

Organ Donation among Muslims:

An Examination of Medical Researchers' Efforts to Encourage
Donation in the Muslim Community

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INTRODUCTION

The shortage of organs for transplantation has in recent years led researchers in transplant medicine and community health to develop new initiatives to reach out to minorities to encourage them to become organ donors. Many of these efforts have also focused on Muslims as potential donors. In the spirit of this effort, in the 1990s, British researchers from the Birmingham Organ Co-ordination Team began collaborating with the UK Muslim Council to address the issue of low numbers of Muslim organ donors in Britain. This collaboration led the Council to issue a fatwa in 1995 that included several resolutions that, it was hoped, would encourage British Muslims to donate their organs. This project, hereafter referred to as the Birmingham initiative, was lauded in the medical community. It was “considered a success and a step forward and it was hoped it would lead to a breakthrough in resolving the problem of low donor rates among Muslims.”¹

Nine years later, however, researchers were disappointed to note that Muslim donor rates had not increased significantly since the passing of the fatwa. The study concluded that the anticipated impact of the fatwa had not been realized and that the initiative was an overall failure. The tone of the study is one of clear disappointment at the failure of the initiative, which they vividly describe as having “fallen flat.”² It describes the situation of low numbers of Muslim donors as being unresolved “despite” the efforts of the researchers.³ The impression, therefore, is that the researchers were generous enough to show cultural sensitivity and meet the Muslims half way, but the Muslims refused to oblige. The study also harbors some more disturbing undertones. The authors write:

¹ Razaq S, Sajad M, “A Cross Sectional Study To Investigate Reasons For Low Organ Donor Rates Amongst Muslims in Birmingham.” *The Internet Journal of Law, Healthcare and Ethics*. 4(2), 2007, pg. 2

² *Ibid*, pg. 5

³ *Ibid*, pg. 5

[P]erhaps a more harsher [*sic*] regime has to be enforced, whereby the Muslim community is advised that organ transplantation can only be offered as an option to them is [*sic*] they are willing to become a donor. Although this policy would be highly controversial, it would certainly eliminate the issue of Asians being disproportionately over-represented on the waiting lists for organ donors.⁴

The implication in this passage is the proverbial “we tried to play nice, but you did not listen, so now we have to do it the hard way.”

The Birmingham initiative was a commendable example of cultural competency within the medical community and an effort to reach out toward minorities, but the blame for its perceived failure was perhaps too hastily attributed to the Muslim community itself. Also too hastily-declared is the proposition that a “harsher regime has to be enforced.” I argue, rather, that an important reason for the initiative’s failure comes from the side of the researchers, as well. This study is just one of the many among researchers who study the Muslim community in that it lacks a complete understanding of the dynamics of ethical decision-making among Muslims and how the personal aspect of these dynamics intertwine with their societal aspects. Study after study among medical researchers makes incorrect assumptions about ethics among Muslims. This thesis is an attempt to examine the issue of ethics in Islam more closely, particularly in the context of organ donation and transplantation, and to bring it into a wider context of ethics in Islam and among Muslims. The hope is that this examination will lead to the discovery of important shortcomings in the approach by the researchers of the Birmingham initiative, and therefore propose a better strategy for encouraging organ donation among Muslims

⁴ Ibid, pg. 6

Background Behind Organ Donation and Transplantation

Skin, cornea, and blood vessels were being transplanted since the early 1900s. Transplant medicine developed during the first and second World Wars, and the first successful transplant operation occurred in 1954 with the transfer of a kidney. The first transplant operation to be conducted in the Muslim world was in Jordan in 1972. By now, organ transplantation is an established and widely-accepted form of treatment all around the world for several kinds of illnesses.

The term “organ donation” refers to the removal of an organ, or part of one, from the body of a donor. “Organ transplantation” is the replacement of a patient’s diseased organ with one from the donor. In this thesis, the process of donation and transplantation as a whole is referred to as organ transplant treatment.

Organ donation is of two types: live and cadaveric. In live donation, the removal of organs from the donor does not threaten the life of the donor. The other organs that remain in the donor’s body can regenerate or enlarge to make up for the loss of the donated organ. Kidney donation, for instance, falls into the category of live donation because after one kidney has been donated, the second kidney that remains in the donor’s body enlarges and takes on the functions of the donated kidney. In cadaveric donation, however, the donor is no longer living, and therefore, organs that are critical to life such as the heart and lungs can be harvested as well.

The question of when death occurs is closely related to the discussion of cadaveric donation. Until recently, the most commonly-held criterion for death has been heart-lung death in which a patient is declared dead once the heart and lungs cease to function. In the case of organ transplant treatment, however, the concept of heart-lung death is

problematic because once a potential organ donor is declared dead based on heart-lung death, the potential donor's organs become deprived of oxygen and begin to deteriorate before they are harvested. An operation to transplant these slightly-deteriorated organs into a recipient is less likely to succeed.

The concept of brain death was introduced and popularized in 1968 by an Ad Hoc Committee of the Harvard Medical School headed by Henry Beecher. According to the brain death concept, death occurs when the brain is irreversibly damaged and loses all its functions. The important thing, however, is that brain death usually occurs well before the cessation of heart beat and breathing. In other words, a brain-dead individual still breathes and has a heartbeat. Brain death is very consequential for organ donation because if brain death is accepted as a legitimate marker of death, then once it occurs, the organs can be harvested. Since the heart is still beating, the harvested organs will not have begun to deteriorate due to lack of oxygen. This will lead to more successful transplantations when those fresh organs are transplanted to recipients. In the context of medical ethics in Islam, however, the controversy arises over the question of whether or not brain death is considered legal death in Islam, a question that is examined in more detail later.

Islamic Tenets Pertinent to Organ Transplant Treatment

Why should the question of permissibility come up at all when considering Islam and organ transplant treatment? The reason is that transplant treatment clashes with certain Islamic principles found in the Quran and Hadith. In order to demonstrate why organ donation poses a potential problem, it is useful to analyze the work of Muhammad Shafi Uthmani and consider it as representative of the reasoning of most jurists who hold to the

opinion of prohibition, as well as those lay Muslims that hold the same opinion, albeit subconsciously.

Shafi, who served as the grand mufti of Pakistan during his life, was one of the earliest Muslim scholars in history to tackle the question of transplant treatment. He commissioned the Majlis-e Tahqiq-e Masa'il-e Hadirah, or Council for Research of Modern Issues, consisting of jurists from prominent Pakistani scholars to examine the issue, and Shafi himself sat at the head of the Council. Shafi published the Council's resolution in a pamphlet titled *Insani Aza ki Paivandkari, or The Transplantation of Human Organs*. Shafi cites two main reasons for the impermissibility of organ transplant treatment in Islam, whether medically necessary or not.

The most important reason why organ transplantation is impermissible, according to Shafi, is that it goes contrary to man's place in the divinely-established order of the universe. Shafi writes:

God Most High has created the entire universe and creation for the benefit and use of the human being, and the human being has been created as the master and consumer of the entire universe. The following Quranic verses are evidence of this point: "And verily we have honored the children of Adam," and "He has created for you all that is on the earth."⁵

In other words, Shafi views the entire world as having been put at man's disposal by God. He sees humans as bestowed with honor and sanctity by God, and at the top of the universe's order, with everything else being subservient to them. Therefore, Shafi divides organ transplantation into three types. The first two, transplantation of animal organs and artificially-constructed organs into humans, he deems to be permissible, because the

⁵ Shafi M, *Tanshit al-Azhan fi 't-Tarqi' bi A'da al-Insan ya'ni Insani Aza ki Paivankari*, Karachi: Darul Isha'at. 1967, pg. 30 (Hussaini) (Translation mine)

organs that are being donated are non-human in origin, and therefore, their only purpose according to Shafi's world-view was to be of use to humans in the first place. The third type of transplantation, however, is the transplantation of a human's organ into another human. Shafi sees this as problematic because the sanctity of the human whose organs are being donated is violated. Mohammad Omar Hussaini explains it best:

The same sanctity and rank that allows man access to utilize created reality to his benefit is the same distinction that requires that his own parts not be utilized...Use is seen as devaluing, and thus a violation of the divinely endowed sanctity of the human body.⁶

Shafi quotes several classical jurists in defense of his opinion. He quotes the *Hidayah* of Imam al-Marghinani in which it states:

It is unlawful to sell the hair of a human, as it is (unlawful) to derive benefit out of it, for a human is honored and sacred, and it is not permissible to disgrace any part of a human's body.⁷

He also lists numerous other classical Muslim jurists such as al-Kasani and Ibn Qudamah who stated that if one was compelled by force to kill another human, it will not be permissible, even if his own life was in danger. He also quotes other classical opinions on the impermissibility of deriving benefit from a human's hair, teeth, and skin. In all these examples, Shafi argues that the common denominator is that one human is taking benefit from another's body. He even quotes the following example of a case of extreme necessity in *al-Fatawa al-Hindiyyah* to argue the impermissibility of transplant treatment whether medically necessary or not:

⁶ Hussaini, MO, *Organ Transplantation: Classical Hanafite Perspectives*. n.d. www.pureway.org, 2007, pg. 12

⁷ Al-Kawthari M, *Organ Donation & Transplantation*. n.d. ww.daruliftaa.com, 2004

If a person feared death due to hunger and another person said to him: “Cut off my hand and consume it” or he said: “Cut a part of me and eat it,” it will be unlawful for him to do so.⁸

Based on all these examples, Shafi sees organ transplant treatment as a human taking benefit from another human, which goes against the natural order that he interprets the Quran and Hadith to suggest. He sees it as impermissible even in life or death scenarios. He also mentions the famous hadith that states, “Breaking the bone of a dead person is similar to breaking the bone of a living person.”⁹ Based on this, Shafi concludes that the body of a dead human is just as sanctified as the body of a living human, thereby addressing cadaveric donation as well as live donation.

Shafi’s second reason for impermissibility of organ transplant treatment is that it goes against the relationship between humans and God. He writes that God has given man all of his organs as a loan and a trust, and that “he has not been made the owner of them.” Shafi is alluding to numerous Quranic verses which assert that God is the owner of everything in the universe such as, “To God belongs the dominion of the heavens and the earth and whatever is within them. And He is over all things competent.”¹⁰ Shafi claims that since God owns a human’s body, the human has no right to sell or donate any part of that body, since one cannot give what one does not own. He writes:

The Jurists, may God have mercy on them, have resolved based on a clear foundation of evidence from the Quran and Sunnah that for a man dying of hunger and thirst, the eating and drinking of carrion or other forbidden things becomes lawful out of necessity, but even in this state it is not permitted that he eat the flesh of another living human, nor is it

⁸ Ibid

⁹ Ibid

¹⁰ Quran (5:120)

permissible for any man to offer his own flesh or organ to another. This is because the sale and purchase or gift and charity can only be done on what the man owns. The human soul and human organs are not in man's possession, and hence he cannot give them to anyone.¹¹

In other words, Shafi views signing a donor card as analogous to writing a will, and inheriting the deceased donor's organs is analogous to inheriting money or other material items. Shafi rejects this view of human parts as on the same level as money or property that can simply be inherited.

But the issue of organ transplant treatment in Islam is much more complicated than this. In fact, an entire body of Muslims refutes this interpretation presented by Shafi, and they hold that transplant treatment is permissible according to Islamic law. Muhammad Al-Kawthari summarizes the most important legal arguments for the permissibility of organ donation and transplantation. The most commonly cited evidence for the permissibility is the well-known legal maxim, "Necessity makes what is prohibited lawful." This is based on several verses of the Quran such as the following:

He (God) has only forbidden you (the consumption of) carrion, blood, the flesh of swine, and that on which any other name has been invoked besides that of God. But if one is forced by necessity, without willful disobedience, nor transgressing due limits, then he is guiltless. For God is Most Forgiving and Most Merciful.¹²

In this verse, the Quran permits the eating of non-permissible food in cases of extreme necessity. By analogy, organ transplantation would also be considered permissible if it is a life-or-death scenario. According to this reason, the effort to save a life through transplantation will take precedence over preserving the sanctity of the human being as

¹¹ Shafi M, *Insani Aza ki Paivandkari*, pg. 31-32

¹² Quran (2:173)

mentioned above. This is further supported by the well-known legal maxim, “If one is confronted with two evils, one should choose the lesser of the two.”

Finally, the jurists who support transplantation disagree with the argument of impermissibility due to humans not owning their bodies and organs. Al-Kawthari writes:

Islam permits a human in certain situations to utilize his body. It is similar to the wealth which Allah Almighty has given a human, and he is permitted to utilize it (in a correct manner) and give it as a gift. If an individual is drowning or in the midst of a burning flame, it is totally permissible to go and save him and put yourself in danger [*sic*]. Similarly, it will be permissible to donate your organ in order to save the life of a fellow human being.¹³

¹³ Al-Kawthari, M. *Organ Donation & Transplantation*.

Chronological Summary of Official Fatwas Regarding Organ Transplant Treatment

Year	Jurist/Organization	Position	Country	Summary of Ruling		
				Prohibited	Permissible	Comments
1959	Hasan Mamun	Grand Mufti	Egypt		See comment	Corneal transplants are permissible
1966	Abd al-'Al Haridi	Grand Mufti	Egypt		x	Organ trading is prohibited
1967	Muhammad Shafi Uthmani	Grand Mufti	Pakistan	x		
1969	Islamic International Conference	International Conference	Malaysia		x	
1972	Algiers Supreme Islamic Council	National Council	Algeria		x	
1973	Muhammad Khatir Muhammad al-Shaykh	Grand Mufti	Egypt		See comment	Harvesting skin from unidentified corpses is permissible
1977	Supreme Council for Fatwas	National Council	Jordan		x	
1978	Senior Ulama Council	National Council	Saudi Arabia		See comment	Corneal transplants are permissible
1979	Gad al-Haq Ali Gad al-Haq	Grand Mufti	Egypt		x	
1980	Fatwa from Ministry of Endowment	National Council	Kuwait		x	
1981	1st Internat'l Conf. on Islamic Medicine	International Conference	Kuwait		x	Transplants involving injuring to donor are permissible
1980	Religious Affairs Supreme Council	National Council	Turkey		x	
1982	Senior Ulama Council	National Council	Saudi Arabia		x	
1985	IFA-MWL - 8th Session	International Conference	International		x	
1986	Council of Islamic Jurisprudence	International Conference	Amman		See comment	Brain death equals actual death in Islamic law
1986	IFA-OIC - 3rd Session	International Conference	International		See comment	Brain death equals actual death in Islamic law
1987	Muhammad Sayed Tantawi	Grand Mufti	Egypt		x	Selling organs is prohibited
1988	IFA-OIC - 4th Session	International Conference	International		x	
1989	IFA-India	National Council	India		See comment	Live donation is permissible, cadaveric donation is prohibited
1994	University of al-Azhar	National Council	Egypt		x	
1994	Ahmad bin Hamad al-Khalili	Grand Mufti	Oman		x	
1996	Indonesian Council of Ulama	National Council	Indonesia		x	
1995, 1998	Yusuf al-Qaradawi	Independent Mufti	Egypt/Qatar		x	Brain death equals actual death in Islamic law

Views According to Major Jurists

According to the table above, both live and cadaveric donation seems to be very widely-accepted among Muslim jurists. Of all the major official research fatwas on the topic, only Shafi's *Insani Aza ki Paivankari* takes a clear stance against donation in all its forms, while IFA-India permits live donation but prohibits cadaveric donation. But these two opinions seem to be outliers. Why, then, have medical researchers held organ transplant treatment in Islam to be a "controversial" subject? In other words, are these mere two fatwas the only reasons why the Birmingham initiative failed? What is the connection between these fatwas and the prevailing notion among Muslims on the ground that transplant treatment is taboo in Islam? This thesis attempts to examine these questions in greater depth. In order to begin examining these questions, we will begin by examining the attitudes of Muslims on the ground.

CHAPTER 1: POPULAR PERCEPTIONS

In order to begin answering these questions, we will examine research studies on attitudes and perceptions regarding organ transplant treatment among Muslims. Most of the studies and research that is examined in this thesis are from Saudi Arabia, Turkey, and the United Kingdom, as well as a limited amount from Egypt, since these are simply the countries where most research has taken place regarding popular perceptions among Muslims. An examination of these studies reveals two prominent and recurring themes.

Theme of Popular Uncertainty

The first theme is that there is a great deal of uncertainty among Muslims as to how to approach the question of donation.

For instance, a 1996 study conducted in Saudi Arabia, surveyed 205 men attending the out-patient department of a hospital in Riyadh.¹⁴ Only 56% of the subjects believed that Islam permits people to donate organs. Of the rest of the subjects, most reported “don’t know,” while others did not attempt to answer the question at all, and 2% said that Islam does not permit donation. These results are disappointing because almost half of the subjects showed uncertainty despite the 1982 resolution by the Saudi Senior Ulama Council that permitted transplant treatment.

Another 1996 study surveyed 839 secondary school students in Riyadh.¹⁵ Only 42% of the subjects knew that Saudi jurists had decreed that Islam permits organ donation. In this study, the subjects who were unaware of the Saudi fatwa actually formed the majority.

¹⁴ Altraif IH, Al Sebayel MI, Nondo H. “Knowledge and Attitudes toward Organ Donation among Males in Riyadh, Saudi Arabia,” *Saudi J Kidney Dis Transplant*, 7(2) 1996.

¹⁵ Shaheen FAM, Souqiyeh MZ, Al-Attar B, Jaralla A, Al Swailem AR. “Survey of Opinion of Secondary School Students on Organ Donation,” *Saudi J Kidney Dis Transplant*, 7(2) 1996

A similar situation can be seen in other parts of the Muslim world. In Turkey, for instance, Dr. Halil Bilgel conducted two surveys to determine the attitudes toward organ donation in Muslim Turks, one published in 1991 and the other in 2004.^{16,17} In the 1991 study, 50.5% of subjects were willing to donate, while 33.7% of subjects refused to donate organs, and 15.8% reported that they were not sure. Among the subjects that refused to donate, 26.2% cited religious beliefs as the reason for their refusal, and 6.9% cited the belief that they will need their organs in the afterlife. Since matters that deal with afterlife are so often connected with religion, the second reason for refusal can also be interpreted as relating to religious beliefs. The authors themselves admit that the belief that Islamic law prohibits cadaveric organ harvesting was a “common” perception among the subjects.

In Bilgel’s follow-up study in 2004, however, although the number of subjects willing to donate had slightly increased to 57% and unwillingness to donate had decreased considerably to 18.3%, the percentage of those who were uncertain had also increased to 24.7%. The authors concluded that “the Turkish public’s attitudes toward organ donation are the same today as they were twelve years ago. Some minor changes have taken place, but they are insignificant.” They also noted that “opinions have shifted from refusal to donate to uncertainty.” These results were disappointing considering the amount of progress Turkey had seen in those twelve years with regard to organ transplant treatment, including the development of transplant technology, the establishment of the National Coordination Center For Organ Transplantation, and the passing of more than twenty

¹⁶ Bilgel H, Bilgel N, Okan N, Kilicturgay S, Ozen Y, Korun N. “Public attitudes toward organ donation: A survey in a Turkish community,” *Transplant Int.* 4. 1991.

¹⁷ Bilgel H, Sadikoglu G, Goktas O, Bilgel N. “A survey of the public attitudes toward organ donation in a Turkish community and of the changes that have taken place in the last 12 years,” *Transplant Int.* 17. 2004

years since the Turkish Religious Affairs Supreme Council ruled that donation was permissible in Islamic law.

The same can be observed among Muslims in the UK, where the Birmingham study that collaborated with the UK Muslim Council was based. In a 1999 qualitative study in Luton, UK, researchers held focus groups and individual interviews with participants of South Asian ethnicity, including British South Asian Muslims.¹⁸ The study concluded that one of the main reasons for subjects deciding not to donate was that “they did not know what their religion’s stance was on the subject.”¹⁹

In another 1999 study of British South Asian perceptions it was found that “of the 7 people who were not sure whether their religion allowed organ donation and transplantation, 6 were Muslim.”²⁰ In another pilot study, researchers conclude that there exist, “significant reservations concerning the issue of organ and body donation even amongst young educated British Muslims.”²¹ They speculate that “it is likely that religious considerations are an important determining factor.”

Theme of Popular Lack of Resolve

The second theme that can be seen in surveys of Muslim attitudes toward organ donation is that even in the cases where Muslims do believe cadaveric donation to be permissible, there is a lack of resolve to take active steps to donate. In other words, for

¹⁸ Darr A, Randhawa G. “Awareness and attitudes towards organ donation and transplantation among the Asian population: A preliminary survey in Luton, UK.” *Transpl Int.* 12. 1999

¹⁹ This study is justified in focusing on the South Asian community because the majority of Muslims in the United Kingdom are of South Asian ethnicity. One study published in 2011 (http://www.muslimsinbritain.org/resources/masjid_report.pdf) estimates that about 85% of British mosques and Islamic centers are run by South Asians, and an analysis of the 2001 Scottish census (<http://www.scotland.gov.uk/Publications/2005/02/20757/53570>) shows that among Scottish Muslims, 67% are of Pakistani ethnicity alone, not to mention other South Asian ethnicities.

²⁰ Ahmed W, Harris S, Brown E. “Attitudes to organ donation among South Asians in an English high street,” *JRSM.* 92. 1999

²¹ Sheikh A, Dhami S, “Attitudes to organ donation among South Asians in the UK,” *JRSM.* 93. 2000

these Muslims, the belief of legal permissibility does not translate into a motivation to act. The bases for this claim are the shockingly low percentages of subjects who carry signed donor cards.

The highest percentage of subjects agreeing with the signing of a kidney donor card is seen in a 1991 Saudi study by Salah Al-Faqih.²² In the study, 10.1% of the 753 respondents had signed a card previous to being surveyed, and 42.6% expressed willingness to sign a card during the process of the survey. Therefore, the overall percentage of subjects that accepted the harvesting of their own organs for cadaveric donation was 52.7%. This study is certainly an anomaly, however, because in most other studies, the percentage of Muslims holding donor cards does not exceed, and is often exceedingly below, 15%.

In a 2004 study that surveyed 22 Saudi physicians in Riyadh, the authors write:

Ninety percent of the intensivists knew about the Islamic view on organ donation [a.k.a. the view expressed in the 1982 resolution of the Saudi Senior Ulama Council]. Seventy-two percent would agree on donation if one of their relatives became brain dead, 12 would not agree, and one could not decide; however, only 13% carry donation cards.²³

Therefore, the subjects' knowledge of permission to donate from Saudi jurists and the subjects' theoretical agreement to donation – demonstrated by their willingness to consent to harvesting of a brain dead relative's organs – was not enough to motivate them to sign donor cards for themselves.

²² Al-Faqih SR. "The Influence of Islamic Views on Public Attitudes Towards Kidney Transplant Donation in a Saudi Arabian Community." *Public Health*. 105. 1991

²³ Al Sebayel MIM, Khalaf H. "Knowledge and Attitude of Intensivists Toward Organ Donation in Riyadh, Saudi Arabia." *Transplantation Proceedings*. 36. 2004

In the 1996 study of Saudi secondary school children mentioned above, only 0.04% of subjects carried donor cards, and only 0.06% agreed to mark their consent to donate on their driving licenses, despite the fact that 42% were aware of the resolution of the Saudi jurists, and that 68% agreed to give consent for harvesting the organs of a brain dead relative.²⁴

The same is observed in Turkey.^{25,26} In comparing the two Turkish studies by Bilgel, the 1991 study recorded 0.4% of the subjects as carrying donor cards, and the 2004 study reported only 1.7%, despite the fact that more than 50% of subjects reported that they were willing to donate.

Analysis of Popular Perceptions: May I? versus Should I?

We have seen that there is uncertainty and lack of resolve among Muslims regarding donating organs. What is the cause of these two observations? Medical researchers seem to suggest that the problem is rooted in Islamic law: either that many Muslim jurists prohibit donation, or that the opinion of jurists that do permit donation is not widely known. These were the assumptions behind the Birmingham initiative, for instance, that led the researchers to approach the UK Muslim Council. That they encouraged the Council to pass a fatwa implies that they believed that a misunderstanding of Islamic law was the problem, which the fatwa would remedy. They assumed that Islamic ethics was only about Islamic law. In fact, however, it is more accurate to think of Islamic law as only the first step in a larger, dynamic process of ethical decision making among Muslims.

²⁴ Shaheen FAM, et al. "Survey of the Opinion of Secondary School Students." 1996

²⁵ Bilgel H, et al. "Public attitudes toward organ donation." 1991

²⁶ Bilgel H, et al. "Changes that have taken place in the last 12 years." 2004

A simple example to demonstrate this difference is the case of a man deciding between two shirts to wear, one blue and the other white. At first glance, this may seem to be merely a decision of preference and not ethics, and in that regard very different from the decision to donate organs. To a Muslim, however, an ethical decision is simply a choice based on the following question: “What will make God most pleased with me?” With this in mind, almost any decision in a Muslim’s life, even the most mundane, can be seen as an ethical dilemma.

In approaching the question of which shirt to wear, a Muslim jurist will decree consult the scripture and decree that under normal conditions, both shirts are permissible to wear since there is no scriptural evidence to suggest otherwise. What this fatwa of permissibility means is that God will not be angry and punish the man no matter which shirt he decides to wear. The law has answered the question of “May I?” Past this point, however, the fatwa still does not help the man in making a choice between the two, and the question of “Should I?” is still unanswered.

If the man next consults, for instance, a Sufi shaykh, the shaykh might answer that Muhammad was fond of white clothing and provide as evidence a narration from a collection like *Shamail al-Muhammadiyah* or *al-Shifa*. Then the shaykh might evoke a principle in Islamic spirituality that encourages Muslims to imitate Muhammad and inculcate his Sunnah into their lives. Therefore, the shaykh will conclude by advising the man that the best course of action is to choose the white shirt with the intention of wearing a color that Muhammad preferred. By doing so, the shaykh may say that God will be pleased and reward the man, but if the man still chooses to wear the blue shirt, he will be blameless and God will not punish him.

In this example, law by itself was unable to help the Muslim with making a choice as to what he *should* do. Rather, it only served as the first step. This is significant in the discussion of ethics and organ transplantation because normative ethics is concerned almost entirely with the question of *should*: choices that people make, and on what basis they are made.

CHAPTER 2: THE UNEXPLORED ROLE OF CLERICS

This example introduces us to an entire body of Islamic authority figures that researchers on organ donation have by and large ignored as a distinct body in their own right, separate from the jurists. I call this body the clerics, but many other classes of non-clerical figures may also be part of this body. Some examples are imams of masjids, Sufi shaykhs, Friday khatibs, Sunday school teachers, chaplains, evangelists, and community leaders. Another modern addition to this body are the “e-clerics,” in the form of question-and-answer websites such as Sunnipath QA, AskImam, Islam-QA, and Islamonline.

Sometimes, the jurist category and the cleric category might overlap. For instance, many jurists also happen to be Sufi shaykhs. The common feature of all members of the cleric category, however, is their role as middle-men between the jurists and the average Muslims. Just as the question of “May I” is the concern of the jurists, the question of “Should I” is their primary field of concern. In other words, the role of the clerics is to provide spiritual guidance, knowledge, and motivation for the Muslim community.

These clerics are the best-positioned sector of Muslim society to address the distinctly Islamic-related barriers to donation among average Muslims, for it is the job of the cleric to disseminate Islamic knowledge to the average Muslim and to encourage the average Muslim to perform certain actions over others in his personal quest for religious excellence.

The Case of Shaykh Sha’rawi

Several studies point to the crucial role that local clerics play for Muslims deciding whether or not to donate. The most prominent example is Muhammad Mitwalli al-

Sha'rawi, the late 20th century cleric and preacher. Sha'rawi (1911-1998) completed his Islamic studies at University of al-Azhar. He is most widely-remembered for his appearances on religious television programs in the 1970s and 1980s. Sha'rawi held that organ transplant treatment was impermissible in all its forms on the basis that human beings do not own their bodies, but that they are a trust from God. His opinion gained widespread publicity when Sha'rawi addressed it spontaneously during a television interview by famously asking, "How can you give a kidney that you yourself do not own?"

Sha'rawi became, and still remains even after his death, a household name because of his ability to speak to the common man and make classical Islamic learning accessible. Sherine Hamdy writes in her anthropology work among Egyptian patients:

Yet, among most of the dialysis patients I interviewed, all the Islamic scholars, and even many transplant physicians, it was Sha'rawi's opinion that was most often cited and held the deepest resonance among patients in need of kidney transplants.²⁷

That Sha'rawi's opinions can have more influence on the average Egyptian Muslim than the opinion of a high-level research jurist such as, for instance, Muhammad Sayed Tantawi's fatwa that donation is permissible, highlights that jurists often have very little direct relevance or influence to average Muslims. Jurists will employ complex legal reasoning in their discourse, and their fatwas will be in classical Arabic that is not accessible to most Muslims. Rather, it is the role of clerics to relay the opinions of the

²⁷ Hamdy S. "Rethinking Islamic Legal Ethics in Egypt's Organ Transplant Debate," in *Muslim Medical Ethics: From Theory to Practice*, ed. Brockopp JE, Eich T. University of South Carolina Press, 2008, pg. 79-80

jurists to the masses of Muslims and to provide them with their day-to-day religious instruction.

Current State of Clerical Influence on Transplant Treatment

Most studies conducted by medical researchers on the ethics of organ transplant treatment among Muslims have either focused on fatwas by Muslim jurists or on attitudes of average Muslims. Within the very few studies on clerics, however, we see that local clerics do not seem to be encouraging donation. Sha'rawi's views are an example of this among Egyptians. Even in Saudi Arabia, researchers, for instance, identify the "Local Imam Factor" as one of the barriers to transplantation among Saudi Muslims.²⁸ They write:

A health care professional or transplant coordinator may tell a relative of a potential organ donor that an official fatwa has been passed encouraging donation. That person will often seek the opinion of his or her local "imam," the trusted leader of the nearby mosque. This local imam may have a different view (fatwa) on transplantation.

The root of the problem mentioned in this example is a gap between the jurists and the clerics. Although Saudi jurists may have passed a fatwa that permits transplantation, that fatwa must be acknowledged and accepted by the clerics before it can actually be applied.

Similarly, a British qualitative study conducted in 2005 affirmed that local clerics are "very influential."²⁹ The study reported that it was a recurring theme that subjects expressed the importance of consulting Muslim scholars in making the decision to donate.

²⁸ Al-Khader, et al. "Important Social Factors that Affect Organ Transplantation in Islamic Countries," *Experimental and Clinical Transplantation*. 2003.

²⁹ Alkhawari FS, Stimson GV, Warrens AN. "Attitudes Toward Transplantation in U.K. Muslim Indo-Asians in West London," *Amer J Transpl*. 5. 2005

The study actually found that ten subjects admitted to canceling their donor cards on the advice of their local imams. Upon questioning the imams that these ten subjects had consulted, the authors reported that the imams were hesitant to discuss the matter of donation and transplantation, stressing the disagreement between Muslim scholars on the subject. They also had little knowledge of the organ donation program in the United Kingdom. It is no wonder that average Muslims express uncertainty and general hesitance toward donation, for it seems that the same can be said of their clerics from whom they receive day-to-day religious guidance.

The case of Turkey is unique because at least three medical studies have actually been conducted in an attempt to learn the perceptions toward organ transplant treatment among Turkish clerics and religious leaders.

One study conducted in 2000 by the Akdeniz University Medical School surveyed 291 influential religious workers in the Turkish city of Antalya.³⁰ Half of the subjects were local imams, and the other half were Quran teachers, religious city officials, and physicians working in religious organizations. The vast majority of subjects, 84%, responded that they believed organ donation is appropriate according to Islam, although the study is unclear as to whether live or cadaveric donation is meant. Furthermore, 86%, said that organ donation was an honorable, humane act that was acceptable in Islam, and that they would donate their organs. Despite these encouraging findings, however, only 0.3% of the subjects had filled out organ donation cards. This percentage is even lower than most of the previously-examined Saudi studies on lay Muslims. It seems that the

³⁰ Kececioglu N, Tuncer M, Yucetin L, Akaydin M, Yakupoglu G. "Attitudes of Religious People in Turkey Regarding Organ Donation and Transplantation." *Transplantation Proceedings*. 32. 2000.

theme of lack of resolve despite belief in transplant's permissibility, which was first seen in the examination of popular perceptions, also exists among the clerics.

This theme can also be seen in another more recent study conducted in 2010 surveyed 416 religious leaders in the Kahramanmaras Province of Turkey.³¹ Subjects consisted of local imams, and Quran teachers. The survey found that while 88.2% of the subjects stated that organ donation was appropriate according to Islam, and 95.2% reported believing that organ donation is a necessity for humanity, only 1.4% had agreed to donate their organs. This lack of resolve is especially concerning since 63.5% of the subjects reported that they had been asked questions by the general public about organ donation in their professional role as religious leaders.

The most disappointing study of the three was conducted in 2009 in the Turkish city of Kayseri.³² It surveyed students from the Erciyes University faculty of theology, most of whom will presumably go on to be employed as imams, muftis, preachers, and religious teachers. This study showed that 76.8% of subjects stated their willingness to donate their organs to a close relative if necessary, and that 59.3% stated that they would be willing to accept organs from other donors if needed. Nevertheless, only 23.6% of subjects were willing to donate their own organs after death. The majority, 57.3% were undecided and 19.1% were unwilling. Not a single subject had filled an organ donor card. Furthermore, only 54% believed that it is permitted in Islam for Muslims to donate to non-Muslims. Similar to the previous study, 51.2% of the subjects reported that they had received

³¹ Ozer A, Ekerbicer HC, Celik M, Nacar M. "Knowledge, Attitudes, and Behaviors of Officials of Religion About Organ Donation in Kahramanmaras, an Eastern Mediterranean City of Turkey." *Transplantation Proceedings*. 42. 2010

³² Nacar M, Cetinkaya F, Baykan Z, Poyrazoglu S. "Attitudes and Behaviours of Students From the Faculty of Theology Regarding Organ Donation: A Study From Turkey." *Transplantation Proceedings*. 41. 2009.

questions from the society in the past about donation. What sort of advice must the subjects of this and the previous study have given to the public in light of this seeming confusion or hesitation?

As we have seen from the previous chapter, the lay Muslims are very confused regarding organ transplant treatment's place in Islam. It seems that the reason they are confused is because the clerics who provide them with religious guidance are themselves confused or hesitant. Why, then, are the clerics confused even in light of several fatwas from research jurists around the world that proclaim transplant treatment to be permissible according to Islamic law? Could it be that the clerics are unconvinced by the jurists' arguments, or that the fatwas are in some way deficient in allaying the clerics' concerns?

CHAPTER 3: JURISTS

Perhaps the answer to these questions can be found by going one step up the hierarchy of Islamic religious authority. This leads us, at last, to the jurists themselves and an examination of these fatwas.

Medical Research on Fatwas Regarding Transplant Treatment

Much has been written in the medical literature about how Muslim jurists have allowed donation. Many medical articles that discuss Islam's views on donation often tend to focus only on the jurists that permit the practice and ignore the jurists that prohibit it. This tendency is especially prevalent among research from Saudi Arabia and the Gulf, where the Saudi Senior Ulama Council passes a fatwa in 1989 that allows donation. The impression is that the jurists all say that donation is permissible, but their verdict merely has not filtered down to the average Muslim. The impression is that the most important legal questions have been put to rest, and that the remaining barriers to organ donation among Muslims are simply issues of culture.

One medical article, for instance, writes that in the study, "93.8% of the persons in group 1 knew that *Islamic teachings permit organ donation from the living.*"³³ This statement assumes that there is only one uniform Islamic teaching on the subject, and completely disregards other opinions. The same study also makes a bold and oversimplified statement: "Islam permits donation after death." Another study by an Egyptian physician claims: "Initially there was some resistance to accept organ transplantation in the Islamic world. Objections were mainly based on cultural rather than religious

³³ Al Shehri, et al. "Organ Donations from Deceased Persons in the Saudi Arabian Population." *Experimental and Clinical Transplantation*. 2005 (Emphasis mine)

reasons.”³⁴ This claim further gives the impression that legal debate over the permissibility of donation is a simply-resolved matter.

Another article was written by Yassin El-Shahat, a nephrologist from the U.A.E, titled “Islamic Viewpoint of Organ Transplantation.”³⁵ It is one of the most frequently-referenced sources by medical researchers on Islam’s position on transplantation, having been cited by at least fourteen other studies.³⁶ El-Shahat states:

Islamic teachings and Fatwas permit all types of organ transplantation if the required conditions are fulfilled. As-Sadlan, one of the most conservative Saudi Islamic scholars, has stated, “The Shariaa (the legal system of Islam) is eternal and appropriate for all ages. It was established to benefit people, so how could it have ever forbidden organ transplantation?”

El-Shahat’s article seems to suggest that transplant treatment is naturally and simply permitted by even the “most conservative” Islamic scholars. A closer examination, however, shows that the situation is not nearly as simple.

Differing Legal Opinions on Permissibility

First, an analysis of the various fatwas that Muslim jurists have passed on donation reveal the existence of two broad rulings on transplant treatment, not just one, as some studies such as El-Shahat’s may suggest.

The first ruling holds that that cadaveric donation is permissible under certain conditions. This ruling is held by the majority of jurists (see table on pg. 13). The Islamic Fiqh Academies of the Organisation of the Islamic Conference (IFA-OIC) and the

³⁴ Hassaballah AM. “Definition of death, organ donation and interruption of treatment in Islam,” *Nephrol Dial Transplant*. 1996

³⁵ El-Shahat YIM. “Islamic Viewpoint of Organ Transplantation,” *Transplantation Proceedings*. 31. 1999

³⁶ As of 3/5/2011 – based off GoogleScholar

Muslim World League (IFA-MWL) both passed resolutions that permit cadaveric donation. These resolutions are significant because they are backed by the authority of several jurists from many nations and schools of thought that are members of the academies. Another group of influential fatwas come from Egypt, where five grand muftis since the 1950s have passed fatwas condoning cadaveric donation. These fatwas are very important since Egypt is often seen as the intellectual hub of the Muslim world. The University of Al-Azhar also passed a fatwa condoning donation in 1994. The Senior Ulama Council of Saudi Arabia passed a resolution in 1982 that allowed donation. This resolution was also influential given that Saudi Arabia houses Islam's holiest sites.

Although many influential jurists have passed fatwas that permit donation, another group of jurists rules donation to be prohibited with its center in the Indian Subcontinent. Muhammad Shafi's previously-mentioned opinion in the 1964 pamphlet *Insani Aza ki Paivandkari* falls into this group. Even though it was published several decades ago, it has left what Hussaini explains as "a strong legal precedent" among jurists of the Subcontinent.³⁷ This precedent is apparent in the more recently resolution in 1989 by IFA-India that allows live donation but still prohibits cadaveric donation. Even though IFA-India is a separate institution from Majlis-e Tahqiq-e Masa'il-e Hadirah (the council on whose decision Shafi based his *Insani Aza ki Paivandkari*) both institutions are composed of scholars from the same academic tradition rooted in Dar al-Ulum Deoband.

For those Muslims that follow clerics who adhere to the opinions of these jurists, cadaveric donation is out of the question. These Muslims believe it unethical to sign

³⁷ Hussaini MO, *Organ Transplantation*, pg. 7

donor cards, since the answer to the very first question in their ethical decision making, “May I?,” is “no.”

Even though the opinion of impermissibility is a minority opinion, it is a sizable minority. It will potentially have great influence on the vast majority of the South Asian population, and not only limited to the Subcontinent, since many South Asian ethnic groups exist in other countries. As mentioned previously, the majority of Muslims in the UK are South Asian.

Therefore, it is important that the medical community is aware of this differing opinion. It is, for instance, one of the explanations of the failure of the Birmingham study. Since the study did not reach out to the local clerics after the UK Muslim Council passed its fatwa, the South Asian Muslims in the area must have seen no reason to reevaluate the default view that they may have had before of organ donation as impermissible.

Shortcomings within Fatwas of Permissibility

A second important problem with regard to the jurists is that even within the opinion that donation is permissible, the fatwas that express this opinion fall short of directly addressing important ethical dilemmas in donation, thereby severely hindering their practicality and applicability.

An analysis of the Saudi Senior Ulama Council’s 1982 resolution permitting donation demonstrates some of these lingering shortcomings among fatwas of permissibility. El-Shahat translates this resolution that was passed by the jurists of Saudi Arabia, which he oddly and unacademically describes as “the most conservative Islamic country”:

The board unanimously resolved the permissibility of removing an organ, or a part thereof from a Muslim or a non-Muslim living person and graft it onto someone else should the need arise, as long as the following two conditions are met:

- (1) That there be no exaggerated anticipated risk to the donor in the removal and,
- (2) The transplantation seems likely to be successful.

By majority vote, the board also resolved the following:

- a. The permissibility of removing an organ or part thereof from a dead person for the benefit of a Muslim, taking into consideration the necessity for doing so and the likelihood of success.
- b. The permissibility for the living person to donate one of his or her organs or a part thereof for the benefit of a Muslim in need thereof.³⁸

El-Shahat's translation, however, is misleading. The original Arabic version of the resolution is below, followed by my own attempt at a more complete and faithful translation:³⁹

وبعد المناقشة وتداول الآراء قرر المجلس بالإجماع جواز نقل عضو أو	1
جزئته من إنسان حي مسلم أو ذمي إلى نفسه، إذا دعت الحاجة إليه، وأمن	2
الخطر في نزعها، وغلب على الظن نجاح زرعها، كما قرر بالأكثرية مايلي:	3
١/ جواز نقل عضو أو جزئته من إنسان ميت إلى مسلم، إذا اضطر إلى	4
ذلك، وأمنت الفتنة في نزعها ممن أخذ منه، وغلب على الظن نجاح زرعها،	5
فيمن سيزرع فيه.	6
٢/ جواز تبرع الإنسان الحي بنقل عضو منه أو جزئته إلى مسلم مضطر	7
إلى ذلك. وبالله التوفيق، وصلى الله على محمد وآله وسلم.	8

³⁸ El-Shahat YIM. "Islamic Viewpoint." 1999

³⁹ Afifi AR, "Qarar than li majlis hay'at kibar al-ulama bi'l-mamlakat al-'arabiyyah al-su'udiyah bi sha'n zira'at al-a'da al-insaniyyah fi jism al-insan." <http://www.themwl.org/Publications/default.aspx?d-1&cid=14&cidi=65&l=AR>, 1982, p. 73

After discussing and reviewing the varying opinions, the Council has unanimously resolved the permissibility of transferring an organ, or part of one, from a living person, whether he is a Muslim or a *dhimmi*, to himself (*ila nafsihi*), if the need arises, and there is no danger in its removal, and success of the transplant is high.

It also resolved the following, by majority vote:

1. The permissibility of transferring an organ, or part of one, from a deceased person to a Muslim, if there is extreme necessity (*idha idtarra ila dhalik*), and the trial of its removal from the donor is averted, and the success of the transplant is probable for the one whom the organ is being transplanted into.
2. The permissibility of a living person to volunteer for the transfer of his organ, or a part of one, to a Muslim who is in need of it.

The El-Shahat's translation reads that it is permissible to remove an organ from "a Muslim or a non-Muslim living person." In fact, in the second line, the original resolution specifically uses the word *dhimmi*, a technical term in Islamic legal discourse that El-Shahat translates as simply "non-Muslim." In fact, the question of what kinds of people can be categorized *dhimmi* is much debated, and it does not apply to all non-Muslims in general, as El-Shahat's translation leads the reader to believe. The Saudi Senior Ulama Council's fatwa, therefore, is unclear as to what kinds of people a Muslim may receive organs from. This question might be less important in Saudi Arabia, where the majority of the population is Muslim and therefore an individual who donates his organs can be reasonably confident that his organs will go to a Muslim. For Muslims living in countries of non-Muslim majority, however, the question regarding the religion of the organ's donor or recipient is very relevant.

The second line of the Senior Ulama’s resolution also contains the odd phrasing of the phrase *ila nafsihi*. This phrase is ambiguous, leading to several different possibilities for interpretation. El-Shahat translates it as “someone else,” but several other interpretations also exist. The most literal reading of the line, which I have used for my own translation above, is the following, with emphasis added: “[T]he permissibility of transferring an organ, or part of one, from a living person, whether he is a Muslim or a dhimmi, to himself.” According to this translation, this line of the resolution would be referring to auto-transplantation, which is how Darius Atighetchi interprets it.⁴⁰ This interpretation is odd, however, when read in the context of the rest of the fatwa, for in what situation would one need to transfer one’s own organ, as the first line specifies, to oneself? The very concept of transferring a kidney from the body of a patient back into the same patient does not make sense.

Perhaps the phrase *ila nafsihi* is referring to the preceding word *insan*. In that case, the line would read as follows: “[T]he permissibility of transferring an organ, or part of one, from a living person, whether he is a Muslim or a dhimmi, to that same living person (whether he is a Muslim or a dhimmi).” This interpretation seems to make a little more sense, but it is also not free of ambiguity because farther down in the resolution in the fourth line, the resolution places the restriction that organs harvested from a deceased donor may only go to a Muslim, and no mention is made of dhimmis. What is the difference, then, between a live donation and a cadaveric donation that allows a live donation to go to a dhimmi, but a cadaveric donation to go only to a Muslim?

⁴⁰ Atighetchi D. *Islamic Bioethics: Problems and Perspectives*. Springer. 2007. pg. 183

If we accept line 4's claim that transplants can only be performed if the donor and recipient are of the same religion, then another possibility is that the phrase *ila nafsihi* refers to the Muslim and the dhimmi separately. According to this interpretation, the line would read as follows: "[T]he permissibility of transferring an organ, or part of one, from a living person, whether he is a Muslim or a dhimmi, to a recipient of that same religious status." In other words, this interpretation states that a Muslim may donate to only a Muslim and a dhimmi may only donate to a dhimmi. If that is the case, however, then why is there a need to provide sanction for transplantation from dhimmi to dhimmi, since dhimmis do not recognize Islamic law?

Whatever the Senior Ulama Council actually meant by this resolution, the point is that the wording of the fatwa is very ambiguous and raises as many questions as it attempts to answer. Therefore, it is not as absolute as El-Shahat makes it appear.

In fact, the question of what kinds of donors and recipients transplant treatment is permissible for is a highly-relevant yet still an unresolved question among jurists, and opinions vary. Yusuf Qaradawi, for instance, clearly believes that the religion of the donor or recipient matters. He writes that it is impermissible for a Muslim to donate to a non-Muslim that is waging war on Islam. It is unclear if his verdict is about war or a difference of religion, for he does not address the question of whether it is permissible for a Muslim who is waging war on other Muslims to receive Muslim organs. Qaradawi also holds that it is impermissible to donate to an apostate. He further writes that in the case that both a Muslim and a non-Muslim are in need of an organ, the Muslim gets

precedence, as does a practicing Muslim over a Muslim who commits open sins.⁴¹ A similar sentiment is seen in a fatwa from the University of al-Azhar in the early 1970s which maintained that the transplant of cornea from a Muslim or from a non-Muslim was allowed if the transplanted tissue was given to a Muslim, but prohibited if taken from a Muslim to give to a non-Muslim.⁴² Other jurists have ruled that it is permitted for a non-Muslim to donate to a Muslim, but that a Muslim may not donate to a non-Muslim.⁴³ Perhaps this vagueness regarding the religion of the donor and recipient explains why the Birmingham study noted that British Muslims were statistically less willing to donate their own organs for the benefit of the rest of the country.

Other opinions hold that recipients of donated organs be filtered by kinship. Qaradawi writes: “If the person concerned (i.e. the patient in need of transplantation) is a relative or a neighbor, he takes great preference (i.e. over an unrelated patient) due to the ties of kinship or the relation of neighborhood.”⁴⁴ The ruling by IFA-India, for instance, limits the permissibility of kidney donation from a living donor exclusively to recipients who are related to the donor.⁴⁵ These opinions simply bring up more questions. What happens, for instance, if recipient is a relative or neighbor but also a non-Muslim?

Other fatwas have no such limitation with regard to the donor’s family. In fact, Tantawi goes so far as to hold that cadaveric donation would be permissible even without permission from the deceased’s inheritors. He writes:

⁴¹ Qaradawi Y. “Donating Organs to non-Muslims,” www.islamonline.net, 2006

⁴² Quoted in Atighetchi D. *Islamic Bioethics*.

⁴³ Abu Shadi M, quoted in Rispler-Chaim V. *Islamic Medical Ethics in the Twentieth Century*. Leiden: E.J. Brill. 1993. pg. 33

⁴⁴ Qaradawi Y. “Donating organs to non-Muslims.”

⁴⁵ Islamic Fiqh Academy of India “Transplantation of Organs.” http://ifa-india.org/english/decision_Transplantation_of_Organs.html. 1989.

Nevertheless, such permission [i.e. consent from relatives] is not binding to competent people, namely reliable doctors, if they believe that the life of a living man is contingent upon the transfer of a human organ of a deceased person.⁴⁶

Another relevant but yet unresolved legal question that seems to be lingering is the question of brain death, and whether it is recognized in Islamic law as a valid definition of death. In 1987, the IFA-MWL passed a resolution stating that the death of a person according to Islamic law can be pronounced only after breathing and the heartbeat have stopped.⁴⁷ This implies the impossibility of brain death donation since the cessation of oxygen transport to the organs will cause them to begin to deteriorate.

In 1986, the IFA-OIC passed a resolution stating that in Islamic law it is permitted to declare death “when all vital functions of brain cease irreversibly and the brain has started to degenerate as witnessed by specialist physicians.”⁴⁸ As one research study notes, however, the IFA-OIC’s resolution is of little help with regards to providing practical answers to the question of brain death.⁴⁹ The study provides a list at least three important questions that the resolution fails to answer:

What are, and who decides, as to the *vital* functions of the brain? A related question is: is there a conceptual basis within the Islamic tradition for brain death? 2) Do physician-scientists have to determine the irreversibility of these vital brain functions as a matter of fact? Related to this question is what level of certainty of diagnosis is needed to stipulate

⁴⁶ Tantawi MS. “Judgement on Sale of Donation of Human Organs.” Medical Jurisprudence Third Symposium on The Islamic Vision of Some Medical Practices. 1987.

⁴⁷ Atighetchi D. *Islamic Bioethics*. pg. 175

⁴⁸ Quoted in Padela AI, Shanawani H, Arozullah A. “Medical Experts & Islamic Scholars Deliberating over Brain Death: Gaps in the Applied Islamic Bioethics Discourse.” *The Muslim World*. 101. 2011, pg. 63

⁴⁹ *Ibid*, pg. 65

brain death? 3) Similarly, is the degeneration of the brain necessary within the brain death conception according to Islamic law?⁵⁰

The researchers conclude: “These questions and related ones were left, and remain to this day, largely unanswered and without consensus. For those looking for clear guidance on brain death, the OIC-IFA statement is lacking.” The situation of views of permissibility mirrors the statement of an Egyptian physician obtained in a focus group interview:

When we and our professors speak to muftis at Dar Al-Iftah (House of Fatawas), they say that it is halal (i.e. permissible), but it leaves so much up to the doctors that we are not certain about.⁵¹

⁵⁰ Ibid, pg. 65-66

⁵¹ Budiani, D., *Facilitating Organ Transplants in Egypt: An Analysis of Doctors' Discourse*. Body & Society. 13(3). 2007. pg. 135.

CHAPTER 4: SUGGESTED SOLUTIONS

We have traced the problem of transplant treatment among Muslims across three levels – the problems of the people, the problems of the clerics, and the problems of the jurists. Each level correlates respectively with one of three important questions in the ethical decision making process for a Muslim: “May I?” “Should I?” and “Will I?” The most appropriate way to confront the problem of lack of Muslim donors as brought up in the Birmingham study is to tackle each one of these steps individually and simultaneously.

Jurists

As for the vast majority of jurists that hold transplant treatment to be permissible, medical researchers must encourage those jurists to tackle the holes and points of vagueness in the fatwas on transplant treatment such that they become practical to follow in the specific context of a hospital setting and of national organ donor programs, especially those programs that operate in majority non-Muslim countries. In this regard, the Birmingham initiative was a commendable first step. More such initiatives are needed in which Islamic law consultants work with health policy makers and hospital administrators to come up with regulations for organ transplant treatment that are compliant with Islamic law.

The development of the field of Islamic economics in recent years can serve as a model for similar development that is necessary in the field of medical ethics. Research bodies exist that discuss issues of Islamic finance and banking, and institutions are training Muslim jurists to serve as consultants for banks both in the Muslim world and in the West. Although questions in the field of Islamic finance are far from resolved, a forum for discussion at least exists, and Muslim economists have moved beyond theoretical fatwas

to the process of trying to implement these fatwas in banks on the ground. No such forum exists for health care. Most of the few Muslim medical organizations are made up of health care professionals, and trained jurists have little influence within them. The ethics committee of the Islamic Medical Association of North America, for instance, does not have a single Muslim jurist as a member. Rather, the entire board is made up of physicians. Any ethical resolutions they pass, therefore, will not be nearly as authoritative to average Muslims as, for example, a research institute such as the Center for Islamic Economics which is officially affiliated with Jamia Darul Uloom Karachi. Therefore, medical researchers need to engage Muslim jurists to move beyond the realm of fatwas and start moving into the realm of specifics and policy-making.

As for the jurists who hold that transplant treatment is prohibited in all its forms, Aziz Sheikh writes that “these views need to be respected,” implying that there is little that medical researchers can do to change their opinion, and that the researchers should simply accept it.⁵² But Sherine Hamdy makes an interesting observation that might shed light on something medical researchers can do to change the opinion of jurists who rule prohibition. Hamdy compares Tantawi’s fatwa of permissibility with Sha’rawi’s opinion of prohibition and notes the following:

[R]eligious scholars’ differing positions on a practice such as organ transplantation may have less to do with their different approaches to Islamic legal tenets than with their views of the practice at hand and its relationship to state institutions...[S]ocial factors necessarily influenced

⁵² Sheikh A, et al. “Attitudes to organ donation among South Asians.” pg. 162

the scholars' positions. Their rulings about the practice at hand were based on specific understandings and assumptions about its benefits and risks.⁵³

In other words, she argues that Tantawi's decision to rule transplant treatment as being permissible was based largely on his understanding of transplant treatment as medically beneficial overall. On the contrary, Sha'rawi's strong views of prohibition of transplant treatment were influenced subconsciously by the negative effects of transplant treatment that he had witnessed or heard about in Egypt, particularly the black market in human organs. Sha'rawi said, for instance, in defending his position against critics:

I spoke about organ transplantation and I said: it is *haram*. And I have [a right to] my opinion. Because the human being does not own his own body. And most cases of organ transplantation fail anyway and do not succeed in their goals. The one who receives a transplant remains seriously ill and suffering for the two or three months that he lives.⁵⁴

Hamdy's observation is also clearly demonstrated in Shafi's *Insani Aza ki Paivandkari*, the only major scholarly work that prohibits transplant treatment in all its forms. Shafi writes:

In Western countries, experiments on organ transplantation have continued to be conducted for years and years, but it has been shown to be less successful than plastic surgery, and its lasting effects cannot be achieved...Further, in light of amazing experiments and discoveries seen in plastic surgery, it has become clear that the practice of organ transplantation, besides being doubtful and unreliable, is also difficult, and it requires a lengthy procedure, and even still, it cannot be used in every case.⁵⁵

⁵³ Hamdy S, "Islamic Legal Ethics in Egypt's Organ Transplant Debate," pg. 85.

⁵⁴ Quoted in Hamdy S. "Islamic Legal Ethics in Egypt's Organ Transplant Debate." pg. 85

⁵⁵ Shafi M. *Insani Aza ki Paivandkari*. pg. 35.

Frequent passages like these betray that Shafi's decision of prohibition was strongly influenced by his understanding that transplant treatment is an unreliable form of treatment, and perhaps this view may have been justified in 1967 at the time when Shafi wrote the fatwa and when transplant medicine was still in its experimental stages. In modern times, however, transplantation is widely-accepted in the medical community and its rate of success is much higher than in the 1960s. This is a perfect example in support of Hamdy's point that Islamic law and society are intimately intertwined, and a jurist's perception and information about a social issue strongly influences his verdict.

A similar example is the case of IFA-India which ruled that cadaveric donation is prohibited, and only live donation is permissible. Even in the case of live donation, IFA-India restricts live donation of one kidney to an "ailing relative."⁵⁶ Atighetchi asserts that this restriction was put in place with organ trading in mind, since it is highly developed in the Indian Subcontinent in particular.⁵⁷ In other words, Atighetchi suggests that by limiting donation's permissibility only to an ailing relative, it would hinder people from participating in the organ trade by donating their kidney for money. In this example, IFA-India's fatwa was informed by the specific Indian context of organ trade. Perhaps if there was less activity of organ trading in India, the IFA-India would not have added this restriction.

In light of this reality, it is the responsibility of medical researchers to provide Muslim jurists with up-to-date research studies on the procedure of transplantation, its success rates, and other medical information that would be relevant to the jurists' decision. It is only then that medical researchers can ask these jurists to reconsider their decision.

⁵⁶ Islamic Fiqh Academy of India "Transplantation of Organs."

⁵⁷ Atighetchi D. *Islamic Bioethics*. pg. 170

Clerics

Clerics occupy the level under the jurists in the hierarchy of influence in ethical decision making. It is crucial that medical researchers reach out to clerics and encourage them to talk about transplant treatment to their congregations and audiences because clerics have the more interaction than jurists with Muslims on the ground. The clerics, therefore, will provide average Muslims with information about the status of transplant treatment in Islamic law. They will also provide encouragement to register as organ donors. The failure of medical researchers to reach out to clerics is most likely one of the important reasons why the Birmingham initiative failed. Only 28% of the subjects were aware of an Islamic fatwa regarding organ donation.⁵⁸ An initiative to encourage clerics to discuss this issue with their congregations in sermons, lectures, and other occasions would have remedied this lack of information.

Bilgel suggests that when Muslim subjects claim to object to organ donation because of religious beliefs, this objection is “based not only on religious belief but also on fear of the unknown, combined with religious beliefs.”⁵⁹ This is likely to be true since the decision to donate one’s organs after death is not an easy one, but jurists are poorly positioned to provide the average Muslim with support in this regard. Rather, it is the clerics who are best able to address this fear among the people. In order for donation to become widespread among Muslims, clerics must frame it in a reward-based context. In other words, the clerics must prove to the people that God will be pleased with them and reward them extra for making the sacrifice of overcoming their fears and agreeing to donate their organs with the intention of serving humanity and saving lives.

⁵⁸ Razaq S, Sajad M, “A Cross Sectional Study.” pg. 4

⁵⁹ Bilgel H, et al. “Public attitudes toward organ donation.” pg. 224.

One of the challenges for medical researchers in practically approaching clerics is that they are very diverse. As mentioned earlier, the term “cleric” as used in this thesis refers to a broad range of religious leaders who share the common role of middlemen whose job is to educate the Muslim masses and guide them in matters of religion. Some are imams of masjids, but also included in this category are televangelists, muftis on e-fatwa websites, community service workers, chaplains, and counselors. As a practical starting point, medical researchers can approach umbrella organizations such as the Islamic Society of North America, the North American Imams Federation or the Ulema Association of North America, where imams and community leaders come together to discuss issues related to the community.

Another practical direction of approach is toward *madrasas* and other institutions that train Muslim clerics. The Indian seminary Darul Ulum Deoband is a perfect example of this point, for its online fatwa department, where clerics-in-training pass personal fatwas under the supervision of instructors, has passed two e-fatwas concerning organ donation, one in 2008 and the other in 2010.^{60,61} In both e-fatwas, the questions are almost identical. They ask whether it is permissible for a person to donate their organ in order to save another person’s life. In both cases, the e-mufti replies that donation is not permissible on the grounds that the donor does not own his body parts. As evidence, the 2008 e-fatwa quotes a line from *Fatawa Hindiyyah* and the 2010 e-fatwa quotes Imam Ibn ‘Abidin. Neither makes any mention of IFA-India’s resolution that permits live donation even though most of the members of IFA-India are either graduates or affiliates of Darul Ulum

⁶⁰ <http://darulifta-deoband.org/viewfatwa.jsp?ID=4578>

⁶¹ <http://darulifta-deoband.org/viewfatwa.jsp?ID=24756>

Deoband. In order to inform clerics about organ donation, medical researchers should inform the institutions that train those clerics.

People

Only after efforts are made at both these levels will Muslims be able to make a proper decision about donating their organs. It is important to note, however, that all the factors discussed in this thesis are related specifically to Islam. It has not taken into consideration barriers that may arise due to other situations. Muslims are subject to cultural, political, and societal barriers just like any other population. Furthermore, some Muslims may simply refuse to donate based on personal preference. Therefore, it would be a mistake to assume that the suggested solutions above will result in all Muslims being compelled to donate because all that a combination of appealing to jurists and clerics can do is to encourage. Medical researchers, then, should most likely resign themselves to the fact that a 100% donation rate from Muslims will never be possible. Furthermore, if the above suggestions are implemented, it may take several years to see their fruits. Increasing the rate of organ donors worldwide is a complex problem to solve. Therefore, it can only be approached with the understanding that the barriers to donation are just as complex.