towards each other, adding, "If any part of the body is not well then the whole body shares the sleeplessness and fever with it".<sup>20</sup> However, there still remain several concerns among people, especially those who come from disadvantaged or minority groups, including the loss of work days, productivity and income in the case of living donors.<sup>21</sup> While the prospect of remuneration of organ donation remains anathema among professionals in developed countries, one survey of Americans found that lay people do not find it unreasonable as long as the remuneration is non-monetary and small in value.<sup>22</sup> Furthermore, Catholics have found justification for remuneration of donors based on consideration of public good.<sup>23</sup>

Shiite jurists have ruled favorably on this issue granted it is done out of expediency during situations of medical necessity.<sup>24</sup> Sunni scholars have had more trepidation on this issue, but a number have allowed it and it is gaining acceptance.<sup>25</sup> The Islamic Jurisprudence Assembly Council of Saudi Arabia in their 1988 meeting ruled out the sale of human organs under ideal circumstances but have, practically speaking, allowed for it tacitly acknowledging the urgency of the situation. There still remains some ambiguity as far as what is considered a

reasonable gift and what the mechanisms would be to prevent open trafficking of organs through coercion or in exchange for relief of debts, etc.

## Informed Consent

Islamic law recognizes the intellectual autonomy of every adult, rational individual, male and female. Free will, rationality and personal accountability are hallmarks of Islam's view of man. For example, in the Quran, we read, "The truth is from your Lord, so let him who please believe, and let him who please disbelieve" (18:29, Sūra Al-Kahf). Informed consent can be defined as the act of giving accurate and pertinent information to a physically mature and sane patient in order for them to freely decide on a treatment or procedure. In the case of a living donor as with any other procedure, consent must be obtained in Islamic law. This pertains for men and for women. Third parties, such as spouses, parents, or adult children, cannot decide for a patient as long as the patients are competent.<sup>26</sup> There is a prophetic saying that goes, "Freedom, in truth, is to be free in all affairs".<sup>27</sup> The case of brain dead and cadaveric donors is more controversial. As we have noted above, those scholars who do not consider brain death to be a form of death naturally don't allow for organ harvesting from brain dead patients.

But as to those who acknowledge brain death as a form of death and allow organ donation from both groups, the problem of consent still remains. It is required in Islam for every adult to have a will and to entrust another person with execution of their will and their physical remains. Because the living person becomes the decision maker as to the disposal of the body, it has been reasoned that if that executor is a close relative, they may give consent for organ donation in the absence of explicit permission or explicit prohibition against it by the deceased.

The Islamic Jurisprudence's Assembly Council of Saudi Arabia affirmed in 1988 in the following fatwa the permissibility of proxy consent: "Transplantation of an organ of the dead to a living human being whose life or essential function of the body would rely on the donated organ is allowed, provided that the dead (before

his death) or his heirs permit it. And the permission of the Islamic authority is needed.” Shiite scholars have made similar rulings.

## Discussion

While the Islamic contribution to the discussion on problems in bioethics is relatively new, there exists a long and well documented history of writings on ethics in general, including medical ethics going back to the Prophet Mohammad himself who gave advice to physicians on accountability, remuneration and on interaction with patients. There is then a rich source of material on which current Muslim theologians, jurists, philosophers and physicians can draw on to contribute to the international discussion on various bioethical topics in the legal, moral, metaphysical and physical realms. Furthermore, the long tradition of *ijtihad*, especially among the Shiite jurists will allow for continuity of Islamic principles in changing circumstances and realistic, practical solutions to new problems. The time, place and circumstances effect the substance of the decree given by a jurist and the same edict can be rescinded or altered in favor of an event if the situation changes, in matters not related to fundamentals of religion.

While the four ethical principles of autonomy, beneficence, non-maleficence, and justice<sup>28</sup> are shared between the Islamic and Western intellectual traditions, divergent opinions are bound to come up owing to Islam’s emphasis on justice and beneficence over autonomy where there is a conflict with the public good. Furthermore, there is still not good contact and discourse between physicians as practitioners of new procedures with jurists, theologians and philosophers who are expected to first understand then weigh in on the moral aspects of it. This leads to a disjointed response to new biomedical problems. In the case of organ transplantation, the jurists approved it long before it was a practical consideration in many Muslim countries and long before legal mechanism were in place to ensure a smooth and equitable system.

As advancements in organ transplantation and bio-artificial organs continue, yet other ethical problems will arise. We recommend that Muslim intellectuals and practitioners carefully study and

appreciate the opinions of Western ethicists so as not to parse each issue *de novo*. Conversely, Western ethicists should consider the Islamic approach to these issues that comes from a theocentric and virtue-oriented basis as opposed to the predominantly humanistic and materialistic approach. Finally, ethicists, physicians and philosophers from Jewish, Christian, and Islamic traditions should study and appreciate the similarities and differences of opinions and approaches to these issues in order to create a more concerted and widely-heard discussion from a religious perspective.

## Conclusion

In conclusion, Islam has a great concern and respect for human life and promotes the preservation and prolongation of such life. In this respect, organ donation has become acceptable to most jurists and is practiced in many Muslim countries. There remain a number of issues where divergent opinions exist among the scholars, such as brain death and organ harvesting without consent of the deceased. Furthermore, there will be procedures and therapeutic techniques that may never be considered acceptable because they conflict with Islamic concepts of justice, human dignity or sanctity of life. The overriding considerations with any new treatment is metaphysical and man’s accountability in the afterlife. As Ayatollah Khamenei stated, “In cases where, after referring to legal (*shar’i*) documents and sources for precise verification of an issue, it can still not be made to conform to the views of the researchers and thinkers, we should ignore the apparent benefits, because the real benefit (for man’s salvation) lies with observance of divine decrees”.<sup>29</sup>

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