

**The Ethical Evaluation of Brain Dead Persons and Organ Transplantation In  
Contemporary Muslim Ethics**

**Mohamed Rashad Moalimishak**

**Institute of Islamic Studies**

**McGill University, Montreal**

**August 2008**

**A thesis submitted to McGill University in partial fulfillment of the requirements of the  
degree of Ph.D. Degree**



Library and Archives  
Canada

Published Heritage  
Branch

395 Wellington Street  
Ottawa ON K1A 0N4  
Canada

Bibliothèque et  
Archives Canada

Direction du  
Patrimoine de l'édition

395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

*Your file Votre référence*  
ISBN: 978-0-494-66565-7  
*Our file Notre référence*  
ISBN: 978-0-494-66565-7

#### NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

#### AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

---

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

  
**Canada**

# **The Ethical Evaluation of Brain Dead Persons and Organ Transplantation In Contemporary Muslim Ethics**

## **Table of Contents**

Acknowledgements	
Abstract	
Preface.....	<b>I-IV</b>

## **Chapter One: *Preliminary Considerations***

Section 1.1 What is Organ Transplantation?.....	<b>1-6</b>
Section 1.2 Definitions: Human Being, Life, Soul, Spirit, Signs of Life, Heart: Introduction .....	<b>6-9</b>
Section 1.2.1 What is a Human Being?.....	<b>9-10</b>
Section 1.2.2 Who is a Human Being? (Medical Definition).....	<b>10-11</b>
Section 1.2.3 The Human Being: Body and Soul or Soul or Body?.....	<b>11</b>
Section 1.2.4 Definition of Soul.....	<b>11-12</b>
Section 1.2.5 Human Being as Body.....	<b>13</b>
Section 1.2.6 Does the Human Soul Die?.....	<b>13-14</b>
Section 1.2.7 What is the Spirit?.....	<b>14-19</b>
Section 1.2.8 The Relationship Between Body and Spirit.....	<b>19-20</b>
Section 1.2.9 The Sunni Opinion.....	<b>20</b>
Section 1.2.10 The Location of the Spirit in the Human Body.....	<b>21-22</b>
Section 1.2.11 The Significance of the Human Heart (Definition of the Heart).....	<b>22-25</b>
Section 1.2.12 Definition of Life.....	<b>25-26</b>
Section 1.2.13 The Signs of Life.....	<b>26-27</b>
Section 1.3 The Beginning and End of Human Life: Introduction.....	<b>27-33</b>
Section 1.3.1 Stages of Human Creation and the Qur'an .....	<b>33-36</b>
Section 1.3.2 Stages of Human Brain Creation .....	<b>36</b>
Section 1.3.3 The Beginning of Human Life.....	<b>36-47</b>
Section 1.3.4 Abortion and Islam.....	<b>47-49</b>
Section 1.3.5 The Definition of Death.....	<b>49-50</b>
Section 1.3.6 Death in the Qur'an and Shari'ah.....	<b>50-51</b>
Section 1.3.7 Definition of Death in the Qur'an.....	<b>51-52</b>
Section 1.3.8 Sunni Muslim Scholars' Opinions about the End of Human Life.....	<b>52-53</b>
Section 1.3.9 Traditional Signs of Death.....	<b>54-55</b>

Section 1.3.10 Traditional Islamic Signs of Death.....	55
Section 1.3.11 Signs of Death in Modern Medicine.....	56
Section 1.3.12 Respect for the Dead Body.....	56-57
Section 1.3.13 The End of Human Life.....	57
Section 1.3.14 Where is Life Located?.....	57-58
Section 1.4 Islamic Teachings on the Afterlife: Introduction: The Resurrection of the Human Being and the Qur'an.....	59-60
Section 1.4.1 Time of Death: People and Angels of Death.....	60
Section 1.4.2 Grave (Barzakh): The Isthmus after Death.....	60-61
Section 1.4.3 The Unfolding of the Soul.....	61-62
Section 1.4.4 Three Categories of Souls in the Qur'an.....	62-63
Section 1.4.5 Transformations and Afterlife.....	63-65

## **Main Thesis**

### **Chapter Two: *Brain Death***

Section 2.1 Brain Death: Introduction .....	66-68
Section 2.2 Definitions of the Brain: What is the Brain?.....	68-69
Section 2.3 The Brain and its Functions.....	69-71
Section 2.4 Brain Death.....	71-72
Section 2.5 Definition of Brain-Stem Death.....	72-73
Section 2.6 Implications of Brain-Stem Death.....	73
Section 2.7 Brain Death and its Causes.....	74
Section 2.8 Signs of a Brain-Dead Person.....	74-75
Section 2.9 Brain and Heart: Both are Complete Death.....	75-77
Section 2.10 Diagnosis of Brain-Stem Death .....	77-78
Section 2.11 Determination of Time of Death.....	78-79
Section 2.12 Brain -Stem Death is Not a Complete Death.....	79-84
Section 2.13 Brain Death is a Complete Death, Irregardless of Heart Death.....	84-89
Section 2.14 Brain Death and Cultural Policies to Increase Organ Donation.....	89-91
Section 2.15 Anthropological Perceptions and Brain-Dead Persons.....	91
Section 2.16 What are Medical Ethics?.....	91
Section 2.17 Medical Ethics and Brain Death.....	92
Section 2.18 Providing Care to Brain Dead Persons.....	92-93
Section 2.19 Prolonging Life (Coma).....	93
Section 2.20 Ethical Issues and the End of Human Life.....	93-97



Section 2.21 Ethical Evaluation.....	97
Section 2.22 Mercy Killing, Suicide and Islam .....	97-99
Section 2.23 Pain Relief Treatment and Withdrawal of Life-Sustaining Treatment.....	100
Section 2.24 The Muslim Doctor.....	100-101
Section 2.25 The Role of a Muslim Doctor.....	101
Section 2.26 The Medical Team.....	101
Section 2.27 The Definition of Medicine and the Responsibilities of the Muslim Doctor..	102
Section 2.28 The Obligations of the Doctor and his Medical Team.....	102
Section 2.29 Islamic Code of Medical Professional Ethics.....	102-103
Section 2.30 History of Islamic Medicine and its Contributions.....	103
Section 2.31 Medical Responsibilities in Islam.....	104-106

### **Chapter Three:**      *Organ Transplantation*

Section 3.1 Organ Transplantation: Introduction.....	107
Section 3.2 Organ Retrieval Procedure.....	107-108
Section 3.3 Artificial Organs and Transplantation.....	108-109
Section 3.4 Organ Transfer from Animals to Humans.....	109-112
Section 3.5 Single or Paired Organ Transplants.....	112
Section 3.6 The Donor (Source of Human Organs).....	112-115
Section 3.7 Permissibility of Organ Donation (Before and After Death).....	116-120
Section 3.8 The Conditions of Acceptable Permission.....	120-121
Section 3.9 Organ Donor.....	121-122
Section 3.10 General Conditions on Organ Retrieval and Transplantation .....	122
Section 3.11 Islamic Conception of Ownership of the Body.....	122-123
Section 3.12 Western Opinion of Human Body Ownership.....	123-124
Section 3.13 Human Body Ownership.....	124-127
Section 3.14 Life-Sustaining Treatment.....	127-128
Section 3.15 Medical Actions and the Human Body.....	128
Section 3.16 Human Organ Transplantation.....	128-129
Section 3.17 History of Organ Transplantation.....	129-130
Section 3.18 The Question of Brain Transplantation.....	130
Section 3.19 Is Brain Transplantation Possible? .....	131
Section 3.20 The Possibility of Brain transplantation and Future Science.....	131-134
Section 3.21 Arguments against the Permissibility of Organ Transplantation .....	134-135
Section 3.22 Arguments in favour of the Permissibility of Organ Transplantation.....	135-138
Section 3.23. Organ Transplantation: Permissible or Not?.....	139-140
Section 3.24 Anti-Sale and Donation Arguments .....	140-144

Section 3.25 Arguments in favour of the Sale of Human Organs Under Necessity.....	144-148
Section 3.26 The Ethics of Organ Sales.....	148-150
Section 3.27 Economic Issues and Social Injustice.....	150-151
Section 3.28 Pro-Sale and Donation Arguments.....	151-155
Section 3.29 Conditions of Human Organ Donation.....	155-157
Section 3.30 Definition of Donation and Sale .....	157-158
Section 3.31 Gift of Organs/Donation/Altruism.....	158-160
Section 3.32 Organ Sale for a Gift or Donation.....	160-162
Section 3.33 Organ Sales under Necessity.....	162-164
Section 3.34 Necessity of Organ Sale and Purchase.....	165-166
Section 3.35 Definition of Dire Necessity.....	166
Section 3.36 What is Dire Necessity in the Case of Illness?.....	167-168
Section 3.37 Dire Necessity .....	168-169
Section 3.38 Prolonging Life through Organ Transplantation.....	169-170
Section 3.39 Brain-Dead Persons and Organ Retrieval.....	170

#### **Chapter Four: *Ethics and Health Policy***

Section 4.1 Ethics and Health Policy Introduction.....	171-172
Section 4.2 Push Factors for Recipients.....	173
Section 4.3 Organ Commercialization and Human Dignity.....	174
Section 4.4 Ethics of Organ Transplantation.....	174-177
Section 4.5 Dangers of Organ Retrieval (Medical Team).....	177-178
Section 4.6 How to increase organ availability.....	178-180
Section 4.7 Western Opinions on Paid Incentives .....	180
Section 4.8 Financial Aid for Buying organs.....	180
Section 4.9 My Critique of Al-Qaraḍāwī and Others.....	180-181
Section 4.10 Sustaining Life as Part of Human Dignity in Islam.....	181-182
Section 4.11 Organ Retrieval and Procurement.....	182-184
Section 4.12 Family Consent.....	184-185
Section 4.13 Moderate Opinions on How To Increase Organ Availability.....	185-186
Section 4.14 Presumed Consent.....	186-187
Section 4.15 Ethical Problems with Presumed Consent in America .....	187-188
Section 4.16 Commodification .....	188-191
Section 4.17 Organ Transplantation and the Social Contract.....	191
Section 4.18 Improving the Success Rate of Transplantation.....	191
Section 4.19 The Black Market in Organs.....	192

Section 4.20 Social Equity.....	192-193
Section 4.21 Economic Issues .....	193
Section 4.22 Race and Nationality .....	194
Section 4.23 Margaret Lock on Equity Issues.....	194
Section 4.24 Commercialization .....	195
Section 4.25 Muslim Views on Organ Donation Legislation.....	195
Section 4.26 Islamic Teachings on Medical Treatment .....	195-196
Section 4.27 Human Sanctity .....	196-197
Section 4.28 My Comments.....	197-198
Section 4.29 Seeking Treatment .....	198
Section 4.30 The Position of Islam in Seeking Treatment.....	198-200
Section 4.31 Conclusion.....	200-203
Bibliography.....	i-xiv
<b>Appendix of Lemmata</b>	


## Acknowledgements

I owe an immense debt of gratitude to Dr. Robert Wisnovsky, for without his painstaking efforts supervising my work, not to mention his patience, kindness and support, this thesis would not have been possible. I am also extremely grateful to him for making my learning experience a valuable one. My sincere appreciation goes out to the library staff for their assistance, in particular Salwa Ferahian for her affectionate care and constant encouragement. Also, I would like to express my utmost gratitude to both Wayne St. Thomas for lending me his precious support, as well as, to Steve Millier for his indispensable help and patience in editing my proposal and dissertation. I also would like to thank again in particular the Institute of Islamic Studies director Professor Robert Wisnovsky and Dr. Uner Turgay, as well as, Professor Andrew Sneddon who offered both advice and encouragement (if the final manuscript is devoid of an overwhelming number of grammatical mistakes it is because of Dr. Wisnovsky's efforts rather than my own).

Also, I would like to thank Ann Yaxley, Kristy McKinnon, and others on the Institute's staff for their help, kindness and constant guidance. My appreciation extends also to my son, Abdulhakim Moalimishak, for his genuine support and for reading this entire thesis, making valuable suggestions. To the family and friends who endured all the absences but who had nonetheless provided me with understanding and support, I owe special thanks. Words are not enough to express my gratitude to all family members for their sacrifice and invaluable support, love and understanding. It is their continuous support that made it all possible.

The completion of this dissertation would not have been possible without the help of a great number of individuals in Canada, but also in Kuwait and throughout the world. In particular, Dr. Andrew Sneddon of the University of Ottawa made extensive and helpful comments on my research. He also acted as a mentor as I became increasingly immersed in the study of the ethical evaluation of brain dead persons and organ transplantation. Also, the President of the Islamic Organization for Medical Sciences Dr. Khalid Madhkur and his colleagues provided great assistance in the form of articles.

Lastly, to the fellow graduate students at McGill who continue to inspire; I am particularly grateful to have had them as friends and fellow scholars throughout these years. They, along with the Islamic Studies Library staff were always willing to help track down important sources while making my time at McGill a pleasant one. This dissertation's abstract was translated into French by Hazem and Ali, who have been a long time sources of academic



and professional advice. Finally, I am very grateful again to my wife Lul Matan Samatar, my son Abdulhakim Moalimishak and the rest of the family for their tireless support throughout the writing of this dissertation. Without the support of all friends, family and colleagues this day would not have been possible. Thank you for everything.

Sincerely,

Mohamed Rashad Moalimishak

## Abstract

This dissertation is primarily about the ethical evaluation of brain death, brain-dead persons and organ transplantation in contemporary Muslim ethics. Chapter One sets out a number of preliminary considerations, which include an introduction to the ethical evaluation of brain death and controversial issues related to organ transplantation in the modern world. It discusses definitions of life, soul, spirit, heart, human body and human being, as well as the location of the spirit and signs of life. Moreover, this chapter deals with the stages of human creation and the Qur'an; the stages of the beginning of human life; abortion and Islam; the definition of death; death in the Qur'an and Shari'ah; traditional signs of death; signs of death in modern medicine; respect for the dead body; the end of human life and the location of life. Lastly, Chapter One focuses on the resurrection and the Qur'an; the time of death and the angels of death; grave (barzakh), the Isthmus after death; the next world; the unfolding of the soul; three categories of souls in the Qur'an; and transformation and afterlife. The following chapters contain the main thesis. Chapter Two will discuss the definition of the brain, brain-dead persons and brain death; as well as the role and responsibilities of the Muslim doctor in Islamic medical ethics. In Chapter Three, I discuss push/pull factors for recipients and donors; the Islamic conception of ownership of the human body as revealed in the Qur'an and Sunnah; arguments of Islamic scholars and experts who completely oppose the sale and donation of human organs; arguments and justifications of scholars who are partially against the sale and donation of human body parts; arguments and justifications of scholars who support the sale and donation of human body parts under dire necessity, and finally the ethics of organ transplantation. Chapter Four will deal primarily with the ethics of health policy; organ sale and human dignity; organ retrieval and ways to increase organ availability; and commercialization and commodification of human organ sales. In this chapter, I will also discuss organ donation and the position of Islam on seeking treatment. This chapter serves as the conclusion of the dissertation.

## Résumé

Cette thèse est premièrement au sujet de l'évaluation éthique de la mort cérébrale et les personnes dans un coma dépassé aux éthiques Musulmanes contemporaines. Chapitre Un démontre les considérations préliminaires, qui incluent une introduction à l'évaluation éthique de la mort cérébrale et les questions sujettes à controverse liées à la transplantation d'organe à l'époque moderne. Ça discute les définitions de la vie, l'âme, l'esprit, le cœur, le corps humain et l'être humain, aussi, l'endroit où se trouve l'esprit et les signes de la vie. De plus, ce chapitre traite des étapes de la création de l'humain et le Qur'an; les étapes du commencement de la vie humaine; l'avortement et l'Islam; la définition de la mort; la mort dans le Qur'an et la Shari'ah; les signes traditionnelles de la mort; les signes de la mort en la médecine moderne; le respect du cadavre; la fin de la vie humaine et l'endroit où se trouve la vie. Finalement, Chapitre Un traite de la résurrection et le Qur'an; le moment de la mort et les anges de la mort; le tombeau (barzakh), l'Isthme après la mort; l'au-delà; le dévoilement de l'âme; les trois catégories des âmes dans le Qur'an; et la transformation et la vie après la mort. Les chapitres qui suivent contiennent la thèse principale. Chapitre deux discutera la définition du cerveau, les personnes dans un coma dépassé et la mort cérébrale; aussi le rôle et les responsabilités du médecin Musulman dans les éthiques médicales Islamiques. Dans Chapitre Trois, je discute les facteurs 'push/pull' pour les récipients et les donateurs; la conception Islamique de la possession du corps humain comme elle est révélée dans le Qur'an et la Sunnah; les arguments des savants Islamiques et experts qui s'opposent complètement à la vente et la donation des organes humaines; les arguments et les justifications des savants qui sont partiellement contre la vente et la donation des parties du corps humain; les arguments et les justifications des savants qui supportent la vente et la donation des parties du corps humain par nécessité, et finalement les éthiques de la transplantation d'organe. Chapitre Quatre premièrement traitera des éthiques de la politique de la santé; la vente d'organe et la dignité humaine; la récupération des organes et les façons d'augmenter leur disponibilité; et la commercialisation et la modification des ventes des organes humaines. Dans ce chapitre, je discuterai aussi la donation des organes et la position en Islam sur le sujet de la recherche du traitement. Ce chapitre conclut la thèse.

## Preface

In this study I will present and analyze the current controversies in Islamic discussions of the ethical evaluation of brain death and organ transplantation. Specifically, I will discuss bioethics in the context of contemporary Muslim communities, including relevant contemporary Western-influenced points of view on the conditions and definitions of brain death. After a careful analysis of the philosophical, medical and religious arguments over brain death— i.e. those arguing that it constitutes a complete death and those that it does not— I will show how the arguments on both sides of the issue play out in contemporary Muslim thought. Lastly, this work is primarily directed towards Muslims and non-Muslims who have an interest in Islamic bioethics.

**The need for such a study:** Although there has been a lot written about the controversy over brain death, there still remains much to be said. Discussions concerning brain death and organ transplantation in Muslim societies remain very controversial. This is because academic work, both religious and secular, has only superficially examined what might be called the “Islamic views”— which are multiple and diverse in range— on organ transplantation and brain death. These two interrelated topics—brain death and organ transplantation— deserve a robust discussion of the interpretations underlying philosophical and bioethical issues, as well as an analysis of the religious and ethical discourses and commentaries that have been made on the subject.

Most of what has been published so far on brain death and organ transplantation is by Western thinkers, who have generally adopted opposing positions on the entire topic of the bioethics of organ transplantation. For example, some scholars such as Peter Singer and Helga Kuhse and other naturalists have rejected the assumption of the unique status of human life and the prolonging of human life through artificial means.<sup>1</sup> Therefore, these scholars, in considering brain death as a complete death, have justified the harvesting of human organs from brain-dead persons. At the same time other scholars, notably Arthur Caplan<sup>2</sup>, but also Tom Beauchamp and

---

<sup>1</sup> Singer and Kuhse in their book *Unsanctifying Human Life: Essays on Ethics* (2002) advocate prohibiting any kind of killing in any circumstances that would violate the sanctity of all life, not just human life. They reject the notion that human life overrides and is more important than anything else. In their discussions of disabled infants and their right to live, they delve into the area of brain death and link it to questions such as whether humans should be allowed to self-terminate or whether it is permissible to remove organs such as the heart from a human being for the purpose of transplanting it into another.

<sup>2</sup> For example, Caplan, Van Buren and Tilney in their article “Financial Compensation for Cadaver Organ Donation” (1998) discuss those who advocate organ markets and compensation of donors. They believe that financial incentives



James Childress<sup>3</sup>, have rejected brain death as a complete death and the commodification of human organs. What is missing from these discourses is any mention, let alone discussion, of Islamic points of view on brain death and organ transplantation. It is my contention that it is now time to investigate existing Muslim discourses of the issue and then, building on all these discourses, to offer a new and synthetic approach to brain death and organ transplantation, which are two of the most important and pressing contemporary ethical issues of our time.

My research will provide an understanding of these issues through an ethical evaluation of brain death and organ transplantation in contemporary Muslim ethics and discourses. I will discuss the new ways of looking at the ethical evaluation of brain death and why it is so controversial in the context of organ transplantation (i.e. as a complete death or not), in addition to reviewing the relevant literatures, both Islamic (classical and contemporary) and Western, which are used by bioethicists today.

**The scope of the study:** Consideration will be given to the problems that face human beings in general and Muslim societies in particular in the 21<sup>st</sup> century in terms of the global commercialization of the human body for spare parts. I will investigate controversial opinions surrounding brain death and organ transplantation—such as modern notions of the mind-body relationship as well as life-sustaining treatment, health policy and its social, political, cultural and economic consequences. I will also discuss the various and contrasting meanings of the following Islamic philosophical and religious concepts: soul, spirit, life, afterlife, grave, Barzakh and Resurrection. In discussing the meaning of these words I will use primary sources—the Qurʾān and its commentaries, collections of Ḥadīth, classical philosophical texts, etc., as well as contemporary books written by Western and Muslim thinkers.<sup>4</sup> The main applicable Qurʾānic

---

and rewards should be denied and refused because of the ethical problems and dangers to personal freedom and human dignity. Consequently, they believe financial encouragement will render human organs subject to market prices and will transform human beings into a source of spare parts. Also Glannon, in *Biomedical Ethics* (2005) highlights the need to protect patients from exploitation in experiments by ensuring that permission and consent of patients is mandatory beforehand. He also says there is no difference between “doing” and “allowing” death as well as between “intending” and “foreseeing death”. Finally, Chapman, Deierhoi and Wight in *Organ and Tissue Donation for Transplantation* (1997) examine the many different approaches taken internationally, at both legislative and individual levels, to improve donor rates. They examine all the aspects of organ and tissue donation and the methods used to increase donation.

<sup>3</sup> In *Principles of Biomedical Ethics* (2001) Beauchamp and Childress discuss ethics and morality in relation to the moral imperative inherent in dispensing medical services and its related responsibilities and they identify four general ethical principles in medicine— respect for autonomy, non-maleficence, beneficence and justice; consequently, they replace it with their own four rules underpinning the medical “professional-patient relationship” which are: veracity, privacy, confidentiality and fidelity.

<sup>4</sup> Al-Rāzī’s *al-Tafsīr al-Kabīr* (also called *Mafātīḥ al-Ghayb*) (1980), Ibn Kathīr’s *Tafsīr al-Qurʾān al-ʿAẓīm* (1992), Al-Zamakhsharī’s *Tafsīr Al-Kashshāf* (1990) and Al-Ṭabarī’s *al-Bayān fī Tafsīr al-Qurʾān* (1986) to name

verses are those that deal with the relationship of the soul to the human body, touching upon such subjects as the soul, spirit, life, reason, intellect, afterlife, as well as the grave, Barzakh, the imaginable world, paradise and hell. The Prophetic Aḥādīth analyzed here are taken from the canonical collections and deal with much of the same set of topics. When it comes to the primary (contemporary) modern sources and authors, specifically on the legal aspects of organ donation, I make use of their wide range of opinions.<sup>5</sup> Similarly, the contemporary western thinkers and works I use are very diverse in range on the topic of organ donation and sale, as well as, the bioethics of organ transplantation.<sup>6</sup>

**Methodology:** This research will focus on texts, both classical and contemporary. First, I will discuss the conception of the relationship between the soul and the human body from a philosophical approach, as well as the afterlife and the human transformation from this life to the afterlife in the “imaginal world” or Barzakh. In addition, attention will be given to the concepts of resurrection and the final destination, i.e., either hell or paradise. This section will also look at the role of past and present Muslim medical doctors and other health professionals.

Second, I will look at the bioethics of life-sustaining treatment, and the implications of commercialization. Moreover, it is my intention to discuss the issues surrounding the organs,

---

just a few. All of the foregoing apart from Al-Zamakhsharī are mainly Sunni in inspiration, although each looks at issues from a particular angle, such as al-Zamakhsharī’s Mu’tazili-inspired exegesis. Among the classical sources I will also consult Fatwa literature. For works that touch on the connection between body and soul, I will rely on Ibn Qayyim’s *Kitāb al-Rūḥ* (1963), Al-Ghazālī’s *Iḥyā’ ‘Ulūm al-Dīn* (1900), Al-Tawḥīdī’s *Thalāth Rasā’il li-Abī Ḥayyān al-Tawḥīdī* (1951), and Avicenna’s *De anima* in Rahman’s edition (1989).

<sup>5</sup> Abu Zayd’s *Fiqh al-Nawāzil* (1996), Shinqīṭī’s *Aḥkām al-Jirāḥah al-Ṭibbiyyah* (1994) and Yāsīn’s article “Bidāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar’iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimīn” (1985). Moreover, I will also utilize Ordoghadow’s “Bidāyat al-Ḥayāh al-Insāniyyah” (1985). Also important, particularly for its rationalist perspective on the subject, is Fazlur Rahman’s *Health and Medicine in the Islamic Tradition* (1989). Finally, I plan to look at some of the contemporary fatwa literature, both official—such as the responses of the Islamic Fiqh Academy in Jeddah—and individual—such as Shaykh al-Sha’rāwī, and Shaykh al-Qaraḍāwī.

<sup>6</sup> For an evaluation of current traditionalist opinion on the subject, I will turn to Rispler-Chaim’s fatwa-based studies of Islamic medical ethics, particularly her *Islamic Medical Ethics in the Twentieth Century* (1993). Some of the secondary (contemporary) western works and authors that I will use (specifically in the area of metaphysics) include Chittick’s *Imaginal Worlds* (1994), Wisnovsky’s *Avicenna’s Metaphysics* (2003), Black’s “Psychology: Soul and intellect” (2005) and Nader’s *Ibn Sīna Wa al-Nafs Al-Bashariyyah* (1960). In the area of bioethics and the sanctity of human life generally I intend to draw upon Rachels’s *Created from Animals: The Moral Implications of Darwinism* (1991), Singer and Kuhse’s *Unsanctifying Human Life* (2002) and Beauchamp and Childress’s *Principles of Biomedical Ethics* (2001). For bioethics and organ transplantation procedures I will consult Harris’s ‘The Survival Lottery’ (1975), Kluge’s “Organ Donation and Retrieval: Whose Body Is It Anyway?” (2002) and Kass’s “Organs for Sale? Propriety, Property, and the Price of Progress” (2000). For issues of organ commodification I will refer to Peters’s “Life or Death: The Issue of Payment in Cadaveric Organ Donation” (1998), A. L. Caplan et al.’s “Financial Compensation for Cadaver Organ Donation: Good Idea or Anathema?” (1998) and Evans’s “Money Matters: Should Ability to Pay Ever Be a Consideration in Gaining Access to Transplantation?” (1998). For issues of consent in organ transplantation I will consult for example Pellegrino’s “Families’ Self-interest and the Cadaver’s Organs: What Price Consent?” (1998) and Veatch and Pitt’s “The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies” (1998). Lastly, for issues of brain death I rely on Ohnuki-Tierney’s “Brain Death and Organ Transplantation: Cultural Bases of Medical Technology” (1994). See the Bibliography for more details.

the donors, the recipients, the medical teams involved in organ transplantation, and in addition the objectives, purposes and philosophy behind them. Specifically, insofar as it relates to Islam's encouragement of seeking medical treatment and the responsibility of medical doctors for the wellbeing of their patients, I will also discuss the considerable research that has been done (both religious and secular) regarding the ethical evaluation of brain death and organ transplantation in contemporary Muslim societies.

Third, there will be an analysis of health policy, ethics and human values in terms of their social, political, cultural and economic consequences, particularly for families, health professionals and the wider society. This research will utilize an extensive review of classical Islamic texts and contemporary works to establish philosophical and theological precedents in the bioethics of organ transplantations.

The thesis will thus be divided into four main chapters. The first chapter serves as the preliminary considerations and includes an introduction to the ethical evaluation of brain dead persons and organ transplantation in contemporary Muslim ethics. Some contemporary Muslim and Western thinkers' views will be introduced, as well as their position on some controversial issues related to organ transplantation and brain-dead persons. This chapter will also focus on definitions of life, soul, spirit, heart, human body and human being, as well as the location of the spirit and signs of life. This section will also utilize philosophical works by both contemporary Muslim and Western thinkers, as well as present the understanding of Muslims on the definition of the soul, heart, life and body. Moreover, it will link life-sustaining treatment to the inception of human life and its end in relation to the ethical evaluation of brain death and organ transplantation in contemporary Muslim ethics. The chapter will also focus on the stages of human creation and the Qur'an; the stages of the beginning of human life; abortion and Islam; the definition of death; death in the Qur'an and Shari'ah rules; traditional signs of death; signs of death in modern medicine; respect for the dead body; the end of human life and the location of life. Lastly, this chapter will discuss the resurrection and the Qur'an; the time of death and the angels of death; Barzakh (the Isthmus after death); the next world; the unfolding of the soul; three categories of souls in the Qur'an; and transformation and afterlife. The second chapter will discuss the definition of the brain, brain-dead persons and brain death; as well as, the role and responsibilities of the Muslim doctor in Islamic medical ethics. Chapter Two will also discuss in-depth the ethical evaluation of brain-death in relation to death which is the end of human life and of the person in this world. It is important to discuss this because science and medical technology have become so advanced, that it is possible today to retrieve and procure organs

from one person in order to transplant them into another. The third chapter will be divided into six main areas: first is the push/pull factors for recipients and donors; second, the Islamic conception of ownership of the human body as revealed in the Qur'an and Sunnah; third is the arguments of Islamic scholars and experts who completely oppose the sale and donation of human organs; fourth, the arguments and justifications of scholars who are partially against the sale and donation of human body parts; fifth, the arguments and justifications of scholars who support the sale and donation of human body parts under dire necessity; and sixth, the ethics of organ transplantation. The fourth chapter will deal primarily with health policy; organ sale and human dignity; organ retrieval and ways to increase organ availability; the commercialization and commodification of human organ sales; as well as organ donation and the position of Islam on seeking treatment.

It will emerge that a coherent Islamic position on these controversial issues can be constructed from the raw materials listed above: namely, that Islamic principles condone human organ sales out of necessity as a life-sustaining treatment, though not for the purpose of commodification or commercialization.

## Chapter One: Preliminary Considerations

### Section 1.1 What is Organ Transplantation?

This chapter includes Muslim beliefs that underlie the various positions in relation to brain-dead persons and organ transplantation. Also, this chapter serves to help the reader understand why and how Muslim interpretations vary regarding this topic. Organ transplantation is a new issue facing Muslim societies and a new topic for scholars, especially ethicists, jurists and medical doctors, as well as human rights advocates, politicians, political scientists and social activists.<sup>1</sup>

As a life-sustaining treatment, transplantation conforms to Islamic teachings, which largely encourage human beings to seek treatment. The Prophet of Islam, peace be upon him, has said, "O servants of God, seek treatment for yourselves. God has created sickness as he has created treatment for that sickness".<sup>2</sup> The Prophet (pbuh), was once asked by Arab nomads if they should search for a treatment for sickness or just trust in Allah alone? The Prophet (pbuh) replied to them that, "God did not create sickness without creating treatment for that sickness- he is wise who knows this, and ignorant who is unaware of it."<sup>3</sup>

In another context the Prophet (pbuh), said, "Every sickness or disease has a treatment or cure. If the cure reacts with the sickness, the person has health, with the help of God."<sup>4</sup> It was also asked of the Prophet (pbuh), "O Prophet, tell us about drugs that we can take for treatment, the precautions we are taking by having recitation and saliva blown upon us. Are these preventing what God had already decided?" And the Prophet (pbuh) replied, "It is part of what God did rule."<sup>5</sup> These Aḥādīth also show that it is permissible to treat oneself.

Organ transplantation is a means of treatment, and therefore, it is permissible and allowed by reason and religion and for the common and public interest. Organ donation can take place between one living person and another, or from a dead person into a living person as stipulated before the former's death by will or documented consent.<sup>6</sup>

---

<sup>1</sup> Yūsuf al-Qaradāwī, *Fatawā Mu 'asirah* (Al-Manṣūra, Egypt: Al-Wafā, 1993), 530-540.

<sup>2</sup> Muḥammad Ibn 'Isa Abu 'Isa al-Tirmidhī, *Sunan al-Tirmidhī*, 2<sup>nd</sup> ed. (Istanbul: Dār Saḥnūn, 1992), 3: 383; Muḥammad Ibn Yazīd Abu 'Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*, 2<sup>nd</sup> ed. (Istanbul: Dār Saḥnūn, 1992), 2:1137.

<sup>3</sup> Ibn Mājah, *Sunan Ibn Mājah*, 2:1137-1138.

<sup>4</sup> Muslim Ibn Ḥajjāj, *Ṣaḥīḥ Muslim*, 2<sup>nd</sup> ed. (Istanbul: Dār Saḥnūn, 1992), 2:1729; Ibn Mājah, *Sunan Ibn Mājah*, 2: 1138.

<sup>5</sup> al-Tirmidhī, *Sunan al-Tirmidhī*, 3: 383; Ibn Mājah, *Sunan Ibn Mājah*, 2:1137-38.

<sup>6</sup> al-Qaradāwī, *Fatawā Mu 'asirah*, 530-540.

The novelty and significance of the issue of human organ sales and donation has won the attention of both experts and the public. It is an issue which converges upon the conception of human life, values and dignity as well as impacting on the economic, social and legal spheres. The subject of human organ sales and donation is also compelling and confusing for philosophical and religious reasons. As Leon Kass and others have argued it links together some of the most powerful religious and secular ideas and principles that govern and enrich modern life today, such as: our devotion to scientific and medical progress for the relief of man's suffering; private property and free enterprise; and the primacy of personal autonomy and choice.<sup>7</sup> In addition, there are certain other notions that arise with human organ sales and donation, chief among them being notions of decency, propriety and the sanctity of human bodily integrity and respect for a person's mortal remains.<sup>8</sup>

In "Organs for Sale?" Kass delves into these controversies over organ sales, in particular asking: Why it is so offensive to engage in the commercialization of human organs, but not their donation?<sup>9</sup> This goes to the heart of the matter in the debate between past commentators and between contemporary Muslim and western thinkers and experts over organ transplantation: What is the qualitative difference between giving an organ and selling it and between receiving it as a gift and buying it? One of the most striking features often overlooked in the heated debate over the permissibility and ethics of organ sales and donation—and by extension over organ transplantation itself—is that society, by allowing organ donation, has already overcome the societal repugnance at the "exploitative manipulation" of one human body to serve the life and health of another. With donation, Kass says, we justify our present arrangements in acquiring organs for transplantation not only on the grounds of utility and individual freedom, but also on the basis of generosity in that the generous deed of the giver is made inseparable from the organ given.<sup>10</sup> But what about those who are in dire need of organs and who cannot afford to wait for the generosity of others, but would like instead to expedite matters by offering money for life-saving organs?<sup>11</sup>

Put another way, what is so reprehensible about allowing "payment" between willing donors to sell their organs to willing buyers/recipients? This is particularly acute in the case of those individuals who face imminent or prolonged death.<sup>12</sup> Despite the prohibitions put in place,

---

7 Leon Kass, "Organs for Sale? Propriety, Property, and the Price of Progress" *Intervention and Reflection* (2000): 65-86.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

many transplant surgeons, hospitals and even the not-for-profit transplant registries and procurement agencies, are making handsome profits from the organ-trading business.<sup>13</sup> In light of these facts, should human organ sales be re-assessed and allowed? Kass for one warns strongly against allowing financial incentives into the equation, believing it would inevitably: 1) commodify these exchanges; and 2) turn generosity into trade, gratitude into compensation and treat the “most delicate of human affairs” as if everything is reducible to its price.<sup>14</sup>

There are, from the standpoint of Islamic religious experts and scholars, important considerations in the sale and donation of human organs. These considerations revolve around the conception of ownership of the human body, as well as the role of “*ḍarūra*” or dire necessity and the implications of modern medical and scientific innovations such as blood transfusion and organ transplantation. Some scholars have ruled that the purchasing and selling of human organs is “impermissible” under Islam without dire necessity. As Muḥammad Yahyā Aḥmad Abū Al-Futūḥ—a consultant of law in the Kuwaiti Ministry of Health<sup>15</sup>, Mukhtar Al-Mahdi—who is chief of the Department of Nerve and Brain Surgery at Ibn Sina Hospital in Kuwait City<sup>16</sup> and Muḥammad Sayid Ṭaṭāwī—Grand Mufti of Egypt<sup>17</sup> maintain, these scholars—such as Sheikh Al-Sha‘rāwī, a famous Qur’ānic commentator—have made rulings against selling and donating human organs on the basis that a human’s body is owned by Allāh and therefore he/she is not permitted to dispose of that body in light of the juristic rule “He who does not have a thing cannot give.”

While other scholars such as Jād Al-Ḥaqq Ali Jād Al-Ḥaqq—the previous Grand Mufti of Egypt—as quoted by al-Ṭaṭāwī<sup>18</sup> have allowed or deemed permissible organ donation under certain conditions, chief among them the involvement of a reliable doctor and gaining the permission of the living patient to operate on their body to transfer an organ to another person. In support, they have cited the Qur’ānic verse “And slay not yourselves, and cast not yourselves with your hands into perdition.”<sup>19</sup> L1

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 65-86

<sup>15</sup> Muḥammad Yahyā Aḥmad Abū al-Futūḥ, “Bay‘ al-A‘ḍā’ al-Bashariyyah fī Mīzan al-Mashrū‘iyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu‘āṣirah 3. (Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995), 371.

<sup>16</sup> Mukhtar al-Mahdi, “A‘ḍā’ al-Insān Bayna al-Hibat wa-al-Bay‘ wa-al-Akhdh bilā Waṣiyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 297.

<sup>17</sup> Muḥammad Sayyid al-Ṭaṭāwī, “Ḥukm Bay‘ al-Insān li-‘Uḍwīn min A‘ḍā’ihī aw al-Tabarru’ bihi,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 309-314.

<sup>18</sup> Ibid., 309-314.

<sup>19</sup> Ch. 2: 195

L1 See Appendix

Some of these scholars have even been inclined, according to Al-Ṭaṭāwī, to accept the permissibility of paying material recompense in the case that the non-transfer of an organ to a patient entails ruin or serious harm to them and there is no donor of blood relation available, since such a case would be one of “dire necessity.”<sup>20</sup> These scholars have justified the disposal of human organs through sale or donation by way of analogy to the lawful sale of a woman’s milk and of blood.<sup>21</sup> Other scholars have rejected this view, pointing out there is a great difference between the sale of a woman’s milk or blood and the sale of human organs.

Abū al-Futūḥ says that removal of the former—women’s milk and human blood—do not decrease or impede the bodily functions, since by nature they are renewable and the “sold” quantity can be easily replenished-although he notes that if the quantity of blood is excessive and inflicts harm upon the body, the sale would be impermissible since harm is established.<sup>22</sup> Moreover, there is another group of scholars who reject human organ sales, but nevertheless draw a distinction between “purchaser” and “seller”.<sup>23</sup>

Muḥammad Fawzi Fayḍ Allāh—a professor at the Faculty of Islamic Sharī‘ah and Islamic Studies at Kuwait University, Kuwait, says these scholars hold that a free man (be he a Muslim or Dhimmi i.e, a free non-Muslim residing in Muslim lands) cannot be sold, which includes selling him or some part of his body.<sup>24</sup> However, they hold at the same time that if a patient has no choice but to acquire an organ from another person, and he does not find any person to donate such a needed organ or does not find any artificial substitute, then “...purchase of that organ is permissible within the aforementioned conditions for cutting from living people, due to a dire necessity and in this, the patient does not make a wrongdoing, but the sin is the seller’s.”<sup>25</sup> Although this is Fayḍ Allāh’s opinion, I strongly believe there is no sin involved whether it is on the buyer or the seller in the case of organ transplantation for life-sustaining purposes.

<sup>20</sup> Muḥammad Sayyid al-Ṭaṭāwī, “Ḥukm Bay‘ al-Insān li-‘Uḍwīn min A ‘da’ihī aw al-Tabarru’ bihi,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu’aṣirah 3. (Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995), 312.

<sup>21</sup> Muḥammad Na‘īm Yāsīn, “Bay’ al-A ‘da’ al-Ādamiyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 356.

<sup>22</sup> ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayah bayna al-Atibbā wa- al-Fuqahā,” in *Al-Ḥayah al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu’aṣirah 2. (Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, (1985), 347-362.

<sup>23</sup> Abū al-Futūḥ, “Bay’ al-A ‘da’ al-Bashariyyah fī Mīzān al-Mashrū‘iyyah,” 371.

<sup>24</sup> Muḥammad Fawzi Fayḍ Allāh, “Al-Taṣarruf fī A ‘da’ al-Insān,” in *Al-Ru’yah al-Islāmiyyah li-ba’d al-Mumārāsāt al-Ṭibbiyyah*, 330.

<sup>25</sup> Ibid., 338.



The Grand Mufti of Tunis, Sheikh Muḥammad al-Mukhtār al-Salāmī says that rulings with regard to organ transplantation are dependent on the objective.<sup>26</sup> For example, al-Salāmī says that transplantation can be done for cosmetic reasons such as adjusting a nose or chin size or enhancing one's looks or it can be done to change one's identity, such as by criminals or fugitives running from the law.<sup>27</sup> However, al-Salāmī says these reasons do not apply to brain or nervous system transplants, because of their special role in giving a person his human qualities.<sup>28</sup> He is therefore adamant that transplantation must only be allowed for genuine psychological or physiological reasons, like restoring health and normality to the body and psychological balance to the person, and not for cosmetic purposes.<sup>29</sup> Thus, al-Salāmī says that such transplantation is permissible within certain specified conditions and when a good chance of recovery exists.<sup>30</sup> Organ transplantation for him is a means whereby doctors overcome illness, pain and mutilation and is therefore a form of treatment.<sup>31</sup> He furthermore says that the transplant organ should only be used if still alive and that an organ may continue to live after the death of its owner whose brain-stem is dead.<sup>32</sup> Moreover, he adds that it may or may not be a life-saving organ.<sup>33</sup> Al-Salāmī does insist, however that since the brain is a unique and personality-giving organ, it should never be wholly or partly removed from anyone capable of sustaining life.<sup>34</sup>

Barbara A. Koenig and Linda F. Hogle observe that organ transplantation—a technology that has become “standard therapy” over the past 30 years— provides an opportunity to examine transformations in concepts of the body and the self. In addition, they say it is fertile ground for exploring a plethora of contemporary issues such as property rights, commodification, the changing nature of kin relations in contemporary culture, and the artificial extension of life (or death) or life-support technology.<sup>35</sup> Koenig and Hogle also contend that organ transplantation is part of life-sustaining treatment, saying that “Transplantation must be located within the spectrum of ‘end-of-life technologies’ deployed to stave off death”.<sup>36</sup> Koenig and Hogle also review and extensively cite the works of Donald Joralemon (a professor of

<sup>26</sup> Muḥammad al-Mukhtār al-Salāmī, “Zarā ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khāṣṣatan al-Mukh,” in *Al-Ru‘yah islāmiyyah li-zarā ‘at Ba ‘d al-A ‘dā’ al-Bashariyyah*, 117.

<sup>27</sup> Ibid., 117.

<sup>28</sup> Ibid., 117.

<sup>29</sup> Ibid., 118.

<sup>30</sup> Ibid., 118.

<sup>31</sup> Ibid., 118.

<sup>32</sup> Ibid., 119.

<sup>33</sup> Ibid., 119.

<sup>34</sup> Ibid., 119.

<sup>35</sup> Barbara A. Koenig and Linda F. Hogle, “Organ transplantation (re)examined?” *Medical Anthropology Quarterly*, New Series, vol. 9, no.3( 1995): 393.

<sup>36</sup> Ibid., 393.

Anthropology at Smith College) and Lesley A. Sharp (another professor of Anthropology at Barnard College) which touch on all the abovementioned issues connected to organ transplantation (i.e. property rights, commodification, life support, conception of body and self etc.) in their analysis.<sup>37</sup>

## Section 1.2 Definitions: Human Being, Life, Soul, Spirit, Signs of Life, Heart

### Introduction

What is a human being? For al-Mahdī, the human being is the living brain. Taking the opposite view, Ibrāhīm says the human being is the soul, but cautions that no one can truly know the reality of the soul, since it is both intangible and unseen. As such, he places his intellectual focus on the human heart and spirit/soul in defining the human being. Imām Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī—the great Sunni Muslim jurist, theologian and influential scholar—has for his part eloquently described the soul and its different characteristics, while Imām Fakhr al-Dīn al-Rāzī—another great theologian, philosopher and Qur’ānic exegete—has defined the human being as a physical body that we can see. Al-Rāzī furthermore deems the spirit and the soul to be one and the same, using many Qur’ānic verses in support of his argument. Similarly, ‘Abd Allāh Muḥammad ‘Abd Allāh—a consultant with the Supreme Court in Kuwait, has examined the spirit on the basis of Qur’ānic verses much like al-Rāzī.

This chapter evaluates the extensive literature, divergent viewpoints and various scholarly definitions of what a human being is. In presenting these arguments, I have cited a select number of authorities who stand out on account of their scholarly merit. These scholars include those who have already been mentioned, such as al-Ghazālī, who in his seminal book *Iḥyā’ ‘Ulūm al-Dīn* coherently and comprehensively discusses the nature of soul/spirit. They also include such other writers as Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah—a famous Sunni jurist and Qur’ānic commentator—and his book on the soul/spirit *Kitāb al-Rūḥ* which was particularly helpful and Ibn Sīnā’s *Al-Nafs Al-Bashariyyah* which was frequently quoted by al-Rāzī in his arguments on the soul/spirit. ‘Umar Sulaymān al-Ashqar—professor of the Faculty of Islamic Sharī‘ah and Islamic Studies at Kuwait University—and his article “Bidayat al-Ḥayāh wa-Nihayatuḥā” was also very important in its own right because he discusses in depth the soul/spirit; while Tawfiq al-Wā‘ī—a professor of Islamic Sharī‘ah and

---

<sup>37</sup> Ibid., 393

Islamic Studies at Kuwait University in his article “Ḥaqīqat al-Mawt wa-al-Ḥayāh fī al-Qurʾān wa-al-Aḥkām al-Sharʿiyyah” looks at the relationship between body and soul/spirit.

Furthermore, other articles and short treatises by Majid Fakhry, al-Wāʿi, al-Rāzī and Ibn Qayyim, were all immensely helpful for the discussion of spirit and soul. The scholarly works of Imām al-Qurṭubī—a famous scholar, philosopher and theologian; as well as Qurʾānic commentator—in his tafsīr *al-Jāmiʿ li-Aḥkām al-Qurʾān*, Aḥmad Shawqī Ibrāhīm—a medical doctor in Kuwait, Ibn Kathīr—a prominent Sunni Muslim Qurʾānic commentator—in his tafsīr *al-Qurʾān al-ʿAẓīm*; as well as Imām al-Zamakhsharī—a famous theologian, philosopher and Muʿtazilite—in his tafsīr *al-Kashshāf* have all stressed the importance of the human heart, consciousness, feeling and understanding.

The scholars presented here have differing opinions about the concepts of human spirit/soul, as well as, what constitutes a human being—that is, is he/she strictly defined based on the physical body, the metaphysical soul or is it rather a combination of both soul and body that makes up a human being vis-a-vis the overall definition of human life? The various scholars also hold wide-ranging, divergent viewpoints on this matter, most of which are conflicting theological opinions not only on the concepts of soul and spirit, but also on the definition of life and what constitutes the primary (master) organ in the human body, the one for which life itself is inextricably linked.

Some of the abovementioned scholars have convincingly argued that human life is dependent, ultimately and solely, upon the functioning brain, while other scholars have pointed to the heart and still others have argued holistically that it is a combination of both brain and heart.<sup>38</sup> In addition to this, there has also been intense scholarly speculation and discussion over what defines and constitutes human death itself. After reviewing all the literature, positions and scholarly arguments dealing with these topics, it is my humble opinion that the human soul, spirit and life are concepts that Allāh and his Messenger discussed and gave different names to in various places within both the Qurʾān and the Sunnah of the Prophet Muḥammad (pbuh). For example, the Islamic concept of soul/spirit is seen as a unitary concept (i.e. there is one human soul); nonetheless, “the soul” has three different characteristics as mentioned in the Qurʾān: in Ch. 89:27-30 the soul is called *Nafs al-Muṭmaʾinnah*, “(To the righteous soul will be said:) “O (thou) soul, in (complete) rest and satisfaction!” “Come back thou to thy Lord,- well pleased

<sup>38</sup> Mukhtar al-Mahdī, “Bidʾayat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidʾatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Muʾaṣirah .2. (Kuwait: Al-Munazzamah al-Islamiyyah lil-ʿUlūm al-Ṭibbiyyah, 1985), 69.

(thyself), and well-pleasing unto Him!" "Enter thou, then, among My devotees!" "Yea, enter thou My Heaven!"; Ch. 6:93, "Who can be more wicked than one who inventeth a lie against God, or saith, "I have received inspiration," when he hath received none, or (again) who saith, "I can reveal the like of what God hath revealed"? If thou couldst but see how the wicked (do fare) in the flood of confusion at death! - the angels stretch forth their hands, (saying),"Yield up your souls: this day shall ye receive your reward,- a penalty of shame, for that ye used to tell lies against God, and scornfully to reject of His signs!""; and in Ch. 12:53 it is called *Nafs al-Ammārah bi al-Sū'*, "Nor do I absolve my own self (of blame): the (human) soul is certainly prone to evil, unless my Lord do bestow His Mercy: but surely my Lord is Oft-forgiving, Most Merciful." ; and finally in Ch.75:2 it is called *Nafs al-Lawwāmah*, "And I do call to witness the self-reproaching spirit: (Eschew Evil)."<sup>39</sup> Equally, the notion of spirit in the Qur'an has at least six different meanings, although the word for both soul and spirit, "*rūḥ*", is one.<sup>40</sup>

As we will see from the various definitions of spirit/soul presented, there is no one agreed-upon Islamic position; instead there is a multitude of various opinions of schools of thought held by prominent theologians and philosophers, both past and present. For Fakhr al-Dīn al-Rāzī, the soul, spirit and life are one. Al-Rāzī has argued on the basis of the various Qur'anic verses that the human being is body. Although al-Rāzī admits that the Qur'anic verses have different meanings for spirit, soul and life, they are nevertheless always the opposite of death-which has a totally different meaning altogether. The direct meaning of death in the Qur'an is the separation of the soul, life or spirit from a body. Moreover, death in the Qur'an and Sunnah also has an indirect meaning in moral and religious usages.

Life is defined by breathing, nourishment, development, movement and reproduction. All living creation (both human and non-human) have different procedures for breathing, nourishment intake, development, movement and reproduction. For instance the breathing of warm blooded mammals differs greatly from that of plant and microscopic life forms. Yet, suffice it to say, all the abovementioned characteristics of life are diametrically opposite to death.

<sup>39</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ* (Beirut: Dār al-Fikr, 1991), 216-238 .

<sup>40</sup> Ch.26:193; Ch.19:17; Ch.2:253; Ch.58:22; Ch.78:38; Ch.42:52.

Both life and death, as the Qur'an mentions, have been created by God, who is also the one that extracts living things from death and vice versa.<sup>41</sup>

### Section 1.2.1 What is a human being?

Here I present the general opinions of Mukhtar al-Mahdi and Ahmad Shawqi Ibrahim in trying to answer the primordial and existential question of what a human being is. Consequently, I take as a starting point al-Mahdi's theory that the human being is essentially a living brain which carries the human soul. For al-Mahdi and those who hold a similar opinion, the human being is, for all intents and purposes, exclusively defined by the creation and existence of a living brain. My refutation of al-Mahdi and his argument is that the human being cannot be defined simply as a living brain. Rather, it is a known fact that without the rest of the human body's vital organs— such as the heart, liver and kidneys, a person cannot survive, even with the presence of a living brain. Of course, the brain is a vital organ, but it cannot be the human being.

On the other hand, Alexis Carrel, as cited by Ibrahim, believes that the human being is not the physical body at all; instead he argues the human being is unknown and will remain such forever.<sup>42</sup> However, Carrel overlooks a major contradiction in contending that the human being is not a physical body— one which we can see before us— but is instead untouchable like the soul, spirit or life. What he overlooks is that the soul needs a physical body, for without a body we cannot recognize the soul, spirit or life. Ibrahim also holds the same philosophical position as Carrel and maintains that, since the human being is soul/spirit, then the soul/spirit is unknown except from what God (Allah) and his messengers have said concerning them.<sup>43</sup> Furthermore, Ibrahim affirms that the heart is the master organ that controls the human body, the soul, consciousness— basing his argument on an important Qur'anic verse that reveals how human soul, spirit or life is to be found in the human heart contrary to the view of al-Mahdi.<sup>44</sup> Similarly, Ahmad al-Qadi—a medical doctor in Panama City, Florida, USA— also holds that

---

<sup>41</sup> Ch.67: 1-2; Ch.57:2; Ch. 30: 19.

<sup>42</sup> Ahmad Shawqi Ibrahim, "Nihayat al-Hayah al-Bashariyyah," in *Al-Hayah Al-Insaniyyah : Bidayatuha wa- Nihayatuha fi al-Mafhum al-Islami*, 363-377.

<sup>43</sup> Ibid., 363-377.

<sup>44</sup> Ch.17:85.

the human soul is located in the heart.<sup>45</sup> Both al-Qāḍī and Ibrāhīm have presented and elaborated on the "heart" as a moral heart and not just a physical "piece of meat"; they have, moreover based their reasoning on Qur'anic verses.

It is my qualified view that the human being is not only soul, spirit and life, but an amalgam of body, soul/spirit and life, such that all three of these items have the exact same meaning. It was al-Ghazālī who skilfully classified the human soul into three categories according to the existing Qur'anic classifications of human soul.<sup>46</sup> With respect to the work of Imām al-Ghazālī on this topic, I hold that the human soul is one-despite having different characteristics, just like when a person has varying individual personality traits. For al-Ghazālī and other similar Sunni scholars, the soul/spirit and "life" are the same and also have signs that allow us to recognize and locate their presence in the human body. It is my strong belief that the human being consists of 1) a human body and 2) a soul/spirit. The majority of Sunni Muslim scholars, such as Ibn Sīnā, al-Ghazālī, Ibn Qayyim, Ibn Taymiyyah (whom Ibn Qayyim cited) concur that the human being is body and soul.<sup>47</sup> For this reason, I have based my own reasoning and judgment on their work in order to show that the human being is both body and soul. One should note 'Umar al-Ashqar's claim that Ibn Taymiyyah held that the spirit or soul is not part of the human body at all, that in fact it doesn't even constitute one of the body's characteristics.<sup>48</sup>

### Section 1.2.2 Who is a Human Being? (Medical Definition)

There are various sources and viewpoints concerning the definition of a human being. For example, al-Mahdī provides a medical definition:

A Human being is a living brain, which carries the human soul. That living brain serves many types of organ functions in the human body. Some organs are for nutrition, others

<sup>45</sup> Aḥmad al-Qāḍī, "Al-Qalb wa- 'Alaḡatuhu bi al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 383-392.

<sup>46</sup> 1) Ch. 89:27-30 as Al-Nafs al-Muṭma'innah; 2) Ch. 6:93 and Ch 12:53 Al-Nafs al-Ammārah Bi al-Sū'; 3) in Ch. 75:2 Al-Nafs al-Lawwāmah (as in the self-reproaching person).

<sup>47</sup> Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn: Kitāb sharḥ 'ajāib al-qalb* vol. 3, (Cairo: Maktabat al-Tīyariyyah al-Kubrā, 1950), 3-5; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Ruḥ* (Beirut: Dar al-Fikr, 1991), 175-212.

<sup>48</sup> 'Umar Sulaymān al-Ashqar, "Bidāyat al-Ḥayāh wa-Nihāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 130-153.

for human waste, transportation, and movement at will. Additionally, the human soul controls all human organs and actions through the brain.<sup>49</sup> L<sup>2</sup>

By contrast Ibrahim, a medical doctor in Kuwait, prefers the position of Carrel, who said: “The science of anatomy, physiology, chemistry, psychology, sociology and other sciences did not give us definite results on what is the reality of a human being. The human being is unknown by himself and our ignorance of a real human being will be unlimited forever”.<sup>L3</sup> According to the Qur’an and the Tradition of the Prophet (pbuh), on the other hand the human being is not only a body, but also soul and spirit. Scholars clearly disagree about the definition and knowledge of the human being. Medical doctors have defined the human being as a body composed of cells which are subject to disease and health, whereas psychologists have defined the human being as a “feeling” that we cannot grasp or touch. Similarly, Sunni Muslim scholars have not been able to come to a consensus on human soul and its secrets. Whatever they do know about the spirit comes from the Qur’an and the Sunnah.<sup>50</sup>

Ibrahim does insist however that the beginning and end of a human life are connected strongly to the body, soul, spirit, intellect and heart; therefore, it is obligatory for any researcher of this topic to first know all these components of human life in order to understand when human life starts and ends.

### Section 1.2.3 The Human Being: Body and Soul or Soul or Body?

Muslim thinkers generally hold that the human being consists of two important essential parts—the physical body and the soul. When both body and soul are functioning together a person is a full person, and when body and soul part company from each other, the person is considered dead.<sup>51</sup>

### Section 1.2.4 Definition of Soul

Muslim and non-Muslim scholars, ethicists and philosophers have long disagreed over the human soul, in particular whether it is something different or separate from the body and spirit, or if it is something that is generated and created as a by-product from the contact

---

<sup>49</sup> Mukhtār al-Mahdī, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 345.

<sup>L2</sup> See Appendix

<sup>L3</sup> See Appendix

<sup>50</sup> Ahmad Shawqī Ibrahim, “Matā Bada’at Ḥayāh al-Insān,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74-76.

<sup>51</sup> Ch. 32:7-9; Ch. 39:42.

between body and spirit. Some Sunni Muslim scholars say the spirit, unlike the soul, commands only good things and those behaviours commanded by Allāh.

Psychologists and theologians also have had arguments about the human soul and where it originated first. Many Muslim scholars have preferred the view that the human soul is different from the body and spirit. In their view, the soul commands both good and bad behaviour, while the spirit commands only good behaviour.<sup>52</sup> However, al-Ghazālī has said that “the soul is the origin of all bad human characteristics”.<sup>53</sup> <sup>L4</sup>

Ibrāhīm cites al-Bayhaqī, who quotes Ibn ‘Abbās, cousin of the Prophet (pubh), as having said that the Prophet (pbuh) said “The worst enemy you have is your soul inside your body”.<sup>54</sup> Ibrāhīm contends that the human soul is the secret life in the human being. It is in many ways the embodiment of the real human, just as the animal lives by the animalistic soul. Nevertheless, it is possible that the human being has both an animalistic and a human soul.<sup>55</sup>

Al-Ghazālī says that the human soul has three attributes, in effect that there are three kinds of souls.<sup>56</sup> If the human soul is pious and against committing wrong acts and favours doing good deeds it is called a “pious soul”, but if it is always distressed about not doing good things and about not obeying Allāh perfectly, it is called a “soul of complaints”.<sup>57</sup> Finally, when the human soul is completely intent on fulfilling its own desires, disobeying its creator and ignoring the commands of Allāh, it is called a “soul that commands bad”.<sup>58</sup> The soul is connected to the body and it is inside the human body; when the soul enters the body, it generates life in the body. When the soul/spirit is separated from the physical body, this event heralds its end in this world, since as Allāh says to the pious soul “(To the righteous soul will be said) "O (thou) soul, in (complete) rest and satisfaction! Come back thou to thy Lord,- well pleased (thyself), and well-pleasing unto Him!"”.<sup>59</sup> <sup>L5</sup>

<sup>52</sup> Aḥmad Shawqī Ibrāhīm, “Nihāyat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fi al-Mafhūm al-Islāmī*, 2. (1985), 365.

<sup>53</sup> Muḥammad Ibn Muḥammad Abū Ḥamid Al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn: kitāb sharḥi ‘ajāib al-qalb*. vol. 3, 3-5.

<sup>L4</sup> See Appendix

<sup>54</sup> Aḥmad Shawqī Ibrāhīm, “Nihāyat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fi al-Mafhūm al-Islāmī*, 365.

<sup>55</sup> Ibid., 366.

<sup>56</sup> Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn: kitāb sharḥi ‘ajāib al-qalb*. vol. 3, 3-5.

<sup>57</sup> Ibid., 4.

<sup>58</sup> Ibid., 4.

<sup>59</sup> Ch. 89: 27-30.

<sup>L5</sup> See Appendix



### Section 1.2.5 Human Being as Body

Fakhr al-Dīn al-Rāzī—the great theologian, philosopher and Qur'anic commentator, who also held that the soul and spirit are one—defines the human being in these terms: as a body which is composed of different parts and elements in specific amounts.<sup>60</sup> Al-Rāzī defined a human being also as a physical body that we can see and feel in front of us, which he named the “earthly body”—what people today would refer to as organic body. Al-Rāzī clarified his definition further by saying that this “earthly body” is the body which is dominated by earthly elements such as heavy, solid organs like bones, tendons, veins, grease, flesh, skin and blood; moreover, he said no one with an intellect would dispute that all human bodies are composed of these similar elements and instead contend that the body is just another organ from amongst the other organs.<sup>61</sup>

The human being is, however, not only a physical body, but a body along with a soul and a spirit.<sup>62</sup> Muslim medical doctors define the human being as a body with cells that are subject to sickness and health.<sup>63</sup> Muslim psychologists define the soul and spirit primarily as feeling. But, no one truly grasps the reality of the human soul and its secrets, and Muslims can turn to the Qur'an and the Prophetic Traditions when they wish to know about the meaning of soul and spirit. Yet, human life, its beginning and its end are both related to the human body, soul, spirit, heart and intellect.<sup>64</sup>

### Section 1.2.6 Does the Human Soul Die?

The physical body dies and is killed, but apparently not the soul, since Allāh says “Hast thou slain an innocent person who had slain none? Truly a foul (unheard of) thing hast thou done!"; and Allāh says “Nor can a soul die except by Allāh's leave, the term being fixed as by

---

<sup>60</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22, (Beirut: Dar Ihya' al-Tura' th al-'Arabi, 1980), 43. “Deliver up your souls” (6:93).

<sup>61</sup> Ibid., 43.

<sup>62</sup> Muḥammad Ibn Muḥammad Abu Ḥamid al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn: kitāb sharḥi 'ajā'ib al-qalb*, 3-5; Aḥmad Shawqī Ibrahim, “Nihayat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidayatuha wa-Nihayatuha fi al-Maḥmūl al-Islāmī*, 364; Al-Rāzī, Fakhr al-Dīn, *Al-Tafsīr al-Kabīr*, 3<sup>rd</sup> ed. vol 21/ 22, 43-44.

<sup>63</sup> Aḥmad Shawqī Ibrahim, “Nihayat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidayatuha wa-Nihayatuha fi al-Maḥmūl al-Islāmī*, 364.

<sup>64</sup> Ibid, 364.

writing” and “ Every soul shall taste death.”<sup>65</sup> <sup>L6</sup> The abovementioned Qur’ānic verses and similar ones show that the soul dies in a general sense, but it is the body that experiences death and not the soul, since to say that every soul shall taste death that means that the “soul” which tastes death remains alive. In the preceding Qur’ānic verses the soul also refers to personhood.

### Section 1.2.7 What is the Spirit?

The traditional understanding of spirit (human spirit) is that it is what causes life, but there are many explanations of the term. In addition, there are various questions arising concerning the idea of the relationship between the body and spirit, such as:

- 1) What is spirit (rūḥ)?
- 2) Is the spirit eternal or temporary?
- 3) Do spirits (arwāḥ = plural of rūḥ) remain after the death of bodies, or do they disappear?
- 4) What is the reality of the spirit’s happiness or discontent?

Fakhr al-Dīn al-Rāzī takes up these questions and attempts to answer them in his Qur’ānic commentary on certain verses.<sup>66</sup>

Specifically, what is the spirit and its nature? Is it a tangible physical body, which exists in human and animal bodies, originating from a mixture of items and characteristics? Or is it a component of this mixture? Perhaps the spirit is a phenomenon which stands alone in the human body and is very different from that body?

The spirit, as is stated in the Qur’ān several times, is something very different from the human body because spirits are components of new essences and elements mixed together. The spirit is a simple element, which accompanies new events or creation. For example, when Allāh creates a human body, He then creates a spirit or soul for that body. He does not create a soul or spirit, then a body to follow. The creation of the soul (spirit) and body are two different, simultaneous events that are linked to each other.

As Fakhr al-Dīn al-Rāzī explains, the word *Amr Rabbi*, the spirit, because the spirit, has several meanings:

---

<sup>65</sup> Ch.18 : 74; Ch. 3: 145; Ch.29:57; Ch.21:35; Ch.25:61; Ch.16:111; Ch.74:38; Ch.89:27; Ch.6:93; Ch.79:40; Ch.12:53; Ch.42:52; Ch.40:15.

<sup>L6</sup> See Appendix

<sup>66</sup> Fakhr al-Dīn Al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22., 36-53; Ch. 17: 85.

- 1) "It is only the command of my Allāh, and knowledge that Allāh has given me little".
- 2) It means action.<sup>67</sup>

Moreover, Fakhr al-Dīn al-Rāzī defines spirit as human soul, which Allāh takes back when a person dies. Al-Rāzī and Ibn Qayyim al-Jawziyyah give six meanings of spirit, as follows:

- 1) Spirit means Gabriel;
- 2) Spirit means power and victory;
- 3) Spirit means Amr Rabbi or hidden life;
- 4) Spirit means Revelation;
- 5) Spirit means the human soul;
- 6) Spirit is connected to Jesus Christ.<sup>68</sup>

The first definition derives from Allāh's words to Prophet Muḥammad (pbuh): "which the trustworthy Ruḥ (Gabriel) has brought down upon your heart that you may be one of the warners."<sup>69</sup> L7

Archangel Gabriel, one of the most powerful angels, is referred to as spirit in another passage where Allāh says, "The Day that the Spirit and the angels will stand forth in ranks, none shall speak except the one who is permitted by (Allāh) Most Gracious, and he will say what is right."<sup>70</sup> In addition, Allāh says in the case of Mariam (Mary) and her pregnancy, "So she took a veil (to screen herself) from them; Then We sent into her Our "spirit" and he [Gabriel] appeared to her in the form of a perfect man."<sup>71</sup> As Ḥasan of Baṣrah and Qatādah, the student of Ibn 'Abbās, likewise explained God states in another place in the Qur'an that Gabriel is spirit, i.e. "The trusted spirit has brought it down upon thy heart."<sup>72</sup>

<sup>67</sup> The phrase, "The command of my Lord", has several meanings: It means an action, as Allah (God) mentions concerning Pharaoh in the Qur'an, "The commandment of Pharaoh was not rightly directed" (Ch.11: 97). This refers to the action of Pharaoh. In addition, Allāh says, "When Our command comes" This means when God's actions arrive, no one can detain them. Therefore, the meaning of this verse, "They ask you Oh Prophet Muḥammad regarding the spirit, say: It is only the command of my Lord (God)". This means the actions of my Allāh (God) – It shows that the spirit is an original occurrence with a new body, which exists with the action and command of God. He is the one who composes the soul and causes it to subsist.

<sup>68</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22., 38-39; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Ruḥ* (Beirut: Dar Al-Fikr, 1991), 152-55.

<sup>69</sup> Ch.26: 193-194; Ch. 19:17.

<sup>L7</sup> See Appendix

<sup>70</sup> Ch. 78:38.

<sup>71</sup> Ch. 19:17.

<sup>72</sup> Ch. 26:193-194.

The spirit also means power and victory, such as when Allāh says in the Qur'an: "We supported Jesus Christ, son of Mary, with Pure Spirit."<sup>73</sup> <sup>L8</sup> God also supported the Companions of the Prophet in their struggle against the Infidels at the Battle of Badr with his spirit.<sup>74</sup>

Incidentally, in the Qur'an it is often Gabriel who is associated with power and victory, as well as being described as Spirit- since he is a large angel who will stand by himself on Judgement Day and will serve as a supervisor to all other angels.<sup>75</sup>

In all of the meanings provided for the term "spirit", there are obvious connections and similarities. However, one distinct meaning of spirit is Amr Rabbi, or the concept of hidden life, as mentioned by Imām Abū 'Abd Allāh Ibn Muḥammad al-Qurṭubī—a prominent classical Sunni Muslim jurist and Qur'anic commentator—in his writings.<sup>76</sup>

The spirit is also divine revelation – it is the Qur'an, the Word of God— because it preserves spiritual life from ignorance, as Allāh says, "Sending His spirit which is Qur'an to His messenger"; and "Similarly, We revealed to you (O Messenger) the spirit of Our command". As well as revelation, spirit symbolizes mercy and inspiration in the Qur'an, as when Allāh says "we have sent to you Rūḥan (an inspiration) and mercy."<sup>77</sup>

Spirit also means the human soul, which has three different characteristics as mentioned in the Qur'an.<sup>78</sup>

The sixth meaning of spirit is connected to Jesus, since Allāh says "The Messiah Jesus, son of Mary, was (no more than) a Messenger of Allāh and his Word (i.e. Allāh said "Be!"— and he was") which He bestowed on Mary as a spirit (Rūḥ) created by Him."<sup>79</sup> <sup>L9</sup>

The Prophet Muḥammad (pbuh), was asked about the spirit by a group of Jewish scholars and Arab pagans. The Prophet replied concerning divine revelation in the following Qur'anic verses: "Where did you get this Qur'an? Say, 'This is a command of God which he

<sup>73</sup> Ch. 2:253.

<sup>L8</sup> See Appendix

<sup>74</sup> Ch. 58:22.

<sup>75</sup> Ch. 78:38

<sup>76</sup> Abū 'Abd Allāh Ibn Muḥammad al-Qurṭubī al-Anṣārī, *al-Jāmi' li-Aḥkām al-Qur'an*. vol. 16, (Cairo: Dar al-Katib al-'Arabi, 1967), 54-55.

<sup>77</sup> Ch. 40:15; Ch. 42:52; Ch. 16: 2.

<sup>78</sup> Ch.89:27-30; Ch.75:2; Ch.12:53; Ch.6:93; Ch.91:8.

<sup>79</sup> Ch. 4: 171; Ch.21: 91.

<sup>L9</sup> See Appendix

revealed for me”<sup>80</sup> However, some Muslim scholars think that the question asked related to the human soul, which inhabits the body (body-life). That is to say, were the Jewish scholars and Arab pagans asking the Prophet (pbuh), about the reality of the human soul? Throughout the history of Islamic civilization, questions have been raised concerning this topic, specifically, where the spirit is located in the human body, what it looks like, and how it is connected to and intertwined with the human body. Suffice it to say, there have been no complete or adequate answers to date. In my opinion, it is God alone who knows the answers to these questions concerning the spirit; therefore, the Prophet’s answer was suitable for the questions asked by the Jewish scholars and the Arab pagans. Moreover, it is God alone who knows the facts and reality of the spirit—since this information was not passed on to human beings. As ‘Abd Allāh Muḥammad ‘Abd Allāh, a consultant with the Supreme Court in Kuwait maintains, it is beyond the ability of the human being to acquire the knowledge of the spirit or soul through his/her own wisdom, reasoning or feelings.<sup>81</sup>

Spirit can also mean life or soul, which is one of Allāh’s secrets put into human beings, since Allah says in the Qur’ān, "I have fashioned him [man] completely and breathed into him (Adam) the soul which I created for him." <sup>82</sup>

The spirit has also been defined by scholars as a living, heavenly entity that enlightens the body, which is able to move and is different from the physical body. The spirit is said to diffuse into the human body as water diffuses into a flower; as oil into an olive tree; and as fire diffuses into charcoal. Moreover, the spirit does not decompose, change or become distributed into separate pieces. Instead, it gives the tangible human physical body life, and its effect on the human body is complete. The human body is fashioned or made prepared for the spirit and the spirit is connected to that body—which is ready to accept the command. However, the established opinion and position of Ibn Sīnā, al-Ghazālī, al-Rāzī and Ibn Qayyim, as well as most other Islamic scholars, is that when heavy foreign substances cause the body not to accept the commands of the spirit and the body becomes unable to serve and obey the spirit, death will immediately occur.<sup>83</sup>

<sup>80</sup> Ch.17:85.

<sup>81</sup> ‘Abd Allāh Muḥammad ‘Abd Allāh, “Al-Ḥayāh : Bidāyatuhā,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 156.

<sup>82</sup> Ch.15:29.

<sup>83</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22., 44; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ*, 175-212; Muḥammad Ibn Muḥammad Abū Ḥamid Al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn: kitāb sharḥ ‘ajā’ib al-qalb*. vol. 3, 3-5.

Regardless of the different meanings of spirit, what is important is that it is a command from Allāh and that no one knows its true meaning and reality except Allāh.<sup>84</sup> As al-Ghazālī said, “The spirit is a simple thing in the human being; it is knowledge and understanding; the spirit is a command of God and is beyond the capacity of all intellects and understanding.”<sup>85</sup>

The spirit or soul can be a complex concept to elucidate. ‘Umar Sulaymān al-Ashqar has attempted to explain it in the following terms:

The spirit/soul is a light body, heavenly, simple and alive by itself. It moves and penetrates into organs and diffuses in them. Human beings cannot see it or recognize exactly what it is. Although we believe that we have a spirit we cannot explain its features like that of a person, so it is not a tangible thing in this sense and no one knows its composition. The spirit is fact or reality that we cannot grasp through our senses. It cannot be analyzed through laboratories or under microscopes, but people can see its effects when it is in the body. People can also feel its effects when it is departing from the body.<sup>86</sup> L10

Humanity has always been interested in the idea of the soul or spirit, including scholars, philosophers and theologians alike. For example, many philosophers, like Aristotle, have believed that spirit and life are the same— even dating back to the beginning of the first human primitive cell. The Mu‘tazilite scholar al-Nazzām even said the spirit is the body and the soul—that all three are the same. In contrast, the Mu‘tazilite Ja‘far Ibn Ḥarb believed that the spirit and life were different; however, he said the soul was an “event” that is present inside the body. Another Mu‘tazilite scholar al-Jubbā‘ī, also said the spirit was the body, but that the spirit was also different from life, while the scholar Abū al-Hudhayl argued that when the person is asleep there is no soul or spirit, but there is a life. The major 12<sup>th</sup> century Muslim thinker al-Shahrastānī took the idea from Aristotle and Ja‘far Ibn Ḥarb that the spirit is an event, which starts with the formation of the body. Moreover, the belief that the spirit did not exist before or after the body was a widely held notion of the Mu‘tazilites. Ibn Taymiyyah clarified the views

<sup>84</sup> Ch.17:85.

<sup>85</sup> Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn: kitāb sharḥi ‘ajāib al-qalb*. vol. 3, 3-5.

<sup>86</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuḥa,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuḥa fī al-Mafḥūm al-Islāmī*, 139-140; R. Arnaldez, “Al-Ḥayāt,” in *The Encyclopaedia of Islam*, vol.3, 302-5; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ*, 175-78.

L10 See Appendix

of the “innovators”, such as the Jahmites and Mu‘tazilites, who declared that the spirit is a life that depends on the body, and, moreover, that the spirit is either one of the characteristics of the body or it is similar to wind, in that the spirit moves in and out of the body.<sup>87</sup> However, Ibn Taymiyyah said that, from an Islamic viewpoint, including the opinions of the Companions of the Prophet (pbuh), their successors and the rest of the Sunni Muslim scholars, the spirit—which separates and departs from the body at death—is not part of the human body nor is it one of the body’s characteristics.<sup>88</sup>

It is my opinion that Islamic scholars like Ibn Taymiyyah and others use the Qur‘ān and the Ḥadīth of the Prophet (pbuh) as a guide in determining the human life cycle. Human beings are inanimate starting from the stage of conception until the inspiration of the spirit at the completion of four months. Consequently, the human being will continue to be alive until the separation of spirit/soul from his/her body. When the spirit and the physical body have separated from each other, the human being will become inanimate once again. The spirit is not a characteristic of the body nor does it resemble any other creature—as far as we know. The life found inside the embryo before the breathing of the soul—as well as the type of life that exists in human organs after the spirit has separated from the physical body—is not considered as a real life in Qur‘ānic usage. Therefore, human beings are essentially dead both at the point before the inspiration of the spirit and after the spirit has departed the body.

### Section 1.2.8 The Relationship Between Body and Spirit

The Mu‘tazilites believed that the human being is a specific or special creation with the attributes of life, knowledge and power. They believed life is an accidental element which depends on the body. In this regard, Mu‘tazilites maintained that the spirit is not separate from the body and that it does not have a separate identity. In their opinion, the human being is a special body which has the attributes of life, knowledge and power. The human being is distinguished from other animals in his shape, structural organs, and parts, while Allah has given him such extra faculties as intellect and the power to differentiate all things.<sup>89</sup>

<sup>87</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuhā,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 139-140; R. Amaldez, “Al-Ḥayāt,” in *The Encyclopaedia of Islam*, vol.3., 302-5; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al- Ruḥ*, 175-78.

<sup>88</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuhā,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 139-140; R. Amaldez, “Al-Ḥayāt,” in *The Encyclopaedia of Islam*, vol.3., 302-5; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al- Ruḥ*, 175-78.

<sup>89</sup> Tawfiq al-Wa‘ī, “Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur‘ān wa- al-Aḥkām al-Shar’ ‘iyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 465; Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/22., 44; Majid

The Mu'tazilites also believed that the spirit is an accidental element which depends on the body and is never separated from it. For the Mu'tazilites, the body and spirit are one and the same and they never separate from each other.<sup>90</sup>

### Section 1.2.9 The Sunni Opinion

Sunni scholars say that a human being consists of two parts- a physical body and a spirit which is breathed into the body. If the body has lost its readiness for spirit, it will die and there will be no life at all.<sup>91</sup> Sunni scholars, philosophers and bio-ethicists say that the spirit is one thing and the body another, that these two are different and separate. Their argument is based on the Qur'ānic verse which says: "Every soul shall taste death."<sup>92</sup>

This verse is important evidence (for those who believe the Qur'ān is revelation) for the idea that the soul is alive when the body dies. The Qur'ān says that the soul will taste death, and as we know the taster of something must be alive; therefore, the meaning of the verse is actually "Every soul tastes the body's death". The soul is different from the body and, therefore, the soul will not die when the body dies. This verse is also evidence (for some Muslims) of the necessity of death for the body or earthly life.<sup>93</sup> The body, because it dies, is different from the spirit which is breathed into the body. The Qur'ān indicates that the human being is both body and soul (or spirit) in the following verses:

And by Nafs (Adam, or a person or a soul etc.), and Him Who perfected him in proportion" and furthermore Allāh said "Then He showed him what is wrong for him and what is right for him."<sup>94</sup> L11

---

Fakhry, "The Mu'tazilite view of man," in *Recherches d'Islamologie* Recueil d'Articles Offerts G. Anawati et L. Gardet par leurs Collegues et Amis, (Louvain: E.J. Brill, 1977), 111; R. Arnaldez, "Al-Hayat," *The Encyclopaedia of Islam*, vol.3., 302-5.

<sup>90</sup> Tawfīq al-Wā'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayah fī al-Qur'an wa- al-Aḥkām al-Shar'īyyah," in *Al-Ḥayah al-Insāniyyah: Bidayatuha wa- Nihayatuha fī al-Mafhum al-Islāmī*, 465; Fakhr al-dīn Al-Rāzī, *Al-Tafsīr al-Kabīr*, 3<sup>rd</sup> ed., vol 21/ 22., 44; Majid Fakhry, "The Mu'tazilite view of man," 111.

<sup>91</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*, 3<sup>rd</sup> ed. vol 21 /22, 43-44; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ*, 178; Muḥammad Ibn Muḥammad Abū Ḥamid Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn : Kitāb kitāb sharḥi 'ajāib al-qalb*, vol. 3., 3-5.

<sup>92</sup> Ch. 29:57

<sup>93</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*, 3<sup>rd</sup> ed. vol 21/ 22., 44.

<sup>94</sup> Ch. 91:7-8.

L11 See Appendix



### Section 1.2.10 The Location of the Spirit in the Human Body

The human being consists of an individual body and spirit, which latter is present inside of this body, though scholars disagree on how or where. Ibn Qayyim al-Jawziyyah presents different scholarly opinions on the spirit:

- 1) The human being is a mixture of four elements (fire, air, water and earth) that create the body;
- 2) The spirit/soul is blood, because without blood a person cannot survive;
- 3) The human being in a sense is the spirit- which simply originates in the left side of the heart and travels through the vessels into all organs;
- 4) The spirit goes from the heart into the brain and adopts the best way to receive the powers of reflection and memory;
- 5) The spirit is a part of the heart which cannot separate from it;
- 6) The spirit is different from the physical body which we see in front of us. It is a simple heavenly light, which is alive and movable; which diffuses inside the organs like water diffuses into flowers; like oil into an olive tree; like fire into charcoal. As long as the body's organs are suitable to accept the spirit; the spirit remains mixed in these bodily organs and provides the whole body with feeling and movement of will. If these organs, one way or another, become unsuitable to the spirit—perhaps because of a heavy combination of elements beginning to overwhelm it— the spirit must separate from the body and move to the spirit world. Consequently, Ibn Qayyim al-Jawziyyah believes strongly that the latter abovementioned opinion, is the only acceptable and correct opinion of the spirit while any other opinion is false. Moreover, he says this opinion of the spirit is reflective of the Qu'rān, Prophetic tradition, the consensus of the Companions of the Prophet and what common sense and nature hold to be correct.<sup>95</sup>

---

<sup>95</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al- Rūḥ*, 177-8.

He also reminds us that Allāh has created both life and death, since the Qur'an says in evidence, "He Who created Death and Life, that He may try which of you is best in deed: and He is the Exalted in Might, Oft-Forgiving..."<sup>96</sup> L12

In the above verses "life" refers to human life in this world which comes before death; as well as human existence in the after-life starting on the day of resurrection. Human life in this world is the power that God has given in the form of reason, intellect, knowledge and as an abode for productive work. Human existence in the after-life is evidence of the power that our Creator has to resurrect, since in the hereafter, humans will remain permanently alive (whether that will be in paradise or in hell). God's life is a complete life, whole and above any incompleteness. Eternal life is exclusively an attribute of God alone. It is an ever-lasting existence, which endures by itself. God furthermore has eternal attributes such as supreme knowledge, omnipresent hearing, sight, absolute power and complete will. God is also infinitely complete. His eternal existence is unconditional and permanent. By contrast, no creature enjoys life for they do not have a permanent life. Instead, human life or spirit is a new event which accompanies the creation of a new person. Therefore, human life is an incomplete life, which is neither absolute nor enduring.

#### Section 1.2.11 The Significance of the Human Heart (Definition of the Heart)

Both Ibrahim and al-Qāḍī, who believe that brain- death is not a complete death but that both the heart and brain must cease functioning for complete death, pose this question to Al-Mahdī and others who believe that brain death is a complete death: If the human heart stops beating does life not also stop? When Islamic scholars discuss the heart in philosophical terms, they do not always mean the muscular organ in the human chest, but rather something else, something that is much more profound than the physical heart. What scholars mean by heart is consciousness, intellect and understanding— the spiritual aspect.<sup>97</sup> Al-Ghazālī said there are two meanings of heart: 1) the organ which pumps blood, a piece of meat in the left side in the human chest, which medical doctors are always concerned about, but a piece of meat which is also found in animals and dead persons, having no more value than that; and 2) the heart as spirit, light and godliness i.e. the real human being; the heart is the one which grasps and knows our inner feelings. Al-Ghazālī also says that the human intellect is confused and cannot grasp

<sup>96</sup> Ch. 67:2.

<sup>L12</sup> See Appendix

<sup>97</sup> Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī. *Iḥyā' 'Ulūm al-Dīn: kitāb sharḥi 'ajāib al-qalb*. vol. 3., 3- 5.

how spirit is related to this organ called the heart.<sup>98</sup> When Ibrāhīm and al-Qāḍī refer to the heart they also mean that spiritual and Godly aspect, the soul, which they say resides in the heart, not in the brain as al-Mahdī claims. The heart also represents intellect, since Allāh says “Verily in this is a Message for any that has a heart and understanding or who gives ear and earnestly witnesses (the truth).”<sup>99</sup> <sup>L13</sup>Consciousness, intellect and understanding—all these elements are related to the heart; moreover, some Muslims believe that the soul resides in the heart and that consciousness, intellect and understanding are related to the heart.

Al-Qurṭubī, the famous Islamic scholar, philosopher and theologian as well as Qur’anic commentator, comments on the phrase “him who has a heart” as meaning the one who has intellect to reflect on or think. Al-Qurṭubī says this is evidence that God refers to the heart as a metaphor for intellect, since by heart he says Allāh means one who has a soul.<sup>100</sup> In the following verse, Allāh clearly discusses the heart as intellect and as soul (which becomes blinded) and that it is in the human chest or breast when he says “Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear? Truly it is not their eyes that are blind, but their hearts which are in their breasts.”<sup>101</sup> <sup>L14</sup>

Furthermore, Mujāhid (as quoted by al-Qurṭubī) commented on the meaning of these verses saying “Every person has four eyes, two eyes are in his head for this world and the other two in his heart to look in the hereafter. If the two eyes in his head become blind, and his two eyes in his heart are un-blinded, his blindness in this world will not affect him.”<sup>102</sup> Ibn ‘Abbās, spoke of an incident involving a blind Companion of the Prophet when Allāh revealed the verse, “But those who were blind in this world (i.e., do not see Allāh’s signs and believe in Him), will be blind in the hereafter, and most astray from the Path.”<sup>103</sup> <sup>L15</sup>Upon hearing this verse the blind Companion Ibn Umm Maktūm in distress said to the Prophet “O Prophet, I am blind in this world here, will I be blind in the hereafter?”, whereupon Allāh then revealed the second verse

---

<sup>98</sup> Ibid., 4.

<sup>99</sup> Ch. 50: 37.

<sup>L13</sup> See Appendix

<sup>100</sup> Ch. 50: 37.

<sup>101</sup> Ch. 22: 46.

<sup>L14</sup> See Appendix

<sup>102</sup> Abū ‘Abd Allāh Ibn Muḥammad al-Qurṭubī al-Anṣārī, *al-Jāmi’ li-Aḥkām al-Qur’ān*, vol. 16. (Cairo: Dār al-Katib al-‘Arabi, 1967), 77.

<sup>103</sup> Ch. 17: 72.

<sup>L15</sup> See Appendix

saying “Truly it is not their eyes that are blind, but their hearts which are in their breasts.”<sup>104</sup> What scholars like Ibrāhīm and al-Qāḍī; as well as al-Qurṭubī (whom they extensively cite) are trying to convey via the above Ḥadīth and Qur’ānic verses is that it is the heart as intellect that is blind, not the actual eyes or the heart as an organ in the chest. Abū al-Fida’ Ismā’il Ibn Kathīr— one of the classical Sunni Muslim jurists and Qur’ānic commentator— in his Qur’ānic commentary, says rather in explaining these verses that blindness is not the blindness of sight, but of hearts in the breast which can either be perfect and see the truth or can be blind to the truth.<sup>105</sup>

Zamakhsharī, another famous theologian, philosopher and Mu’tazilite, states in his Qur’ānic commentary *al-Kashshāf*, that people have the intellect to understand what Allāh has obligated them to understand such as the unity of God and revelation—this means their normal sight or eyes are perfect to see this world, but their blindness is in their hearts(intellect).<sup>106</sup> All the above Qur’ānic verses are metaphoric in meaning, which is, they refer to heart as intellect-consciousness and understanding; blindness is not therefore actual loss of sight, but spiritual blindness. Moreover, Muḥammad Ibn Ismā’il al-Bukhārī—a famous and prominent classical Sunni Muslim Muḥaddith— in this respect has authenticated the saying of the Prophet(pbuh) who said: “ The heart of the elderly is still young in two things: the love of wealth and long life”. What this Hadith shows is that the heart of the elderly is not physical per se, but refers to the feelings and consciousness in their soul, to their desires.<sup>107</sup>

Although, I am completely opposed to the opinion shared by Ibrāhīm and al-Qāḍī that the soul resides in the heart and not the brain (as well as their contention that brain death is not complete death until the heart stops); however, I also understand that the heart which is mentioned in the Qur’an and Sunnah of the Prophet (pbuh) refers to consciousness, understanding, reflection or conception and intellect. If the heart, that piece of meat in the breast, stops beating, this does not mean that the intellect, understanding or life is finished and completely ended. The end of the human soul or life is the death of the brain itself, which is the final death. The brain, not the heart, in my opinion is the tool of consciousness, intellect,

<sup>104</sup> Ch. 22: 46; Aḥmad Shawqī Ibrāhīm, “Nihāyat al-Hayāt al-Bashariyyah,” in *Al-Hayāt al-Insaniyyah: Bidāyatuhā wa-Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 371; Ismā’il Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*. 5<sup>th</sup> cd, 227; Abū ‘Abd Allāh Ibn Muḥammad al-Qurṭubī al-Anṣarī, *Al-Jāmi’ li-Aḥkām al-Qur’ān*. vol. 12, 77.

<sup>105</sup> Ismā’il Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*. 5<sup>th</sup> cd.vol.3, 238.

<sup>106</sup> Maḥmūd Ibn ‘Umar al-Zamakhsharī al-Khawarizmi, *Tafsīr al-Kashshāf ‘an Ḥaqā’iq al-Tanzīl*. (Beirut: Dār al-Ma’rifah, 1990), 17.

<sup>107</sup> Muḥammad Ibn Ismā’il al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*. 2<sup>nd</sup> cd. vol. 2 (Istanbul: Dār Saḥnūn, 1992), 17.

understanding and conception. If these four elements are gone, the person will not be a “full person”, even though that person may still be alive thanks to a heartbeat maintained by life-support equipment. This type of life as found in brain-dead patients is considered by medical and Islamic thinkers as a “vegetative” life and not a complete human life. According to the Aristotelian scheme the soul has three set of faculties: 1) vegetative [faculties of nutrition, growth, reproduction]; 2) animalistic [faculties of motion and perception]; 3) human [faculties of (deliberate) action and intellection]. According to this schema, brain-dead person should be classified as vegetative. The personal responsibility for fulfilling religious obligations and all other accountabilities are centered on having an intellect or functioning brain, since the brain itself is the provider and source of intellect. Therefore, if a person’s brain is not functioning well, or its capacity is damaged fully or partially, all personal responsibilities, obligations and accountabilities are omitted. Also, it is a well-known fact that the human being’s intellect, heart and source of energy are all connected with the brain. If the human brain is dead, all the interconnected energies are gone and the body reverts back to a vegetative state of life.<sup>108</sup> Some Sunni Muslim scholars do not differentiate between “animalistic life” and “vegetative life” in brain-dead persons, because the functions of the brain are consciousness, reflection, thinking, understanding and when the brain ceases to function the person loses all these faculties. Therefore, any life remaining in such a person is considered by these scholars as “animalistic” or “vegetative” life— since animals lack these higher brain functions. Moreover, human activities are connected and regulated by the brain. If the brain dies, all energies are gone, though as was said the body could still live on in an animalistic fashion.<sup>109</sup> In my opinion, animalistic life and the complete human life can be distinguished based on levels of capacity and functions, even though they are equally in the same sense alive. Moreover, human life always has sanctity, even if it is a primitive, “vegetative” existence.

### Section 1.2.12 Definition of Life

Islamic law and secular laws consider the heartbeat, breathing (in and out), nourishment, and the secretion of urine and stool as signs of life. The scholar Ibn Qayyim says that Allāh sends an angel to the human body in the mother’s womb who blows one breath that causes life to begin. The angel’s breath will be the only cause of that body’s life or spirit-sexual intercourse

<sup>108</sup> Ahmad Shawqī Ibrahim, “Nihāyat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmūl al-Islāmī*, 372-3.

<sup>109</sup> Ahmad Shawqī Ibrahim, “Nihāyat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmūl al-Islāmī*, 373; Fazlur Rahmān, *Avicenna’s Psychology* (London: Geoffrey Cumberlege, 1952), 24-25, 32-33.

and ejaculation cause the formation of the human body while the food or nourishment causes it to grow. The element of spirit comes from the angel's inspiration. Moreover, Ibn Qayyim says the spirit is a heavenly element, while matter such as sperm and clay are from the earth and are used for the body's creation. The spirit is a different entity from the tangible physical body which is better known to human beings. He insists that the spirit is very light and heavenly, like moonlight—that it is alive, and moves and penetrates human organs, since these organs are suitable for accepting the spirit and its elements, the normal body will remain connected with the spirit (soul).<sup>110</sup> L16

### Section 1.2.13 The Signs of Life

All Sunni schools of thought have agreed that movement in the human body is a sign of the presence of life—whether that movement takes a couple of minutes or longer does not matter.<sup>111</sup> Moreover, if the human heart is beating, blood circulating and breath going in and out, and if all other organs function, such as the liver, kidneys, etc., then there is the presence of life. The presence of consciousness and feeling are also indicative of the presence of life, but these two elements are not the source of life.

Muslim scholars have identified the signs of life as the presence of sound at birth, sneezing, breathing, spontaneous movement (long or short), and heartbeat—as was mentioned before. What is breathing? Most Islamic Sunni schools of thought such as the Shafi'ites, Ḥanafites and Ḥanbalites, agree that breathing is a kind of movement that is proof of the presence of life, because breathing is a sign of life and of spontaneous movement or the potential for one.

Al-Wa'ī uses these scholars' opinions on natural breathing to consolidate his view that brain death is not a complete death and hence that it is impermissible to engage in organ retrieval and transplantation from brain-dead persons.<sup>112</sup> He cites as evidence al-Ghazālī, who said that the human chest moves up and down with breathing and that the heartbeat is a spontaneous movement inside the human body. What al-Ghazālī is really saying is that the human body is only a tool which can tell us if life is present or not.<sup>113</sup> However, al-Wa'ī mixes up natural breathing with synthetic breathing in brain-dead persons. Al-Wa'ī also offers a

<sup>110</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ*, 147.

L16 See Appendix

<sup>111</sup> Tawfiq al-Wa'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur'ān wa- al-Aḥkām al-Shar'iyyah," in *Al-Ḥayāh al-Insaniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 475.

<sup>112</sup> Ibid., 474-75.

<sup>113</sup> Ibid., 474-75.

definition of life in that: “Life is the opposite of death and vice versa. The living are the opposite of the dead”. In this respect, life and death are opposite to each other like day and night, light and dark, hot and cold. Yet, again Al-Wa’i does not differentiate between brain death, where breathing is the result of synthetic life support equipment, and the “coma”, where there is natural breathing.

Aḥmad Shawqī Ibrāhīm along with Ḥassān Ḥaṭḥūt— a medical professor at Kuwait University— and al-Ghazālī believe that the human embryo is alive in the mother’s womb before the inspiration of the spirit, which means that the embryo has a vegetative life, not a human life. After the breathing or blowing of the spirit into the human embryo it becomes human.<sup>114</sup> The human foetus, after the spirit has been blown into the embryo, has a human soul and human attributes. Therefore, Ibrāhīm and Ḥaṭḥūt— in stark contrast to al-Mahdī and those who believe that human life begins 120 days after the blowing of the spirit into the embryo— hold that the beginning of the human soul starts with the foetus and its end is the soul’s departure from the human body, as it returns to its Creator.<sup>115</sup>

### Section 1.3 The Beginning and End of Human Life

#### Introduction

The views of Mukhtār al-Mahdī,<sup>116</sup>; Aḥmad Shawqī Ibrāhīm,<sup>117</sup>; ‘Abd Allāh Muḥammad ‘Abd Allāh,<sup>118</sup>; Muḥammad Na‘īm Yāsīn (professor of Islamic Shari’ah and Islamic Studies at Kuwait University),<sup>119</sup>; Muḥammad al-Mukhtār al-Salāmī,<sup>120</sup>; Muḥammad Sulaymān al-Ashqar

<sup>114</sup> Aḥmad Shawqī Ibrāhīm, “Mata Bada’at Ḥayat al-Insān,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74-76; Ḥassan Ḥaṭḥūt, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 57-59.

<sup>115</sup> Aḥmad Shawqī Ibrāhīm, “Mata Bada’at Ḥayat al-Insān,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74-76; Ḥassan Ḥaṭḥūt, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 57-59.

<sup>116</sup> Mukhtār al-Mahdī, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 69-70.

<sup>117</sup> Aḥmad Shawqī Ibrāhīm, “Mata Bada’at Ḥayat al-Insān,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74.

<sup>118</sup> ‘Abd Allāh Muḥammad ‘Abd Allāh, “Al-Ḥayāh: Bidāyatuhā,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 79-80.

<sup>119</sup> Muḥammad Na‘īm Yāsīn, “Bidāyat al-Ḥayāh al-Insāniyyah fī Daw al-Nuṣūṣ al-Shar’iyyah wa- Ijtihādāt al-‘Ulama’ al-Muslimin,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 89-94.

<sup>120</sup> Muḥammad al-Mukhtār al-Salāmī, “Zara ‘at Khalāya al-Jihāz al-‘Aṣabī wa- khaṣṣatan al-Mukh” in *Al-Ru’yah islāmiyyah Li zara ‘at Ba ‘d al-A ‘dā al-Bashariyyah*, 113.

(a researcher of Fiqh encyclopedia at the Kuwaiti Ministry of Awqāf),<sup>121</sup>; ‘Umar Sulaymān al-Ashqar (professor of Islamic Shari‘ah and Islamic Studies at Kuwait University),<sup>122</sup>; ‘Abd Al-Qādir Muḥammad al-‘Ammārī (a judge at the Islamic Supreme Court in Qatar),<sup>123</sup>; Sheikh Ṣāleḥ Mūsā Sharaf (member of Islamic Research Academy at Al-Azhar University, Egypt),<sup>124</sup>; Muṣṭapha Ṣabrī Ordoghadow (Associate Professor at the Faculty of Islamic Studies, Marmara University, Istanbul),<sup>125</sup>; Aḥmad Ibn Ḥajar al-‘Asqalānī (a prominent Sunni Muslim scholar, jurist and Muḥaddith),<sup>126</sup> have all been critical to my discussions of the beginning of life, spirit and soul as forms of life. Like Ibn Qayyim, some of the above scholars believe that life, soul and spirit are one, while others contend that human life starts when a man’s sperm unites with a woman’s ovum; and still quite a few other scholars hold that human life in fact starts with the blowing of the spirit/soul into the embryo. There are also some scholars who, like Ibrāhīm, strongly argue that human life will remain unknown—since no one can either see when the soul/spirit joins with the human body or the manner in which it unites with the physical body.

In this chapter, I would like to only describe (and not explain in length) the different Muslim perspectives on Ibn Masūd’s Ḥadīth. The reason is the basis for the different understandings and perspectives come from the wording of the Ḥadīth itself, therefore, do not require a lengthy explanation. In this regard, I have used various articles to showcase divergent positions on the beginning of human life. Ḥaṭḥūt in his article, “Bidāyat al-ḥayāh”, frequently citing al-Ghazālī, argues that human life begins when the male sperm and female ovum unite to form the first living cell.<sup>127</sup> Therefore, Ḥaṭḥūt contends that human life does in fact exist before the blowing of the spirit into the embryo.

Taking the opposite view, al-Mahdī in his “Bidāyat al-Ḥayāh al-insāniyyah” holds that the beginning of human life starts with the creation of the brain and contends as well that the blowing of the spirit into the embryo occurs exactly 120 days from the merging of sperm and ovum.<sup>128</sup> Al-Mahdī uses as his basis the Ḥadīth of Ibn Mas‘ūd, as well as in-depth analysis of

<sup>121</sup> Muḥammad Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 125-127.

<sup>122</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuhā,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 138.

<sup>123</sup> ‘Abd al-Qādir Muḥammad al-‘Ammārī, “Bidāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 171.

<sup>124</sup> Sheikh Ṣāleḥ Mūsā Sharaf, “Ba’d i Ḥayāt al-Insān fī Daw’ al-Qur’ān al-Karīm wa- al-Sunnah al-Nabawiyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 185.

<sup>125</sup> Muṣṭafā Ṣabrī Ordoghadow, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 190.

<sup>126</sup> Aḥmad Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Barī Sharḥ Ṣaḥīḥ al-Bukhārī*. vol. 11 (Beirut: Dar al-Ma’rifah, 1980), 486.

<sup>127</sup> Ḥassan Ḥaṭḥūt, “Qudsiyyat sirr al-Mihnah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 59.

<sup>128</sup> Mukhtar al-Mahdī, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 62-73, 333-346.



Qur'anic verses, medical science and philosophy. Consequently, he comes to a standpoint contrary to that of Ḥaṭḥūt and al-Ghazālī. Ibrāhīm, in “Matā bada’at Ḥayāh al-Insān”, explains that sperms and ova have lives of their own, which are not human life but what he terms “animalistic (vegetative) life”.<sup>129</sup>

For Ibrāhīm, the beginning of human life is mysterious and unknown; however, he maintains that Qur'anic verses from Ch. 23: 11-14 indicate that the creation of the human brain, while it is not responsible for human life per se, is nevertheless a significant and fundamental tool for human feeling, understanding and consciousness.<sup>130</sup>

Al-Wā’i, Ḥaṭḥūt and Ibrāhīm, as will be shown in this chapter, all believe that brain death is not a complete death. For this reason, they believe it to be impermissible to retrieve and transplant organs from brain-dead persons. Moreover, these scholars also reject abortion of the embryo in any context or circumstance, except when the mother’s life is in danger.

‘Abd Allāh Bā Salāmah—a consultant medical doctor in Saudi Arabia—in “Al-Ḥayāh al-Insāniyyah Dākhl al-raḥim Bidāyatuhā wa-Nihāyatuhā”, says the beginning of human life starts with the breathing or blowing of the spirit into the embryo exactly 120 days from the merging of sperm and ovum.<sup>131</sup> Moreover, Bā Salāmah holds that for human life to exist it needs a suitable brain to grow and develop in a normal fashion. Consequently, he says the end of human life is when life is separated from the brain. Incidentally, many medical doctors also believe that the end of human life is when the human brain is dead and life has been irrevocably separated from the brain—something on which Bā Salāmah and Al-Mahdi are in full agreement.

Yāsīn’s opinion in “Bidāyat al-Ḥayāt al-insāniyyah Fī Daw’ al-Nuṣuṣ al-Shar’iyyah wa Ijtihādāt ‘ulamā al-Muslimīna” is that the beginning of human life starts with the blowing of the soul/spirit into the embryo at exactly 120 days after the beginning of pregnancy.<sup>132</sup> It is Yāsīn’s personal opinion, after utilizing a philosophical-theological approach based on appropriate Qur'anic verses and the Ḥadīth of Ibn Mas‘ūd (as well as the opinion of al-Qurṭubī who explained the phrase “Yanfukhu fihī al-rūḥ” and Ibn Qayyim al-Jawziyyah (who held that the embryo has two lives—a plant life and a human life), that the end of human life is the separation of life from the human body including the brain. Furthermore, Yāsīn calls for respect of the human foetus and its protection. Yāsīn also discusses various related topics in-depth using

<sup>129</sup> Aḥmad Shawqī Ibrāhīm, “Matā Bada’at Ḥayāh al-Insān,” in *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūl al-Islāmī*, 74-76.

<sup>130</sup> Ibid., 74-76.

<sup>131</sup> ‘Abd Allāh Bā Salāmah, “Al-Ḥayāh al-Insāniyyah Dākhl al-Raḥim,” in *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūl al-Islāmī*, 81.

<sup>132</sup> Muḥammad Na‘īm Yāsīn, “Bidāyat al- Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar’iyyah wa Ijtihādāt al-‘Ulamā’ al-Muslimīn,” in *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūl al-Islāmī*, 87-108, 403-428.

selective Qur'anic verses and the Ḥadīth of Ibn Mas'ūd, these topics range from the beginning of life and death to the permissibility of abortion, that is before and after specific stages of the pregnancy.

I have also made extensive use of Badr al-Mutawallī 'Abd al-Bāsiṭ— Secretary-General of the Fiqh Encyclopedia at the Kuwaiti Ministry of Awqāf—in his seminal article “ Bidāyat al-Ḥayāh al-Insāniyyah” because he too clearly believes that human life starts when a male sperm is mixed with a female ovum in the context of pregnancy. Presenting his argument on the beginning of human life in the mixing of male sperm and female ova, using similar Qur'anic verses, 'Abd al-Bāsiṭ takes the same position as al-Ghazālī, Ḥaṭḥūt and likeminded scholars. Though 'Abd al-Bāsiṭ steadfastly opposes and prohibits abortion, he does however make an exception in cases where the mother's life is in danger. His opinion on abortion is unanimously accepted by all other Sunni Muslim scholars including jurists, Muḥaddithūn, theologians, philosophers, ethicists, and medical doctors to name a few.

Muḥammad al-Ashqar, in his important article, “ Bidāyat al-Ḥayāh”, which also relies on Qur'anic verses and the Ḥadīth of Ibn Mas'ūd, makes the argument that the human race started with the creation of Adam from clay. Al-Ashqar believes that human life starts within 120 days from conception and therefore opposes abortion after those 120 days have passed. However, al-Ashqar concedes that the embryo has a life, though he says, that this life is not a complete human life, but rather a plant life or cellular life.

Similarly, 'Umar al-Ashqar, in his article “Bad' al-Ḥayāh wa Nihāyatuhā”, discusses the concept of life and death using Qur'anic verses and the Sunnah. In fact, 'Umar al-Ashqar discusses the contextual usages or characteristics of life and death in the Qur'anic language. While agreeing that human life starts when the spirit/soul is blown into the human embryo at 120 days, al-Ashqar delves much deeper into the beginning and end of human life by evaluating and citing the opinions of philosophers who see spirit/soul and life as one— such as Aristotle and al-Shahrastānī.

'Umar al-Ashqar also believes that the human being cannot be considered completely human before the 120 days have passed- which is when the blowing of the spirit/soul into the embryo takes place. Moreover, in his argument he strongly supports the opinions of the Sunni Muslim scholars who oppose Aristotle and the Mu'tazilites' views, such as Ibn Taymiyyah, who likewise held that the beginning of human life starts when the spirit is blown into the embryo at the end of the 120 days from pregnancy. Specifically, Ibn Taymiyyah states that before the blowing of the soul/spirit, the embryo is considered to be dead, not qualifying as a human life.

Ibn Taymiyyah also says that death occurs when “life” or the soul/spirit is separated from the physical body. All of which goes to show, al-Ashqar maintains that life before the breathing of the spirit/soul into the embryo is not a full human life; furthermore, it means that the life of the body’s organs after death is similarly not a full human life. ‘Umar al-Ashqar, like his brother Muḥammad al-Ashqar, strongly opposes abortion except under necessity (whether the spirit has as yet been blown into the human embryo notwithstanding, before the 120 days the embryo is considered to be dead and abortion is only permitted at this time if the mother’s life is in danger). However, general abortion is impermissible before the 120 days because the embryo (specifically the brain) is still developing—even though there is no full human life yet. As well as in his later discussions of the heart and brain, ‘Umar al-Ashqar sees the brain-dead person as a dead person.<sup>133</sup>

In this regard I have used the various scholars’ arguments as supporting evidence for my own conclusion. These include those advanced by both classical and contemporary Muslim writers, theologians, philosophers and bioethicists such as Fakhr al-Dīn al-Rāzī and Ibn Kathīr in their Qur’ānic commentaries or Tafāsīr, as well as the Qur’ānic verses and Prophetic Ḥadīth of Ibn Mas‘ūd.

Throughout this chapter, I also endeavour to extensively integrate the various works and opinions of al-Mahdī, Ibrāhīm, ‘Abd Allāh, Yāsīn, the al-Ashqar brothers, al-‘Ammārī, Faṭḥī al-Bārī, Sheikh Sharaf and many other scholars who have to varying degrees discussed the beginning and the end of human life through the Ḥadīth of Ibn Mas‘ūd and the Qur’ānic verses. Al-Mahdī consistently asserts that the beginning of human life is in the creation of the brain; while Ibrāhīm holds the opposite opinion that the location of life is unknown. Nevertheless, Ibrāhīm has concentrated on the creation of the brain, as well as the heart as vital life-sustaining organs—organs which together in his view facilitate human feeling, consciousness and understanding.

Ḥaṭḥut—as well as al-Ghazālī, ‘Abd al-Basīṭ and others—consistently holds that human life comes from the merging of the male sperm and female ovum in the mother’s womb.<sup>134</sup> Bā Salāmah, for his part, offers the same opinion as Ibrāhīm regarding the unknowable beginning of human life and its end.

Regarding the matter of the definition of death, I have heavily relied on the works and opinions of ‘Umar al-Ashqar, Ibrāhīm and al-Qāḍī, as well as Ibn Kathīr’s Qur’ānic

<sup>133</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuḥā,” in *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuḥā fī al-Mafhūm al-Islāmī*, 130-153.

<sup>134</sup> Ḥassan Ḥaṭḥut, “Qudsiyyat sirr al-Mihnah,” in *Al-Ru’yah al-Islāmiyyah li-Ba ‘d al-Mumārāsāt al-Ṭibbiyyah*, 21-27.

commentary.<sup>135</sup> In defining the signs of death, I have made use of the work of classical Muslim scholars such as Imam Nawawī among others; as well as medical doctors who are more precise in their scientific analyses than the traditional classical Muslim scholars.

‘Abd Allāh Muḥammad ‘Abd Allāh’s article “Al-Ḥayāh Bidāyatuhā” is pertinent to my research because, like Fakhr al-Dīn al-Rāzī and ‘Umar al-Ashqar, he discusses in-depth the spirit (rūḥ) and its different meanings and usages in the Qur’anic verses. ‘Abd Allāh examines the meaning of soul, its origin and the relationship between soul and spirit. In ‘Abd Allāh’s opinion, while some scholars hold that the spirit and soul are one, he however agrees with the scholars who hold that the spirit and soul are different from each other.<sup>136</sup>

Fakhr al-Dīn al-Rāzī believes that the human life or soul is specifically present inside the physical body, which we can see before our eyes.<sup>137</sup> But many scholars have disagreed with Al-Rāzī’s opinion. The most extensive discussions of the “rūḥ” so far have been put forth by Ibn Qayyim, al-Ghazālī, Ibn Sīnā and Fakhr al-Dīn al-Rāzī— all of whom drew their supporting evidence from the Qur’an, the tradition of the Prophet (Sunnah), the consensus of the Prophet’s companions and that of their successors, as well as from the Arabic translations of Aristotle’s works. Furthermore, ‘Abd Allāh asserts, using the Ḥadīth of Ibn Mas‘ūd and relevant Qur’anic verses in Ch.23:11-14, that there is a life in sperm and ovum, just as there is also a life after the merging of sperm and ovum before the breathing of the soul/spirit into the embryo.

According to ‘Abd Allāh’s broader view, God (Allāh) has significantly dignified the human being in the following ways: 1) God had created the human being with his hands; 2) God has blown His spirit into the human being; 3) God had commanded the Angels to prostrate before the first human being Adam after he created him; and 4) God had taught the human being the names of everything in this world.

I have similarly used ‘Abd al-Qādir Muḥammad al-‘Ammārī’s article “Bidāyat al-Ḥayāh” because he discusses thoroughly the Qur’anic verses and Ḥadīth Ibn Mas‘ūd, stating that the beginning of human life is when the male sperm unites with woman’s ovum.<sup>138</sup> Al-‘Ammārī, like ‘Abd Allāh, also says there is life in sperm and ova before they unite, but that this life is not a full human life. Al-‘Ammārī, who also agrees with Ḥathūṭ, al-Ghazālī and Shaykh

<sup>135</sup> Aḥmad al-Qāḍī, “Al-Qalb wa- ‘Alāqatuhu bi al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 383-392.

<sup>136</sup> ‘Abd Allāh Muḥammad ‘Abd Allāh, “Al-Ḥayāh Bidāyatuhā” in *al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 154-169, 395-402.

<sup>137</sup> Fakhr al-Dīn Al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22., 43.

<sup>138</sup> Ch.28:11-13, Ch. 22:5, Ch. 76:2, Ch. 75:36-38.

‘Abd al-Bāsiṭ refutes those scholars who claimed that there is no human life before 120 days from pregnancy.

Ṣaleḥ Mūsā Sharaf’s article “Bad’ Ḥayāh al-Insān fī daw’ al-Qur’ān al-Karīm wa al-Sunnah al-Nabawīyyah” is useful because he holds that the spirit and soul are different. Sharaf agrees with Ibrāhīm in focusing on the faculty of wisdom— since wisdom is the power of reflection, consciousness and feelings and enables one to differentiate between human and non-human life.<sup>139</sup> Ibn Kathīr, in his Qur’anic commentary holds there is no human being as such before the blowing of the spirit into the embryo; whereas similarly Fakr al-Dīn al-Rāzī has considered the embryo “Jamād” or “inert”- as not full human life. Al-Rāzī holds that human life starts with the blowing of spirit into the embryo; however, what is possessed by the embryo prior to the blowing of the soul is vitally necessary for the later growth and development of the embryo.

Ordoghadow’s article, “Bidāyat al-Ḥayāh al-Insāniyyah”, was very important to this research because in it he affirms, like most other Sunni Muslim scholars, that the beginning of human life starts with breathing of soul/spirit into the embryo— at the end of the fourth month of pregnancy (120 days).<sup>140</sup> At that point, Ordoghadow says, the embryo begins to show movement in the womb and for this reason the widow mother must not re-marry until the fourth month and 10 days have passed, as the Qur’ān commands. Ordoghadow examined deeply the Ḥadīth of Ibn Mas‘ūd and the relevant Qur’anic verses to support his opinion, like other Muslim scholars, based on medical jurisprudence, philosophy and theology. In the case of abortion Ordoghadow deems it a crime, the compensation for which is five camels (5 camels out of the 100 camels for compensation or diyah); however, he makes the exception that abortion is only permitted under dire necessity.<sup>141</sup>

### Section 1.3.1 Stages of Human Creation and the Qur’ān

Muslim belief holds that the human body is an incredible creation, which after death begins to decompose and is usually interred beneath the earth. Then, Allāh will eventually recreate the human body/person as he/she was on earth, without help from anyone, at the resurrection. Both life and death relate to human beings. In the creation of the human being, there was a process of different stages in the mother’s uterus: first comes birth, and then

<sup>139</sup> Ṣaleḥ Mūsā Sharaf, “Badi Ḥayāh al-Insān fī Daw’ al-Qur’ān al-Karīm wa- al-Sunnah al-Nabawīyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidayatuha wa nihayatuha fī al-Maḥmūd al-Islāmī*, 182-188, 488-491.

<sup>140</sup> Mustafā Ṣabīr Ordoghadow, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidayatuha wa nihayatuha fī al-Maḥmūd al-Islāmī*, 191.

<sup>141</sup> Ibid., 191.

subsequent development through different stages of life (i.e. adolescence, puberty, adulthood, old age) after which, ultimately, the person dies. From a Qur'anic point of view, the soul is different from the physical body. Fakhr al-Dīn al-Rāzī says the following in this regard:

It is well known that the skeletal structure of the body is different from the soul. The reason that human beings sometimes forget their own souls is because of ignorance. As evidence, God says in the Qur'an, "And be not as those who forget Allāh. So He caused them to forget their own souls."<sup>142</sup>

This Qur'anic verse is evidence (again, for those who believe that the Qur'an is revelation) that the soul is different from the body, as God further explains, "If you could see, when the wrong-doers reach the pangs of death and the angels stretch their hands out (saying): Deliver up your souls."<sup>143</sup> <sup>L17</sup> In addition, according to al-Rāzī, God mentions in the Qur'an the stages of the creation of the human body and its development.<sup>144</sup>

After mentioning the stages of bodily development, God then mentions the blowing of the soul into the human body; here it is very clear that everything related to the spirit is different from the body, since the spirit does not pass through the stages of creation. As God says:

We created human beings out of an extract of clay. Thereafter, We made him a sperm in a safe receptacle. Thereafter, We made the sperm a clot; then We made the lump of flesh; then We made the lump of flesh into bones; then we clothed the bones with flesh; thereafter We brought him forth as another creature. Blessed be then Allāh, the Best of Creators.<sup>145</sup>

In another verse, God mentions the creation of Adam, "When I have formed him and breathed into him My spirit, fall down before him (Adam) and prostrate".<sup>146</sup> <sup>L18</sup> There is a clear understanding that there is a soul which is characterized with feeling and that is able to perceive and to stimulate the body to move. Human beings have the ability to feel and move. In addition, the soul has the ability to perform both detrimental and virtuous actions.<sup>147</sup>

---

<sup>142</sup> R. Arnaldez, "Al-Ḥayāt," in *The Encyclopaedia of Islam* (London: Luzac & Co., vol.3, 1971), 302-5.

<sup>143</sup> Ch.6:93; Ch.59:19.

<sup>L17</sup> See Appendix

<sup>144</sup> Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21 and 22., 51.

<sup>145</sup> Ch.23:12-14.

<sup>146</sup> Ch.15: 29.

<sup>L18</sup> See Appendix

<sup>147</sup> Fakhr al-Dīn Al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21/ 22., 51.

All Sunni scholars who have discussed the beginning and end of human creation have argued on the basis of important Qur'ānic verses.<sup>148</sup> <sup>L19</sup>These scholars include: Abū al-Fida' Ismā'il Ibn Kathīr<sup>149</sup>; Fakhr al-Dīn al-Rāzī<sup>150</sup>; the Ḥadīth Ibn Mas'ūd; Mukhtār al-Mahdī<sup>151</sup>; Aḥmad Shawqī Ibrāhīm<sup>152</sup>; 'Abd Allāh Muḥammad 'Abd Allāh<sup>153</sup>; Muḥammad Na'im Yāsīn<sup>154</sup>; Muḥammad al-Mukhtār al-Salāmi<sup>155</sup>; Muḥammad al-Ashqar<sup>156</sup>; Aḥmad Ibn Ḥajar al-'Asqalāni<sup>157</sup>; 'Umar Sulaymān al-Ashqar<sup>158</sup>; 'Abd al-Qādir Muḥammad al-'Ammārī, a judge at the Islamic Court in Qatar<sup>159</sup>; Ṣāleḥ Musā Sharaf<sup>160</sup>; Muṣṭapha Ṣabī Ordoghadow<sup>161</sup>— all the following are the viewpoints and statements of Sunni Muslim scholars.

Al-Mahdī discusses the stages of the beginning of human life within medical science and philosophy, stating that if we as Muslims think and reflect deeply on the beginning of human life, we will find that the different stages or levels of human life gradually come together (stage by stage). First, human life starts as one cell, which is a zygote or gamete. Then the cell starts to multiply and divide and enters into tissue life. Then, many organs start to form such as a heart (even though the spirit has not been blown into the embryo). Next, the organic life starts to form. Once the organic life forms, the spirit is blown into the embryo, and then the body and human life continue. Consequently, al-Mahdī says that 1) a complete human life includes consciousness, understanding, feeling and movement with choice; 2) bodily life is a sleeping life;

<sup>148</sup> Ch. 23:12-14, Ch.22:5, Ch.15:29, Ch.39:6, Ch.75:37-39, Ch.96:1-2, Ch.76:2.

<sup>L19</sup> See Appendix

<sup>149</sup> Ismā'il Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, 5<sup>th</sup> ed.vol., 3: 250-252; R. Arnaldez, "Al-Hayat," in *The Encyclopaedia of Islam*, vol.3, 303.

<sup>150</sup> Fakhr al-Dīn Al-Rāzī, *Al-Tafsīr al-Kabīr*, 3<sup>rd</sup> ed. vol 21/ 22,51; Ch.23:12-16, 83-86.

<sup>151</sup> Mukhtār al-Mahdī, "Bidāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 69-70.

<sup>152</sup> Aḥmad Shawqī Ibrāhīm, "Mata' Bada' at Ḥayāh al-Insān," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74.

<sup>153</sup> 'Abdullah Muḥammad 'Abdullah, "Al-Ḥayāh: Bidāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 154-169.

<sup>154</sup> Muḥammad Na'im Yāsīn, "Bidāyat al-Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'iyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 89-94.

<sup>155</sup> Muḥammad al-Mukhtār al-Salāmi, "Zarā'at al-khalāyah al-Jihāz al-'Aṣabī wa- khaṣṣāt al-Mukh," in *Al-Ru'yah islāmiyyah li-zarā'at Ba'ḍ al-'Aḍā' al-Bashariyyah*, 113.

<sup>156</sup> Muḥammad Sulaymān al-Ashqar, "Bidāyat al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 125-127.

<sup>157</sup> Aḥmad Ibn Ḥajar al-'Asqalāni, *Fatḥ al-Bar'ī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.11, 486.

<sup>158</sup> 'Umar Sulaymān al-Ashqar, "Bidāyat al-Ḥayāh wa- Nihāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 138.

<sup>159</sup> 1985:171

<sup>160</sup> Ṣāleḥ Musā Sharaf, "Bad' i Ḥayāh al-Insān fī Daw' al-Qur'ān al-Karīm wa- al-Sunnah al-Nabawiyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 185.

<sup>161</sup> Muṣṭafa Ṣabī Ordoghadow, "Bidāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 190.

and 3) organic life which is any remaining life in any organ of the body after the person's death.<sup>162</sup>

### Section 1.3.2 Stages of Human Brain Creation

The beginning of human life and the reality of the soul or spirit are unknown. However, a zygote comes into being when a man's sperm unites with a woman's ovum, forming a single cell. This cell— from a biological point of view— carries some characteristics of life, growth and development, which eventually breaks into segmentations and multiple divisions. Life exists even before the spirit is breathed into the embryo. The breathing of the spirit is an unknown event that no one can conclusively ascertain when it takes place. However, the question which remains is: Is it possible to determine exactly when the soul or spirit is established within the embryo or fetus? Twelve weeks after the formation of the zygote (as a result of the merging of man's sperm and the woman's ovum), the brain is completely formed; and at that moment, the foetus engages in activity that resembles play, jumping, sleeping, experience, and fear. Moreover, the brain begins to function with the onset of breathing which has been initiated by electrical wave activity in the brain's membranes. At this point, we can say the beginning of human existence occurs.<sup>163</sup> Ibrāhīm has discussed the creation of the brain as the beginning of an important stage in human development: the establishment of "Al-Idrāk" or perception. This stage is also the onset of reason or 'aql' in human beings. Yet, the beginning of the human soul remains as a hidden knowledge. The human brain initiates individual characteristics such as reason ('aql), conscience and perception. Accordingly, after the death of the human brain, life concludes; however, it is possible for the human body to stay alive in a vegetative-like state of existence.<sup>164</sup>

### Section 1.3.3 The Beginning of Human Life

According to Ḥaṭḥut, the word "Nuṭfah" means sperm, while the word "Muḍghah" describes the mass of cells formed in the foetus days after the division of the gameta. In regard to the inception of human life, Ḥaṭḥut explains that, "It is well known that a form of life exists before the breathing of the spirit into embryo. However, the breathing of the spirit into embryo is the beginning of human life, though we do not know the actual beginning of the soul or

<sup>162</sup> Mukhtār al-Mahdī, "Bidāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fi al-Mafhūm al-Islāmī*, 345.

<sup>163</sup> Ibid., 69.

<sup>164</sup> Aḥmad Shawqī Ibrāhīm, "Mata Bada'at Ḥayāh al-Insān," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fi al-Mafhūm al-Islāmī*, 2. (1985), 74-75..



spirit”; in addition, some aspects of human creation remain a mystery as Ḥaṭḥūṭ further comments, “The fact or reality of life is unknown and we cannot define it through materialistic concepts”.<sup>165</sup> <sup>L20</sup> Ḥaṭḥūṭ’s article “Bidāyat al-Ḥayāh” presents specific conditions in relation to the fertilized cell, among which are:

- 1) the pre- embryo fertilized egg must be verified that it is alive;
- 2) the pre-embryo fertilized egg must be able to grow without the presence of any intervening external obstacle;
- 3) the pre-fertilized egg, once it has been verified to be living, must develop into a full embryo that facilitates the live birth of a human child.; and
- 4) the first cell (the zygote) must come about as a product of the unity of male sperm and female ova, carrying within it the whole genetic information from both parents.<sup>166</sup>

Others, like Ibrāhīm have pointed to specific hadith for their answers, stating that, “The beginning of human life is definite after the complete four months of pregnancy according to the ḥadīth of Ibn Mas‘ūd.”<sup>167</sup> According to the Ḥadīth of Ibn Mas‘ūd, the creation of the brain begins the onset of important human characteristics such as faculties of understanding and intellect”.<sup>168</sup> As Ibrāhīm precisely explains, the brain directly serves as a conduit for the intellect, heart, conscience and understanding.<sup>169</sup> Moreover, all of these are also the higher human attributes; if they cease, the brain dies and human life ends.<sup>L21</sup>

Bā Salāmah states that the last stage of embryo growth or development is 120 days from the beginning of pregnancy. When brain formation is completed, the spirit or soul will be blown into the embryo and all the individual’s responsibilities in the Islamic religion will be established. Moreover, the beginning of human life begins with the beginning of breathing of the

<sup>165</sup> Ḥassan Ḥaṭḥūṭ, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 2. (1985), 57-60.

<sup>L20</sup> See Appendix

<sup>166</sup> Ḥassan Ḥaṭḥūṭ, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 59; Mukhtar al-Mahdi, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 69; ‘Abd Allāh Bā Salāmah, “Al-Ḥayāh al-Insāniyyah Dakhil al-Rahim,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 81; Ahmad Shawqi Ibrahim, “Mata Bada’at Ḥayāh al-Insan,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 74-76.

<sup>167</sup> Ahmad Shawqi Ibrahim, “Mata Bada’at Ḥayāh al-Insan,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fi al-Maḥmū al-Islāmī*, 75.

<sup>168</sup> Ibid., 75.

<sup>169</sup> Ibid., 76.

<sup>L21</sup> See Appendix

soul or spirit into the human embryo.<sup>170</sup> Bā Salāmah in particular believes that human life comes into full existence with the completion of brain formation in order for the embryo to receive the breathing of the spirit, life or soul. Additionally, Bā Salāmah like al-Mahdī, also believes that the location of the spirit or soul is the brain.<sup>171</sup>

Bā Salāmah's contention is that human life comes into full existence after the completion of brain formation, and that the brain lays the groundwork for the breathing of the spirit, life or soul into the embryo. In this respect, his vision is similar to that of al-Mahdī and those scholars who accept brain death as a complete death because they say the location of the spirit or soul is in the brain.<sup>172</sup>

Muḥammad Naʿīm Yāsīn for his part adds that, "Human life starts with the breathing of the spirit or soul into the embryo according to the Prophetic Ḥadīth and for this reason we do not have a choice to deny this fact", adding that "It [human life] is the completion of the first four months of pregnancy."<sup>173</sup> Yāsīn comments that Sunni Muslim scholars such as al-Qurṭubī, Ibn Qayyim and Ibn Ḥajar al-ʿAsqalānī have all maintained that, "The blowing of spirit or ruh is the cause of human life, as it was with Adam, the father of humanity."<sup>174</sup>

In my opinion, the Qurʾān clearly presents an account of the beginning of human life, describing in detail for us the story of human creation in many verses.<sup>175</sup> The verses that discuss the stages of human creation most directly are 23:12-14. These verses discuss the merging of the male sperm with female ovum becoming a "gamete" or zygote, which then becomes a clot which is connected to the uterus, and then in turn becomes a mass of cells (*mudghah*); consequently, the verses above also describe the formation of the parts of the human skeleton such as hands, legs, eyes and head, for which God provides an external meat/skin. After these stages of development are complete, then, there is the breathing of the spirit into the embryo. The next major stage of human creation after birth is in fact death by which God kills every human being, who will then enter into the intermediary life of the grave (*barzakh*). This stage lasts until God resurrects all human beings on Judgement Day.

Sharaf explains that "The beginning of human life is something absent from us. Its original source and true knowledge is with Allāh (The Creator), the Qurʾān and the tradition of

<sup>170</sup> ʿAbd Allāh Bāsālāmah, "Al-Ḥayāh al-Insāniyyah Dakhil al-Raḥim," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2. (1985), 81.

<sup>171</sup> Ibid., 81-2.

<sup>172</sup> Ibid., 81-2.

<sup>173</sup> Muḥammad Naʿīm Yāsīn, "Bidāyat al-Ḥayāh al-Insāniyyah fī Daw al-Nuṣuṣ al-Sharʿiyyah wa- Ijtihādāt al-ʿUlamāʾ al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2. (1985), 91.

<sup>174</sup> Ibid., 93.

<sup>175</sup> Ch. 23:12-14, Ch. 22:5, Ch. 40:67.

the Prophet (pbuh). Life before the breathing of the spirit into the human embryo does not mean that the human embryo cell was not human". He adds furthermore that it is only "after the breathing of the spirit into the embryo cell that it becomes human because it carries human genes".<sup>176</sup> In my own personal view the beginning of human life relates not only to the physical body, but also to the soul and spirit. Consequently, it is necessary for us to understand the connection of the spirit, soul and body. After that, we will understand fully the beginning of the human soul and its end.

Although the human body dies, the soul lives on forever. Therefore, the soul is independent from the human physical body. There are some scholarly opinions which claim that human life begins on the first day of fertilization, when the man's sperm and the woman's ovum create the zygote; moreover, this is the stated opinion of both al-Qāḍī and Ibrāhīm, among others.<sup>177</sup> These scholars believe that human life grows and develops with time as the body grows, simultaneously, with the intellect and spirit. However, Bā Salāmah refutes al-Qāḍī and holds the opposite opinion that, "There are two lives, the beginning of life— which is the cell life, and the beginning of human life— which is the continuation of the primitive life".<sup>178</sup> Bā Salāmah— also a medical doctor—also permitted abortion, but only under dire necessity, stating that:

It is not true that the life in the sperm and the ovum make a complete human being. Sometimes the fertilization happens and causes the development of certain membranes, which can harm the life of the mother. It is obligatory to perform an abortion in order to save the mother's life, which over-rides the pregnancy. The medical field knows this as a cluster pregnancy. Therefore, it is not true that every pregnancy leads to a human being and human life. Moreover, not every life in the cell will produce a human being.<sup>179</sup>

Ḥaṭḥūt maintains that, "We cannot say: the sperm alone or female ovum is animate and will give us a human being. Only when the female ovum and male sperm combine do they

<sup>176</sup> Ṣalḥ Mūsā Sharaf, "Bad'i Ḥayāh al-Insān fī Daw al-Qur'an al-Karīm wa- al-Sunnah al-Nabawīyyah," in *Al-Ḥayāh al-Insāniyyah : Bidayatuḥā wa- Nihayatuḥā fī al-Maḥmūd al-Islāmī*, 184.

<sup>177</sup> Aḥmad al-Qāḍī, "Al-Qalb wa- 'Alaqatuḥu bi- al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidayatuḥā wa- Nihayatuḥā fī al-Maḥmūd al-Islāmī*, 383-392; Aḥmad Shawqī Ibrāhīm, "Mata Bada'at Ḥayāh al-Insān," in *Al-Ḥayāh al-Insāniyyah : Bidayatuḥā wa- Nihayatuḥā fī al-Maḥmūd al-Islāmī*, 74-76.

<sup>178</sup> 'Abd Allāh Basalamah, "Al-Ḥayāh al-Insāniyyah Dakhil al-Rahim," in *Al-Ḥayāh al-Insāniyyah : Bidayatuḥā wa- Nihayatuḥā fī al-Maḥmūd al-Islāmī*, 77-83.

<sup>179</sup> Ibid., 77.

produce one cell and this cell develops into a cluster which ultimately becomes a human being.”<sup>180</sup>

The origin of human beings goes all the way back to the primordial clay via Adam and Eve, the first human beings. In the mother’s womb, human beings live in three stages of darkness undergoing multiple stages of creation, as the Qur’an clarifies: “He created you (all) from a single person: then created, of like nature, his mate; and he sent down for you eight head of cattle in pairs: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness.”<sup>181L22</sup> The Qur’an also states “Was he [the human being] not a mixed zygote of male sperm and female ovum poured into the uterus of womb, then he became a clot, then Allāh shaped and fashioned him and made from him two kinds: male and female.”<sup>182 L23</sup>

Sunni Muslim scholars continually offer their opinions on various issues when there is no clear verse in the Qur’an or from the authentic traditions of the Prophet (pbuh). In general Sunni Muslim scholars, for that matter, clearly state that their opinions are not binding and are simply viewpoints. It is rare to find Muslim scholar who claims that his opinion is the only valid Islamic one. Of course, some scholars’ opinions carry more weight than others because of strong evidence to back them up, but there are some views which also lack strong evidence. Therefore, after evaluating the evidence and opinions of the Sunni Muslim scholarship on the beginning of human life, it can be said that this starts with the fertilization of the ovum by the sperm in the uterus. The life which exists before the blowing of the spirit into the embryo is not a complete human life. Real human life, as many scholars such as al-‘Ammārī have argued, begins only after the blowing of the spirit into the foetus 120 days after fertilization.<sup>183</sup>

In the Qur’an, Allāh explains the stages of human creation by saying:

Man We did create from a quintessence (of clay); Then We placed him as (a drop of) sperm in a place of rest, firmly fixed; Then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then we made out of that lump bones and clothed the

<sup>180</sup> Ḥassan Ḥaṭḥūt, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. (1985), 57.

<sup>181</sup> Ch.39:6.

<sup>L22</sup> See Appendix

<sup>182</sup> Ch.75:37-39, Ch.96: 1-2, Ch.76:2, Ch.22:5, Ch.23:12-14.

<sup>L23</sup> See Appendix

<sup>183</sup> ‘Abd al-Qādir Muḥammad al-‘Ammārī, “Bidāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 170; Mukhtār al-Mahdī, “Bidāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 62-73.

bones with flesh; then we developed out of it another creature. So blessed be Allāh, the best to create! After that, at length ye will die. Again, on the Day of Judgment, will ye be raised up.<sup>184</sup> L24

Ibn Qayyim al-Jawziyyah classifies the spirit or soul (for him both are one and the same) into five connections with the body:

- 1) The soul is connected with the body inside the mother's womb, as a foetus;
- 2) The spirit is connected with the body on earth after birth;
- 3) The spirit is connected with the body, in one way, during sleep, and separates from it in another way;
- 4) The spirit is connected to the body in the grave, in barzakh. Yet even though the spirit separates from the body, it is not completely detached, as it still has some connections and relations with the body;
- 5) The spirit is connected with the body on Judgement or Resurrection Day. This is the most important connection that spirit has with the body because after that day, there is no death, sleep nor decomposition.<sup>185</sup>

My specific comments on the Ḥadīth of Ibn Mas'ūd that deals with human creation are the following:

- 1) This Ḥadīth is both famous throughout Islamic theology and was narrated by many renowned Companions of the Prophet Muḥammad (pbuh) such as: Ibn Mas'ūd; 'Āisha, the wife of the Prophet; Abū Hurayrah; Anas Ibn Mālīk; Ḥudhayfah Ibn Usayd; 'Abd Allāh Ibn 'Umar; Sahal Ibn Sa'ad; Abū Dharr al-Ghafārī; Mālīk Ibn al-Ḥuwayrith; 'Alī Ibn Abī Tālib; Jābir Ibn 'Abd Allāh. The scholar Ibn Ḥajar al-'Asqalānī has said the chain or number of transmitters of this Ḥadīth from Zayd Ibn Wahb and from Ibn Mas'ūd reached forty.

---

<sup>184</sup> Ch.23:12-14.

<sup>L24</sup> See Appendix

<sup>185</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Ruḥ*, 212-15; 'Abd Allāh Muḥammad 'Abd Allāh, "Al-Ḥayāh : Bidāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihayatuha fī al-Mafḥūm al-Islāmī*, 396.

- 2) Because of its many chain of transmitters and versions however, the Ḥadīth exists in several different versions. For example, noticeable differences in the wording of the text can be founded in the number of days or the nights cited by the various transmitters regarding the first cell (the zygote). Some transmitters or narrators of the Ḥadīth have said that “forty nights” must pass for the zygote’s creation while others have said “forty-two nights”, and still other narrators have variously reported “forty-five nights” and “forty and some nights”.
- 3) The original purpose of this Ḥadīth of Ibn Mas‘ūd dealing with human creation is to make clear the wisdom, foresight and supreme power of God to create the human being. Secondly, the Ḥadīth highlights the expansive knowledge and foresight of God—who always takes into account what has not yet transpired in the present, but what will come into existence later on in the future—in his decision-making.
- 4) While the transmitters of the Ḥadīth have disagreed over the exact wording of the text; they have nevertheless all agreed upon the same word “Al-Jam’” or collection, which appears in all the different versions of the same Ḥadīth.
- 5) The precise word “Al-Jam’” or collection has itself today taken on an important meaning in modern medicine in light of the advancement of the science of human embryology. This is to say, “Al-Jam’” or collection as used in the Ḥadīth clearly shows that it was meant to describe the unity of male sperm with female ova to produce the first fertilized cell ( the zygote)- which, carries the genetic information or makeup of the human child from both parents.
- 6) The fertilized pre-embryo cell (the zygote) moreover is not a complete human being yet, but rather it develops according to the genetic blueprint inherited from the merging of male sperm with female ovum in the mother’s womb.
- 7) Lastly, the transmitters who have narrated this Ḥadīth from Ibn Mas‘ūd have agreed by and large on not mentioning the blowing of the spirit, except Zayd Ibn Wahb who does speak of the “blowing of spirit into the fully developed embryo”. However, all of the narrators do mention and agree on four things happening in the womb to the embryo: 1) an angel writes down the person’s future means of livelihood while still in the mother’s womb; 2) the angel writes down his/her life-span while in the womb; 3) the angel writes down his/her actions while in the womb; and 4) the angel writes down whether the

person who is still in the womb and embryo will be happy or unhappy at Judgement Day in the afterlife.<sup>186</sup>

As was mentioned, Zayd Ibn Wahb stands out as the only narrator-Companion of the Prophet (pbuh) who did mention the “blowing of the spirit” into the embryo after the customary 120 days have passed in the pregnancy. For this reason after evaluating the different narrations of this specific Ḥadīth and others it would seem that the permissibility of abortion in Islam must not exceed the forty days or so in the pregnancy. Still, the critical question raised regarding abortion in Islam then becomes: Is the embryo before the forty days considered as possessing a human life or not?

Further evaluation of the Ḥadīth and scholarly opinion indicate in my view that the life of the embryo before the forty days have expired should not be considered human life, since it is completely devoid of the blowing of the soul/spirit. To a certain extent the embryo in its pre-forty days state does have or show a semblance of life of its own, but that this life would be more akin to plant life rather than full human life.

Similarly, it is my strong belief that chapter 23:12-14 of the Qur’an—which contains a beautiful paragraph describing God’s inventiveness and imaginative actions, as far as human creation is concerned—holds the key to understanding the mysteries of human creation. These Qur’anic verses summarize God’s intentions in creating the first human being in order to present and show humans their meaningful purpose in this world, which is to say, for humanity to endeavour to do good in this life so as to be among those rewarded in the afterlife. Of the different stages of God’s establishment and creation of the world, I will only focus on the first stages of human creation, that is, the preparation, inception and its end. As 23:12-14 show, human creation is a developmental process of action within the earliest stages. That is to say, it is an important “active” process when clay becomes a living human being. It is one of the signs of God’s power to change inorganic material such as clay from the earth into a living, active organic material (i.e., the genesis of the human being). Therefore, using the Qur’anic verses we can deduce that man’s sperm originally came from the inanimate clay; as well as from the interaction of different chemicals and proteins contained in food and living organisms

---

<sup>186</sup> Ahmad Ibn Hajar al-‘Asqalani, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. vol.11 (Beirut: Dār al-Ma’rifah, date N/A), 477-91; Abu Zakariya Yahya Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*. vol.16 (Beirut: Dār al-Fikr, 1981), 189-199.

regenerating themselves in the body to produce sperm. During sexual reproduction culminating at the stage of pregnancy the male sperm is stored within the female ovum. After fertilization takes place, the primitive fertilized ovum is changed into a clot of thickly congealed blood (*'alaqah*); the zygote cells develop and grow through segmentation and multiple divisions. After that, the whole process of human creation develops and takes shape in the growth of an embryo, which later becomes a foetus. The compact shapeless mass known today as foetus, which in the Qur'an is called a lump (*mudghah*), changes and develops into flesh, then into bones, organs and the nervous system— all of which are later covered with flesh by the command of God. All animals and human beings share this process of creation and development. In this particular early stage of life, the human being is much like any other animal. However, an important development takes place that causes a crucial differentiation between humans and animals. During the human developmental stage in the womb, God commands a specific angel to blow or breathe His spirit into the foetus. It is possible that there is a permanent development going on simultaneously with the physical growth stages during this event with the blowing of the spirit. This is to say, when a child is in the mother's womb he/she continuously develops, even though we cannot see it because the child is quiet and is in the safety of the mother's womb. Moreover, the mother's womb is like a castle for the baby; it is the best and most suitable place for the child during this crucial period of life. The mother's body provides protection for the baby, as she produces all necessary nourishment until birth. The child depends exclusively on his/her mother for everything and the womb is firmly secured by God. Finally, the child comes out from the mother's womb to exist on earth. Immediately, the newly born child begins to develop and grow outside of the womb for an extended transitional period leading to adulthood, which ultimately leads to old age and death after gradual decay.

Suffice it to say, after birth we consider that child to be a complete human being. Human creation as detailed in 23:12-14 in the Qur'an discusses clay— which is dry and dusty—being changed from an inorganic material into organic material, which is said to be later turned into protoplasm. Needless to say, human creation as mentioned in the Qur'an indicates a process of growth. For Muslims, it shows God's wisdom, power and knowledge. The general opinion of Sunni Islamic scholars is that the process of early human growth and development in the womb is a result of divine intervention; therefore, it is outside of the capacity and responsibility of human beings. In general, Sunni Muslim scholars have discussed the Ḥadīth of Ibn Mas'ūd and Qur'anic verses relating to human creation, including al-Mahdī, Ibrāhīm, Bā Salāmah, Yāsīn, al-



Salāmī, Muḥammad al-Ashqar, al-‘Asqalānī, ‘Umar Sulaymān al-Ashqar, al-‘Ammārī, Sharaf, and Ordoghadow.

Although we have already commented on and discussed this hadith at length, nonetheless, different versions of this hadith will now be presented. Moreover, there is no clear evidence in the Qur’ān or ḥadīth which specifies the beginning of the human soul except the following versions of the Ḥadīth of Ibn Mas‘ūd. Ibn Mas‘ūd, a renowned Companion of the Prophet, has quoted the Prophet(pbuḥ), who said:

The creation of each one of you is composed in the wombs of your mothers in forty day *Nuṭfa* (zygote). In that creation, it turns into a kind of clot, then that turns into a kind of *Mudghah*. Then Allāh sends an angel and commands him to write four words: his provisions, his life span, his deeds, and whether he is a wretched or blessed person. Then the spirit is breathed into him.”<sup>187</sup>

In another version of the same Ḥadīth, the Prophet of Islam (pbuḥ), detailed the stages of human creation in the mother’s womb, saying:

The creation of each one of you is composed in the mother’s womb. After forty days in that stage, it becomes a clot, then eventually into a kind of *Mudgha*. Next, Allāh sends an angel and commands him to write four things, such as: the person’s provision, his/her life span or age, his/her deeds and whether he/she will be of the wretched or the blessed in the hereafter. After that, the soul or spirit is breathed into him. Then, by Allāh, a person among you may do deeds of the people of paradise until there is only a cubit or two between him and paradise. Then that writing proceeds and he does the deeds of the people of the fire and enters it. And a person among you may do deeds of the people of the fire until there is only a cubit or an arm breadth distance between him and the fire, but then that writing proceeds and he does the deeds of the people of paradise and enters it.<sup>188</sup>

<sup>187</sup> Ahmad Ibn Hajar al-‘Asqalānī, *Fat ḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, 477; Abū Zakariyā Yahyā Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*, 189-199.

<sup>188</sup> Ahmad Ibn Hajar al-‘Asqalānī, *Fat ḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.11,477; Abū Zakariyā Yahyā Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī* vol.16, 189-199.

In a third version of the Ḥadīth the prominent Companions named respectively Abī al-Ṭufayl and Ḥudhayfah Ibn Usayd reported that the Prophet(pbuḥ), had said:

An angel enters into the *Nutfah* after the spermatozoa stays in the uterus for forty or forty-five nights. The angel asks Allāh saying, O Allāh is this a wretched or blessed person? The angel also asks, O Allāh (God) is this person male or female? After this the angels writes down—after getting the permission of Allāh (God)—the person’s deeds, his/her age or life span, and whatever they will gain or earn. Then, the scrolls are rolled up and the person will not experience any additional increase or decrease.<sup>189</sup>

However, this particular angel is not the one assigned to breathe the spirit into the foetus. However, although there is a kind of animal life present at this stage of creation, there is no human life.

To summarize, Ibn Mas‘ūd’s Ḥadīth is the most complete and sound ḥadīth of the Prophet(pbuḥ) dealing with the topic of human creation.<sup>190</sup> This ḥadīth, which was transmitted by famous Companions of the Prophet, details all stages of human creation, such as: the uniting of the sperm and ovum; the zygote; the clot; the *Mudghah* (a piece of flesh); followed by bones, flesh, blood, embryo, foetus; and finally, becoming a human baby. All authentic versions of Ibn Mas‘ūd’s ḥadīth of the Prophet (pbuḥ), agree that an angel writes down provisions for the embryo after forty days in the mother’s womb dealing with a person’s age or life-span; his/her deeds, and whether they will be among the wretched or blessed in the afterlife. Furthermore, the differences among the various versions of the hadith only emerge after the forty days, not before. Therefore, human life does not begin before the 40<sup>th</sup> day of pregnancy. Rather, the breathing of the spirit into the embryo is only present after the completion of four months or 120 days of pregnancy—as stated in the Ḥadīth narrated by Ibn Mas‘ūd. Moreover, in general Sunni Muslim scholars have agreed on this point.

<sup>189</sup> Aḥmad Ibn Hajar al-‘Asqalānī, *Fat ḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. vol.11, 477; Abū Zakariyā Yaḥyā Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*. vol.16, 189-199.

<sup>190</sup> Aḥmad Ibn Hajar al-‘Asqalānī, *Fat ḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. vol.11, 477; Abū Zakariyā Yaḥyā Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*. Vol.16, 189-199.

### Section 1.3.4 Abortion and Islam

Abortion is generally forbidden in Islam after pregnancy occurs, except when the mother's life is in danger, which is considered reasonable justification in the shari'ah. As the Qur'an says, "For those who are pregnant (whether they are divorced or their husbands are dead), their prescribed period is until they deliver their burdens or babies, and whosoever fears Allāh and keeps his duty to Him, He will make this matter easy for him".<sup>191</sup> For the human embryo (i.e. the nascent person) to inherit from his/her parents and take a portion of their wealth in the future, the baby must be born fully alive.<sup>192</sup>

Moreover, Allāh says in the Qur'an in the same verse regarding those who have doubts over their pregnancy due to old age or youth that their prescribed period is three months.<sup>193</sup>

After the breathing of the spirit into the embryo, the foetus becomes a human being with a soul. Therefore, the foetus is protected as the Qur'an, the Word of God, and the Prophet's traditions have both accorded the highest respect to the souls of human beings. The only time that abortion is allowed in Islam is when the life of the mother is in danger, because the mother's survival overrides that of the foetus. For this reason, if the continuity of the foetus in the womb will definitely cause the death of the mother, the pregnancy will have to be terminated.<sup>194</sup> The foetus is alive in the womb of the mother before the breathing of the spirit; however, this stage of existence is vegetative-like, since full human life requires a human soul or spirit. Following the completion of the first four months, the foetus receives the spirit and begins to move. Bā Salāmah and Ibrāhīm believe that human life begins after the completion of the fourth month of pregnancy.<sup>195</sup>

Natural abortion is permissible in Islam since the termination of pregnancy is without human interference whatsoever. Vardit Rispler-Chaim says that abortion can be natural such as a miscarriage caused when the body rejects the foetus or the foetus stops growing; consequently, she says that such an abortion is perceived as an expression of God's will and no one is at

---

<sup>191</sup> Ch. 65:4.

<sup>192</sup> Muḥammad Na'im Yāsīn, "Bidāyat Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'iyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fī al-Mafḥūm al-Islāmī*, 105.

<sup>193</sup> Ch.65:4.

<sup>194</sup> Muḥammad Na'im Yāsīn, "Bidāyat al- Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'iyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fī al-Mafḥūm al-Islāmī*, 105.

<sup>195</sup> 'Abd Allāh Basālamah, "Al-Ḥayāh al-Insāniyyah Dakhil al-Rahim," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fī al-Mafḥūm al-Islāmī*, 81; Aḥmad Shawqī Ibrāhīm, "Mata Bada'at Ḥayāh al-Insān," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa nihāyataha fī al-Mafḥūm al-Islāmī*, 75.

fault.<sup>196</sup> However, Rispler-Chaim also says abortion is permitted only to save the life of the mother or in the case of a defective foetus during pregnancy. At a 1982 conference of Islamic scholars in Kuwait the abortion of physically or mentally distorted foetus whose defects can be identified while still in the womb was sanctioned if the defection was incurable. Regarding the latter case of aborting a defective foetus, Rispler-Chaim adds— citing prominent scholars including Muṣṭafa Zurqā, Jād al-Ḥaqq ‘Ali Jād al-Ḥaqq and Shaykh Shaltūt— that it is impermissible to abort a foetus because of rape or adultery; undergo sterilization and tying of tubes; and the defection in the foetus must be confirmed by professional medical doctors.<sup>197</sup> If the abortion is performed after 120 days of pregnancy, this action is considered a crime and blood money must be paid— the blood money being 5% of the total diyyah (i.e., the blood money or compensation to be given to the diseased’s family unless the family remit it) which is five camels out of hundred camels— a penalty known as Ghirrah (this is the opinion of the previous Mufti of Egypt, Shaykh Shaltūt and other renowned scholars of jurists).<sup>198</sup>

The Mudghah (a chewed-like lump of flesh) formed in the mother’s womb is the foetus, which breaks into multiple segmentations and divisions in order to establish and form different organs with specific functions. The Ḥadīth of the Prophet (pbuh) narrated by Ibn Mas‘ūd, details the sequence of these stages.

As Allāh says in numerous Qur’ānic verses detailing the stages of human creation that, “Verily We created human beings from a drop of a mingled fluid-drop [called *Nuṭṭa* which is a mixture of sperm and ovum coming from man and woman]” and Allāh further says “So We gave him (the gifts), of hearing and sight.”<sup>199</sup> L25 Moreover, the Qur’an says “Allāh is the one who created all creatures in the best way and Allāh began the creation of human beings from clay and made the human offspring from pure extract of fluid (*sulālah*)” and furthermore Allāh is the one who “fashioned him [the human being] in due proportion and breathed into him the soul and He gave you hearing, sight and hearts.”<sup>200</sup> L26 In particular, Allāh challenges man to contemplate the

---

<sup>196</sup> Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, 7-8.

<sup>197</sup> Ibid., 8, 14-16.

<sup>198</sup> Ibid., 9.

<sup>199</sup> Ch. 76:2.

L25 See Appendix

<sup>200</sup> Ch. 32:7-9.

L26 See Appendix

intelligence and awe of human creation “Let the human being reflect and contemplate what Allāh has created him from. He has created him [the human being] from gushing sperm.”<sup>201</sup> L27

In conclusion, general Sunni Muslim scholars who have discussed the Ḥadīth of Ibn Mas‘ūd, have explained the phrase “breathing spirit” as a sign of the beginning of human life in the embryo. Although there might be some kind of life in existence before the blowing of the spirit in the embryo, it would be an vegetative-like life, not a fully human life. Al- Qurtubī, in his Qur’ānic commentary, explains the meaning of the Prophet’s words, “Yunfakhu fīhi al-rūḥ.”, saying that the breathing is evidence that the creation of the human soul is in the embryo and happens by the actions of Allāh.<sup>202</sup>

Ibn Ḥajar Al-‘Asqalānī explains the breathing of the soul or spirit in his explanation of the phrase “When God wants to create someone or something He just says ‘Be and it becomes’”.<sup>203</sup> He explains this as meaning the breathing or blowing of the human spirit into the embryo that becomes the foetus- which is the act that creates the human soul. This happened to Adam when Allāh sent the angel Gabriel: he had taken one handful of clay from the earth and made it into mud, then breathed the spirit into it, when the spirit entered it became the flesh and blood of a living, speaking human person.<sup>204</sup>

The embryo has two lives. The first life is like a vegetative life which Allāh created in the embryo before the breathing of the spirit. The life before the blowing of the spirit generates growth, development and spontaneous nourishment in the embryo. The second life is a human life, which occurs following the breathing of the spirit. At that time, the embryo transforms into a foetus and the blowing of the spirit allows the foetus to feel and move at will.<sup>205</sup>

### Section 1.3.5 The Definition of Death

The cessation of life means the departure of the soul from the body. Moreover, death is opposite of life. The origin for the root meaning of death (mawt) in the Arabic language is “static” and everything which is static is dead. As the Qur’an says, it is Allāh who takes away

---

<sup>201</sup> Ch. 86:5-6.

L27 See Appendix

<sup>202</sup> Abū- Abd Allāh Ibn Muḥammad al-Qurtubī al-Anṣārī, *Al-Jām i’ li-Aḥkām al-Qur’ān*. vol. 12 (Cairo: Dār al-Katib al- ‘Arabi, 1967), 8.

<sup>203</sup> Aḥmad Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.11, 411.

<sup>204</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al- Rūḥ*, 143-213.

<sup>205</sup> Ibid., 143-213.

the souls at the time of their death, and those that die not during their sleep. He keeps those souls for which he has ordained death and sends the rest for a term appointed. Verily, in this are signs for a people who think deeply.”<sup>206</sup> L28

### Section 1.3.6 Death in the Qur'an and Shari'ah

Among the definitions of death from the Qur'an and Ahādīth are:

(1) Death is the disappearance of the signs of life (i.e. spontaneity, voice, colour, touch, taste, smell etc) whether it is in humans, animals or plants. As Allāh says in the Qur'an he gives life to the earth after its death and verily he will do the same to the human beings who are dead, for Allāh has power over all things; moreover, Allāh says clearly in the Qur'an it is, “He who brings out the living from the dead, and brings out the dead from the living.”<sup>207</sup>

In Islam, there are similarities drawn between human death, the dryness (and rebirth) of the earth and ignorance. For instance, human beings will be resurrected on Judgement Day just as the earth revives after receiving rain, since the earth is considered to be dead when it is dry. Moreover, spiritual ignorance is considered to be akin to death because the ignorant person cannot understand and appreciate divine revelation, hence he/she is devoid of guidance and considered spiritually dead. In this regard, the Qur'an says, “Allāh revives the earth after its death and thus you will be brought out.”<sup>208</sup> (2) Another definition of death is ignorance, since Allāh also says in the Qur'an discussing ignorance of the unbelievers, “Can he who was dead, to whom We gave life, and a light whereby he can walk amongst men, be like him who is in the depths of darkness, from which he can never come out? Thus, to those without faith, their own deeds seem pleasing.”<sup>209</sup>

(3) Death is loss of life, such as when the soul separates from the human body, as the Qur'an says, “Wherever ye are, death will find you out, even if ye are in towers built up strong and high!”<sup>210</sup> and Allāh says, “And the stupor of death will bring Truth before his eyes: ‘This was the thing which thou was trying to escape!’”<sup>211</sup>

<sup>206</sup> Ch.39:42; ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa-Nihāyatuha,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa-Nihāyatuha fī al-Mafhūm al-Islāmī*, 131.

L28 See Appendix

<sup>207</sup> Ch. 30:50

<sup>208</sup> Ch. 30:50

<sup>209</sup> Ch.6:122

<sup>210</sup> Ch.4:78

<sup>211</sup> Ch.50 : 19.

In the Qur'an, Allāh says that he takes the soul of the person at the time of death and does not return it to the deceased body, and also he temporarily takes the souls of those who sleep, though he returns it back into their bodies when they awaken.<sup>212</sup>

However, a sleeping person is not dead, although he/she does not appear to be alive either. Therefore, sleep is considered a small death, in that the sleeping person is not conscious because the spirit and soul are all temporarily away from the body. Ibn 'Abbās, the Companion of the Prophet (pbuh) commented that Allāh takes the souls during sleep and death, but that he brings back the soul to their bodies after sleep, but keeps the souls of the dead with him.<sup>213</sup>

As I understand, when Allāh takes the soul from the body without returning it, this action signifies the end of human life. Moreover, the soul and spirit are consciousness, intellect, reflection and conception- all of these faculties are connected to the brain, which regulates and controls life. Therefore, the end of human life is directly connected to the death of the brain. However, Ibrahim maintains that it is only when heartbeat, blood circulation and brain death simultaneously occur that truly constitutes complete death.<sup>214</sup> Yet, if only the heartbeat stops this does not constitute death, since the above-mentioned faculties are still present in the brain.

### Section 1.3.7 Definition of Death in the Qur'an

Regarding the definition of death in the Qur'an, it should be recalled that when Allāh destroyed the deviants and disbelievers, he said in the Qur'an, "It was no more than a single mighty Blast, and behold! They were (like ashes) quenched and silent."<sup>215</sup> The words "quenched and silent" or "khāmidūn" in the verse, means "static" or inert, which we can interpret as meaning lack of movement, breathing or any other bodily signs of life.<sup>216</sup>

Allāh also says in other verses concerning death and the dying, that when the soul of the dying man reaches the throat and all the while people sit haplessly looking around, Allāh is the one nearer to him, but people do not perceive this.<sup>217</sup> It is very clear from these Qur'anic verses

<sup>212</sup> Ch.39: 42.

<sup>213</sup> Ismā'il Ibn Kathīr, *Tafsīr al-Qur'an al-'Azīm*. 5<sup>th</sup> ed.vol.4 (Beirut: Dār al-Ma'rifah, 1992), 60.

<sup>214</sup> Ahmad Shawqī Ibrahim, "Nihayat al-Hayat al-Bashariyyah," in *Al-Hayah al-Insaniyyah: Bidayatuha wa-Nihayataha fi al-Mafhum al-Islami*, 376.

<sup>215</sup> Ch. 36:29.

<sup>216</sup> Tawfiq al-Wā'ī, "Ḥaqīqat al-Mawt wa- al-Hayah fī al-Qur'an wa- al-Aḥkām al-Shar'iyyah," in *Al-Hayah al-Insaniyyah: Bidayatuha wa-Nihayatuha fi al-Mafhum al-Islami*, 467.

<sup>217</sup> Ch. 56: 83-85.

that while people settle around the dying person, the soul is separating from the body, and people cannot see death as they cannot see the angels of Allāh. But, how do people recognize death? People have recognized death through signs in the physical body; for example, when the two legs cannot stand upright; when the lips are open; when the shape of the physical body changes or when the whole body becomes cold and has no temperature. As Allāh says, “Yea, when (the soul) reaches to the collar-bone (in its exit), And there will be a cry, "Who is a magician (to restore him)?" And he will conclude that it was (the Time) of Parting; And one leg will be joined with another: That Day the Drive will be (all) to thy Lord!”<sup>218</sup> These verses show the separation of the spirit/soul from the body and that people cannot see this separation, except through the signs of death, which they recognize from experience.

### Section 1.3.8 Sunni Muslim Scholars’ Opinions about the End of Human Life

Traditional Sunni scholars have discussed the end of human life, and what follows death; that is, the rules and regulations for preparation of the corpse in advance of burial, including the washing of the body, acquiring the coffin, and praying over the deceased as stipulated in the Qur’an.<sup>219</sup> The ‘Ulama’ have said that if people around the dead person have verified and ascertained that the person is dead—based on their experience of the signs of death (i.e. stoppage of breathing, lips wide open, etc.)—the person is dead. The signs of death, which were recognized by previous medical doctors throughout the history of Islamic medicine include: a) lack of consciousness; b) loss of body temperature; c) cessation of pulse and breathing; d) glazing of the eyes; e) parting of the lips; f) sagging of the nose; and g) slackening in the muscles of the hands and feet. Among those who have held this opinion are: Bakr Ibn ‘Abd Allāh Abū Zayd—the Director General of the Ministry of Justice, Kingdom of Saudi Arabia—as well as the authors of Mukhtaṣar Al-Khaḥlī, Al-Fatawā Al-Hindiyyah, Ḥashiyyat Ibn ‘Abdīn and Ibn Qudāmah.<sup>220</sup> The heart used to be considered as the centre of life in the body, when it completely stopped, death was presumed.<sup>129</sup>

Abū Zakariya Yahya Ibn Sharaf al-Nawawī—a prominent and famous classical Sunni Muslim jurist and Muḥaddith—says if there is doubt about whether a person is really dead, for example, if there is any complication casting doubt on death—such as unconsciousness or a

<sup>218</sup> Ch.75: 26-30.

<sup>219</sup> Ch.80:21.

<sup>220</sup> Bakr Ibn Abd Allāh Abū Zayd, *Fiḥ al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/2 (Beirut: Muassasat al-Risalah, 1996), 226-7; Tawfiq al-Waḥī, “Ḥaqīqat al-Mawt wa- al-Ḥayāt fī al-Qur’an wa- al-Aḥkām al-Shar’iyyah,” in *Al-Ḥayāt al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. (1985), 465; Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*. (Beirut: Dar al-Fikr, 1981), 98.

<sup>129</sup> See Appendix



heart attack or the presence of panic signs on the face—burial of the person has to be delayed until death becomes clear through a change in the body's odour. Sunni Islamic scholars, such as Al-Nawawī, mention that if there is any doubt about a person's death or the presence of life, that person cannot be pronounced dead until it is absolutely confirmed—this in order to avoid burying someone alive.<sup>221</sup> In my opinion, if there is any lingering doubt then there must a prescribed waiting time, since this allows confirmation by means of changing the body's odour or any other obvious physical changes exist.

Sometimes, a body is breathing in and out, the heart is beating and all the organs are working with every thing alive, except the brain. In this situation, if the person's body is functioning by their own system, such a person in my view is alive and must be dealt with as a living human being. But, if a person's body is living and only functions through synthetic life support equipment (i.e., to maintain the heart, liver, kidneys, lungs, etc.) but the brain fails to respond, the person should be considered dead. If the brain-dead person breathes on their own, without life support, his/her life is respected by the Islamic shari'ah and by medical professionals who are obligated to provide all the necessary health care treatment. Yet, that person is dead according to medical professionals and their experts. For them, this person is effectively dead or there is 99% certainty that he/she will die- that is why a medical doctor will declare such a person as dead.<sup>222</sup> Islamic scholars have based their decisions in this regard on their expertise, personal experience, customs and the knowledge available to them during or before their eras. In my view there are no verses of the Qur'an or Prophetic Aḥādīth which precisely discuss the brain death situation, but the classical 'ulama' during their particular eras always arrived at their judgements through their own *ijtihad* and in the absence of today's medical technology. Therefore, there was a doubt between the classical Islamic scholars and the medical doctors of their time, with some Islamic scholars casting doubts about the validity and credibility of the medical doctors.

<sup>221</sup> Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Rawḍat al-Tālibīn*. vol.2 (Cairo: Al-Maktab al-Islāmī, 1960), 98.

<sup>222</sup> Tawfiq al-Wa'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayāt fī al-Qur'an wa- al-Aḥkām al-Shar'iyyah," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 476; Mukhtar al-Mahdi, "Nihāyat al-Ḥayāt al-Insāniyyah," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 346; Ḥassān Ḥaṭḥut, "Nihāyat al-Ḥayāt al-Insāniyyah," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 379; 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāt bayna al-Atibba wa- al-Fuqahā," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 360; Aḥmad Shawqī Ibrahim, "Nihāyat al-Ḥayāt al-Bashariyyah," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 373; Aḥmad al-Qaḍī, "Al-Qalb wa- 'Alāqatuhi bi- al-Ḥayāt," in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhūm al-Islāmī*, 389-392.

### Section 1.3.9 Traditional Signs of Death

How can one be certain that the soul is separated from the body and that there is no more life inside? There are some situations in which everyone clearly recognizes that a person is dead. However, there are other instances where to ascertain death is not so simple and can deceive the average person, as well as some medical doctors and even Islamic scholars who are experts on the topic of death. There are normal signs upon which Islamic scholars and medical doctors agree that death has occurred. For example, Yāsīn discusses the opinions of previous Muslim scholars about death situations. In cases of death by heart attack, unconsciousness, fear or falling from a high place, Muslim scholars request a delay of burial as a precaution in-order not to bury the living, until the signs of death are obvious such as lifeless legs. Yet, Yāsīn says that it is difficult to confirm death, except through medical professionals who are experts on the matter more so than the religious scholars. In this respect, Yāsīn continues to raise questions about reconciling the opinions of the religious scholars and modern medical doctors about brain death and its reality. Specifically, he says concerning brain death that scholars such Ibn ‘Abdīn say if there is any doubt about a person’s death, burial must be delayed until the signs of death become obvious. By contrast, the medical doctors say with absolute certainty that if the heartbeat stops, brain death immediately follows, in a maximum of five minutes.<sup>223</sup>

As was mentioned before, when Islamic scholars have doubts about whether a person is dead or alive, they delay the common preparations and burial procedures for dead bodies. Imām Al-Shāfi‘ī explains that, in specific cases the burial must be postponed for those who die from drowning, being burned, falling from a high place (such as a mountain or into a well), or from being attacked by a wild animal. The delay lasts until there is absolute confirmation that the person is dead.

Al-Shāfi‘ī, moreover, says that the family should wait up to three days for the burial, until people witness decomposition, because a person may be in a coma, have their throat closed or may be affected by other such things.<sup>224</sup> Abū-Hāmid al-Ghazālī confirms that the transmission of Imām Shāfi‘ī’s statement is sound and that if a person dies from such above-mentioned

<sup>223</sup> Muḥammad Na‘īm Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw al-Nuṣuṣ al-Shar‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimīn,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihayatuha Fī al-Mafhum al-Islāmī*, 415-6; Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Rawḍat al-Ṭalībīn*. vol.2 , 98.

<sup>224</sup> Ibid., 98.

situations, we must wait several days to bury him, in order to ensure that he is not alive. The Prophet (pbuh) mentioned a clear sign of death when he said, “When a believer dies, his sight or eye is straight and follows his soul”.<sup>225</sup>

### Section 1.3.10 Traditional Islamic Signs of Death

Death has clear signs, which are recognizable to every mature person. These signs include ceased heartbeat and breathing, widened eyes, continually open lips and lifeless legs, which are unable to hold the body upright.<sup>226</sup>

The conclusion that can be extracted from these Muslim scholars’ judgement on the signs of death, in my opinion, is that worldly human life ends when the body becomes unable to serve the spirit as its tool. From Muslim scholars’ perception, human beings are neither solely body nor spirit. Only with both, can one be a complete human being. The fact is that the body is a house for the human spirit during worldly existence.

In addition, knowledge, understanding, feeling, choice and selection are the most important functions of the spirit or soul. The function of the body, including organs and other systems, is to serve the spirit/soul, as a tool in this worldly life. The physical body is not able to perform or choose any action, without the command of the spirit.

I also believe that all bodily actions are the result of the power which God has bestowed upon the body through the spirit and death the means of departure of the spirit from the body. Furthermore, I maintain that any presence of intentional feeling, understanding and movement shows that the spirit or soul is in the body, including in the brain. However, the absence of feeling, understanding and selective movement reveals that the soul has separated from the body. Moreover, after brain death, any uncontrolled movement from the body indicates a simple vegetative life without the spirit; therefore, without the spirit the person is dead.

Medical opinion holds that, in this vegetative state after brain death, the human body is alive (even though it is not a full human life), therefore Yāsīn believes that medical doctors should treat the brain-dead patient as a living person.<sup>227</sup> However, in my view, this is a controversial issue and contrary opinions hold that the body in its vegetative state after brain-death, is not truly alive.

<sup>225</sup> Abu Zakariya Yahya Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*. vol.6, 222; Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*. 2<sup>nd</sup> ed. vol. 1, 634.

<sup>226</sup> ‘Abd Allāh Muḥammad ‘Abd Allāh, “Nihāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 396.

<sup>227</sup> Muḥammad Na‘īm Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimin,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 415-6; Abu Zakariya Yahya Ibn Sharaf al-Nawawī, *Rawḍāt al-Ṭālibīn*. vol.2, 98.

### Section 1.3.11 Signs of Death in Modern Medicine

Medical doctors define death as being when human or animal life ceases, and when three important organs stop functioning, namely:

- 1) Respiratory organs fail to work;
- 2) Blood circulation discontinues;
- 3) The brain and all nerves cease to function.<sup>L30</sup>

What if one's brain is dead, but one's heart still beats and other organs are functioning? In my view, cases like these are very problematic and cause much doubt. Therefore, there must be enough time allowed in order to ensure that death has occurred. If a person's heart completely stops, that person is dead. This is true even if other organs such as the kidneys still function. However, if a person's heart continues to operate without life-support equipment, this person is considered alive. Yet, if the person requires life support to remain alive the person may be considered dead, because dependence on life support equipment is not a real, but a false life. Moreover, if an individual continues to look at or listen to people, and is able to move his/her body, then the person's life remains normal. This is because if the soul separated from the body, the individual would not be able to look around and listen to others; it would have no movement at all— indicating an absence of life. The soul is also connected to both the heart and the brain. As previously mentioned, the Qur'an and ḥadīth clearly indicate that the soul comes into the chest and moves up through the throat. So, an interesting question arises: Is it possible that during death the spirit separates from the brain, but for a short time is still connected to the heart? My answer to this is, yes the spirit can be separated from the brain, but the heart can function only for a short time, one or two minutes, until blood circulation completely stops.

### Section 1.3.12 Respect for the Dead Body

The emphasis on respect for the dead body— whether Muslim or non-Muslim (or even an advanced embryo), is great in the Islamic religion, as well as in many other religions and cultures. Leor Halevi in *Muhammad's Grave* states that Islam specifically commands Muslims to prepare the dead body by washing it, clothing it and placing it in a coffin so as to pray over it and finally bury it in the ground. Cremation, or the burning of the human body, is absolutely not permitted in Islam. The dissection of dead persons is also not permissible, even if the person is

---

<sup>L30</sup> See Appendix

non-Muslim or the corpse is found on the battlefield. Islam also prohibits Muslims to disturb dead bodies, whether to mutilate or dissect. In an authentic Ḥadīth narrated by Abū Dawūd, Tirmidhī and Ibn Mājah, the Prophet(pbuḥ) said that “breaking the bones of the dead is equal to breaking the bones of the living” nor is there any difference between breaking the bones of a dead person and cutting his fingers or other parts of the body.<sup>228</sup>

### Section 1.3.13 The End of Human Life

The end of human life was not questioned as often in the past as it is currently. In my opinion, the main reason for this today is the advancement of science and medical technology. This advancement has led to the discovery of many secrets of life and death. For example, the availability of new equipment in intensive care units, such as life support, enables many people to survive when death would have otherwise been certain. Today, there are also many new and sophisticated medical technologies available ranging from artificial breathing equipment to brain function measurement equipment. The use of all this technology and science enables us to understand partially the end of human life. It is possible to use this equipment to determine exactly when the soul will depart from the body. Although this equipment is not 100% accurate, it is very helpful in determining the end of human life. The use of scientific and medical technology has also allowed medical teams to develop new scientific methods in human organ transplantation. Through transplantation, medical professionals offer new hope to save new lives, in situations where previously many could have been lost. Modern medical technology, coupled with the use of advanced scientific methods, give the medical team a great chance of saving the lives of both donors and recipients in human organ transplantation procedures.<sup>229</sup>

### Section 1.3.14 Where is Life Located?

According to some Islamic scholars human beings consist of a body and soul; however, we know nothing about this soul.<sup>230</sup> Nevertheless, we can grasp the soul’s effects on the human

<sup>228</sup> Leor Halevi, *Muhammad’s Grave: Death Rites and the Making of Islamic Society*, 1-416 ; ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuhā,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 146; Sulayman Ibn al-Ash’ath Abū Dawūd al-Sijistānī, *Sunan Abī Dawūd*. 2<sup>nd</sup> ed., vol. 3, 544; Muḥammad Ibn Yazīd Abū Abd Allāh Ibn Mājah, *Sunan Ibn Majah*. 2<sup>nd</sup> ed., vol.1, 516.

<sup>229</sup> Mukhtār al-Mahdī, “Nihāyatu al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 333.

<sup>230</sup> Mukhtār al-Mahdī, “Nihāyatu al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 333; ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayāh bayna al-Atṭibba wa al-Fuqaha,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 347-362; Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī, *Ihya ‘Ulum al-Dīn: kitāb sharḥi ‘ajaib al-qalb*. vol. 3, 3-5; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al-Rūḥ*, 143-215 ; Aḥmad Shawqī Ibrahim, “Nihayat al-Ḥayāh al-Bashariyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 363-5.

body. Some medical doctors, such as al-Mahdī, believe that the human soul is located in the brain because it is the organ that generates all human faculties, such as feeling, hearing, vision, smell, taste and touch.<sup>231</sup> The brain is also the storage area for memories from reading, sounds, sights, previous experiences, thinking and creativity. The brain stores all the person's habits, personality traits, origins and whatever differentiates them from others. In this regard, the brain is the human database. The most important section of the brain is the brain stem, which is a specific tissue inside the brain. If a person loses his/her consciousness, al-Mahdī says that it demonstrates that this specific tissue is damaged, such as may happen in a car accident.<sup>232</sup>

Therefore, we can say the brain stem is responsible for a person's consciousness. This specific membrane tissue is also responsible for a person's ability to walk and sleep; hence, we think this is the location of the soul.<sup>233</sup> Some scholars believe that the soul is in fact located in the human brain, and this means that before the creation of the brain, there is no soul. Hence, these scholars do not recognize a person without a brain as a "full human being". Consequently, if the brain dies, the person is considered dead, regardless of heartbeat, breathing or blood circulation.<sup>234</sup>

Certain medical doctors and religious scholars, among them Mukhtar al-Mahdī, hold this position. They point out that when the heartbeat stops, the consciousness of a person also ceases. Breathing and blood circulation immediately stop; and all bodily organs and tissues stop receiving any of kind of nourishment, such as glucose and oxygen, which are responsible for providing the body with energy.<sup>235</sup>

These scholars affirm that human life ends when the heart beat stops. Immediately following, breathing and consciousness will also stop. The rest of the body's organs will begin to die, starting with brain- death, in the first couple of minutes (4 minutes). Brain- death can also be caused by liver, kidney, heart and lung diseases. These organ diseases can cause blood pressure failure and the heart will stop functioning. Next, brain- death occurs and the person consequently dies. In conclusion, these religious scholars and medical professionals believe that brain -death is a complete death, regardless of the functioning of other organs of the body.

<sup>231</sup> Mukhtar al-Mahdī, "Niḥāya tu al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fi al-Mafhūm al-Islāmī*, 336-7; Ismā'īl Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, 5<sup>th</sup> ed.vol.3 , 251.

<sup>232</sup> Mukhtar al-Mahdī, "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fi al-Mafhūm al-Islāmī*, 336.

<sup>233</sup> Ibid., 336.

<sup>234</sup> Ibid., 337-8.

<sup>235</sup> Ibid., 337-8.

## Section 1.4 Islamic Teachings on the Afterlife:

### Introduction: The Resurrection of the Human Being and the Qur'an

In the Qur'an, Allāh says, "After that, at length ye will die; again, on the Day of Judgment, will ye be raised up".<sup>236</sup> However, after death, another life begins and new episodes and events commence. A person's transition into another world begins after the death of the body occurs. A sequence of events begins for every person, as each individual enters the final hour.<sup>L31</sup>

Allāh repeats the objection of those who reject the afterlife: "They say: 'What! When we die and become dust and bones, could we really be raised up again?'"<sup>237</sup> Similarly, Allāh quotes in another passage in the Qur'an the Unbelievers' obstinate denial: "What! When we die, and become dust and bones, shall we (then) be raised up (again)?"<sup>238</sup> <sup>L32</sup> They also ask: "And also our fathers of old will be raised up?". To these Allāh commands the Prophet to say "Say (O Muḥammad): 'Yes, and you shall be raised up humiliated (on account of your evil).' Then it will be a single (compelling) cry; and behold, they will begin to see!"<sup>239</sup> Similarly, Allāh mentions in another context the Unbelievers saying, "When we die and become dust and bones, shall we indeed receive rewards and punishments?"<sup>240</sup> <sup>L33</sup> Moreover, Allāh says in another instance, "And they [the Unbelievers] used to say, 'What! When we die and become dust and bones, shall we then indeed be raised up again?'" <sup>241</sup> <sup>L34</sup> Likewise, the Qur'an further says, "And they used to say, 'What! when we die and become dust and bones, shall we then indeed be raised up again?'- Say, 'He will give them life Who created them for the first time!' for He is Well-versed in every kind of creation!"<sup>242</sup> <sup>L35</sup>

In my opinion, these Qur'anic verses serve to primarily reinforce the theme of the coming Resurrection and afterlife in Islam. Moreover, the afterlife in Islam is seen an established reality. Therefore, these Qur'anic verses also discuss the transformation and transition of the human being from the earthly life to the everlasting afterlife. Finally, these

---

<sup>236</sup> Ch. 23:15-16.

<sup>L31</sup> See Appendix

<sup>237</sup> Ch. 23: 82.

<sup>238</sup> Ch. 37:16.

<sup>L32</sup> See Appendix

<sup>239</sup> Ch. 37:17-19.

<sup>240</sup> Ch. 37: 53.

<sup>L33</sup> See Appendix

<sup>241</sup> Ch. 56: 47.

<sup>L34</sup> See Appendix

<sup>242</sup> Ch. 36: 78-9; Ch.32: 11; Ch.56:83-4.

<sup>L35</sup> See Appendix

Qur'anic verses show the Islamic conception of continuity of the human being from one world to another, from one stage of life to another.

#### Section 1.4.1 Time of Death: People and Angels of Death

There are specific angels that God has assigned to take human souls. For example, in the Qur'an God says, "The Angel of Death, put in charge of you, will (duly) take your souls: then shall you be brought back to your Lord."<sup>243</sup> L<sup>36</sup> God also says in the Qur'an, "Nay, when the soul [or spirit] reaches the collar bone up to the throat in its exit and it will be said, 'who can cure him and save him from death?' and the dying person will conclude that it was the time of departing death and one leg will be joined with another. The drive will be on that day to your God, Allāh."<sup>244</sup> L<sup>37</sup>

Qurṭubī's linguistic-based commentary regarding this Qur'anic verse is the word "turquwah" as the collar bone around the throat, above the chest.<sup>245</sup>

#### Section 1.4.2 Grave (Barzakh): The Isthmus after Death

Muslim theologians believe that after death there is a place known as the isthmus (barzakh). This isthmus is thought to be the place where the dead dwell, until the resurrection. Similarly, it is understood to be what the Prophet (pbuh) meant by "grave". Simply put, events in the isthmus lie between death and resurrection. Isthmus, in this situation, exists only to the imagination. Ibn al-‘Arabī contends that there is a connection between isthmus and imagination, as there is a similar connection between this world and the next, or the connection between the spiritual and corporeal as being similar to worlds. The relationship between isthmus and imagination is explained in the Qur'an; for example, the relationship between sleep and death.<sup>246</sup> Additionally, the Prophetic hadith where the Prophet (pbuh), explained that sleep is "death's brother" establishes a connection between sleep and death. Similarly, Ibn Qayyim al-Jawziyyah has discussed the barzakh in this context, saying that it divides this world and the afterlife; and

---

<sup>243</sup> Ch. 32:11.

<sup>L36</sup> See Appendix

<sup>244</sup> Ch.75:26-30; Ch.56:83-84.

<sup>L37</sup> See Appendix

<sup>245</sup> Abū ‘Abd Allāh Ibn Muḥammad al-Qurṭubī al-Anṣārī, *Al-Jāmi‘ li-Aḥkām al-Qur‘ān*. vol. 16 (Cairo: Dar al-Katib al- ‘Arabī, 1967), 111.

<sup>246</sup> Ch.39:42.



that the Muslim soul— unlike the unbeliever’s soul, which will be in a narrow place of humiliation and punishment—will enjoy a pleasant existence there.<sup>247</sup>

Moreover, barzakh is the Arabic word for “isthmus”. Isthmus can be explained as a situation between this world and the next. Shaykh Ibn al-‘Arabī describes “barzakh” as something in between two things. For example, the present time is in between the past and the future. Ibn al-‘Arabī believes barzakh applies to a transitional situation. William Chittick, a scholar of Ibn al-‘Arabī, has presented his view that “barzakh” is in between this world and the next. Ibn al-‘Arabī insists that “barzakh” is not incorporated into the next world, but that it is the imaginary part; whereas the next world is real and tangible. In particular, Ibn al-‘Arabī says that there are certain situations in which “barzakh” is real. For example, during the resurrection at the time of the awakening of the dead is considered “barzakh”; and in addition, this time is real, tangible and sensory.<sup>248</sup>

### Section 1.4.3 The Unfolding of the Soul

In this world, everyone engages in activities that are deemed positive or negative. These activities also determine the destiny of one’s soul in the afterlife. It is well known that after death, the physical body is placed in the grave, while the soul remains in an imaginable form. Therefore, in the grave or isthmus, all humans await the results of their deeds in this world. Isthmus (barzakh) is considered a waiting period for resurrection, like gestation is a dynamic period prior to birth.<sup>249</sup>

Abū Hurayrah, the famous Companion of the Prophet, reported that when the soul of a believer departs, two angels take it into the sky. Ḥammād, one of the chain of transmitters, mentions the sweetness of that soul’s odour and that the dwellers of the sky upon seeing it say, “Here comes the pious soul from the side of the earth, let there be blessings of Allāh upon the body in which it resides”. The soul is carried by the angels to Allāh, the Exalted and Glorious, who says, “Take it to its defined end”. If the person is a non-believer as his/her soul leaves the body and is taken by the angels, Ḥammād says its foul smell will be noticed and it will be cursed by the dwellers of the sky who say, “There comes a dirty soul from the side of the earth”. Then it is said of the unbeliever’s soul, “Take it to its defined end”. Abū Hurayrah reported that

---

<sup>247</sup> William C. Chittick, *Imaginal Worlds: Ibn al-Arabi and the Problem of Religious Diversity* (Albany: State University of New York Press, 1994), 98-102; Muḥammad Ibn Abi Bakr Ibn-Qayyim al-Jawziyyah, *Kitab al-Ruḥ*, 111; “Al-Hayat,” in *The Encyclopaedia of Islam*, vol.3, 302-5.

<sup>248</sup> William C. Chittick, *Imaginal Worlds: Ibn al-Arabi and the Problem of Religious Diversity* (Albany: State University of New York Press, 1994), 102-104.

<sup>249</sup> *Ibid.*, 101-2.

Allāh's Messenger (pbuh) put a thin cloth that was with him upon his nose while mentioning the foul smell of the soul of a non-believer.<sup>250</sup>

It has been reported that the Companions asked the Holy Prophet (pbuh), the meaning of Ch. 3: 169 in the Qur'an dealing with the soul in the afterlife. The Prophet (pbuh) replied:

The souls of the Martyrs live in the bodies of green birds who have their nests in chandeliers hung from the throne of The Almighty. They eat the fruits of paradise from wherever they like and then nestle in these chandeliers. Once Allāh casts a glance at them and says, 'Do you want anything?' They said, 'What more shall we desire? We eat the fruit of paradise from wherever we like.' Allāh asks them the same question three times. When they see that they will be repeatedly asked the same question until providing a response, they say, 'O Allāh, we wish that you may return our souls to our bodies so that we may be slain in the way of Allah again.' When Allāh saw that they had no need they were left in heaven.<sup>251 L38</sup>

#### Section 1.4.4 Three Categories of Souls in the Qur'an

The three categories of souls mentioned in the Qur'an are the following:

- 1) Al-Nafs al-ammārah bi al- su' - Corrupt soul that commands people to do immoral things.
- 2) Al-Nafs al-lawwāmah – The soul that always blames itself either for a) not doing enough good b) commanding unscrupulous actions.
- 3) Al-Nafs al-muṭma'innah – The soul that is in a state of constant tranquility.

The scholar Ibn Taymiyyah clearly states that these divisions are one soul's characteristics. That is to say, the human soul is one. If the soul follows its desires and commits deviant actions it is named "Al-Nafs al-ammārah bi al- su' (the commander of corrupt things). If the soul commits immoral actions but holds its person accountable for those actions, it is named the "blamer's soul" or "Al-Nafs al-lawwāmah". If the soul's attitude transforms into one that loves

<sup>250</sup> Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiq'hī wa- al-Akhlaqī min Qaḍiyyat Zar ' al-A'ḍā'* (Beirut: Dār al-Shamiyyah, 1994), 7- 9.

<sup>251</sup> Ismā'īl Ibn Kathīr, *Tafsīr al-Qur'an al- 'Aẓīm*. 5<sup>th</sup> ed, vol.1, 435-6.

L38 See Appendix

to do good and hates sinning, then it is referred to as “soul of tranquility” or “Al-Nafs al-muṭma’innah.”<sup>252</sup>

Ibn Taymiyyah was once asked what the soul looks like. He answered that it is possible to know situations and characteristics of the soul, but that one cannot see it in terms of any shape, form or body. The soul differs from water, air, fire, and earth; in addition, it is not like an animal, vegetable or mineral, not even slightly.<sup>253</sup> Moreover, the soul does not have a specific place in the human body, but is instead diffused throughout, as it moves along with the inner life. Internal life and the soul are one. If the soul exists inside the body there is absolute certainty life is present; but if the soul departs from the body, there is no life. Ibn Taymiyyah concluded that the spirit and the soul are one, and that they are connected within the heart and the brain. He says that while reflection and memory exist in the brain, a person’s will is found inside the heart.<sup>254</sup>

#### Section 1.4.5 Transformations and Afterlife

Fakhr al-Dīn al-Rāzī attempted to provide an explanation of human growth in terms of soul. For him, a human being’s soul, spirit and life exist inside the body, in its structure. Everybody is familiar with the elements that exist in the earthly world. The human body consists of bones, tendons, muscles, oils and skin. Some of these bodily organs originate from the earth and some from water, such as blood. In addition, some people claim that blood itself is the soul or spirit because without blood, no one can survive. Additionally, other bodily elements originate from the air, like the spirit or soul.

Therefore, al-Rāzī says that human growth derives from two elements:

- 1) Elements originating from air, mixed with fire
- 2) Elements originating from the heart or brain, which is named spirit (rūḥ) and this is called a human being.<sup>255</sup>

In this regard, some scholars argue that human beings are the spirit or soul (which is a combination of air-based elements mixed with natural temperature or natural fire inside the human body, originating from the heart or brain). Some scholars maintain that human beings are

---

<sup>252</sup> ‘Umar Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh wa- Nihāyatuhā,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2. 143.

<sup>253</sup> Ibid., 143.

<sup>254</sup> Ibid., 143.

<sup>255</sup> Fakhr al-dīn al-Rāzī, *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. vol 21 / 22, 43.

the spirit—which resides in the heart. Some other scholars claim that the spirit is an indivisible part of the brain, while others contend that the spirit is igneous (i.e., al-‘anāṣir al-nāriyyah= air mixed with fire), that is, originating from natural elements, mixed with other igneous elements in the heart and brain. These igneous parts are referred to as natural temporal elements, which make up a human being. Some of scholars define spirit (Rūḥ) as simple heavenly illuminated elements, which have the characteristic of sunlight: inseparable, unchangeable, unscatterable or undisturbable and uncuttable. When the physical body has developed and is ready, then the above-mentioned heavenly illuminated elements will enter. These perfect elements (referred as “spirit”), which come from God, enter into the human body as fire enters into wood and charcoal. So long as the human body remains perfectly intact, accepting the presence of these flawless, heavenly and divine elements, the human body remains alive. If, however the human being has generated heavy elements—which are a mixture of elements that will oppose the perfect, heavenly and divine elements remaining inside the human body—this will lead to death. This is because these heavy elements will force the spirit (i.e. perfect elements) to depart from the human body, which will be what causes death to arrive and life to be extinguished. The latter explanation is common to most heavenly inspired religious books about life and death. This is an interpretation of the concept and ideology of those who have said and advocated that: the human being is an invisible entity inside the physical body.<sup>256</sup>

Furthermore, human beings are able to acquire knowledge and to have power to reflect and choose their own actions. Therefore, human beings are tangible, fundamental elements, and not accidents. In the human transformation process (i.e. afterlife process) our physical departure from this life through the process of death is not our final end. Rather, it is a break—a transformation and change from one abode to another—from this world to another which is called the afterlife. Arguably, if our present lives were to conclude solely here on earth, they would, ultimately, be useless. God assures us that there will be a coming resurrection on the Day of Judgment and there will be accounting of our deeds. After all, the basic and fundamental tenet of Islam is that every one must die and will be raised up on the Day of Judgment by our Lord and Creator. Therefore, human beings will not end with their lives on earth, but rather their existence is a continuous journey from earthly life to the everlasting afterlife.<sup>257</sup>

Various theologians’ views of human beings may be broken down as follows:

---

<sup>256</sup> Ibid., 43-44.

<sup>257</sup> Ibid., 51.

- 1) Some theologians have said that human beings are like bodies or elements that are generated from a mixture of different elements in specific amounts ( this view is held by certian Mu'tazilites such as Abū al-Ḥusayn of Baṣrah, Aristotle and those who reject that the soul remains after the death of the person).<sup>258</sup>
- 2) Other Mu'tazilite theologians believe that human beings are a mixture of specific elements like knowledge and power. They say life is an accident, which is dependant on the body. They reject and deny the ideas of spirit and soul. Moreover, they say that there is nothing else except elements such as knowledge, power or ability. This is the opinion of the majority of Mu'tazilites and their leaders.
- 3) Human beings possess certain elements that characterize life, knowledge and power. However, human beings are different from other animals by the shapes of their bodies, organs and limbs- although, angels are able to resemble human beings.
- 4) There is another group of theologians who argue that human beings do exist, but that they are not bodies nor are they characterized as bodies. This is the opinion of most Sunni Muslim philosophers who believe that the human soul remains after the death of its body. In addition, these scholars believe that the human soul returns to its Creator (God), where it may be punished or forgiven. Either way, they say the soul will be accountable before God on the Day of Judgment. Among the many prominent Muslim scholars who hold this opinion, include Abū Ḥāmid al-Ghazālī, Abū al-Qāsim al-Rāghib al-Iṣfahānī, and Mu'ammār Ibn 'Abbād al-Sulamī [a Mu'tazilite], al-Shaykh al-Mufīd [ a Shi'ite scholar].<sup>259</sup>

In the words of one scholar, Thābit Ibn Qurrah, who accepted the existence of the soul: "The soul is simple, lightened, heavenly elements, which cannot be destroyed or cut into pieces and disbursed. These elements are moving inside the human body; the soul remains to manage the physical body which obeys it. However, when these elements have separated from the body, the relationship and connection between the human body and the soul will by completely severed. At that time, the person is considered dead and is no longer called a person, but is instead referred to as a dead body."<sup>260</sup>

---

<sup>258</sup> Ibid., 44.

<sup>259</sup> Ibid., 45.

<sup>260</sup> Ibid., 45.

## Main Thesis

### Chapter Two: *Brain Death*

#### Section 2.1 Brain Death

##### Introduction

In this Chapter, I rely on books and articles by both Muslim and non-Muslim scholars including those written by classical and contemporary thinkers, theologians, philosophers, ethicists, jurists and physicians. All the scholars consulted, whether they see brain-death as complete death or not, have nonetheless been very important in forming my understanding of the various perspectives on the end of human life.

In “Nihāyat Al-Ḥayāh al-Insāniyyah”, Mukhtār al-Mahdī argues that human life ends when the brain is dead, which causes other vital organs like the heart to collapse. Al-Mahdī contends that the soul is located in the human brain; therefore, he claims that the human being is a living brain. I agree with al-Mahdī that when the brain stem dies a person is considered to be a dead person. Closely related to this discussion of brain- death, al-Mahdī also examines how to verify brain- death and maintains that keeping the body’s other organs alive through artificial means after brain- death is not considered a full life.

‘Iṣām al-Din al-Shirbīnī—a consultant in internal medicine at al-Ṣabah Hospital in Kuwait—and his article “ Al-Mawt wa al-Ḥayāh bayna al-Aṭibbā’ wa al-Fuqahā’ ” was valuable for my discussion of the connection between the death of organs and the death of a person, as well as for how to determine brain stem death. Al- Shirbīnī also discusses organ transplantation and organ harvesting from brain -dead persons to living (needy) persons.

Aḥmad Shawqī Ibrāhīm in his article “Nihāyat al-Ḥayāh al-Bashariyyah” discusses what a human being is, while at the same time defining death and life in the human body. He specifically looks at whether the human soul dies with the physical body or remains alive. Ibrāhīm in his article has sought to define the human spirit, the relationship between the body and soul/spirit, as well as the signs of brain death.

I have used Ḥassan Ḥaṭṭūt’s article “Matā Tantaḥī al-Ḥayāh” because as a medical doctor he asserts that human life ends when the human brain is dead and that this is in fact the real death- with which I agree wholeheartedly. Similarly, Aḥmad al-Qāḍī’s article “Al-Qalb wa

‘Alāqatuhu bi al-Ḥayāh” was important in its discussion of the definition of the heart. Al-Qāḍī believes, unlike al-Mahdī, that life resides in the heart, not the brain alone. If the heart and brain die— either together or separately— he says a person is dead, since brain- death will result in the person’s complete demise. Personally, after reviewing most of the scholarly works on brain death, it seems that the brain stem dead person is dead, because the heart and other vital bodily organs such as the liver and kidneys will immediately fail after a few hours or days.

‘Abd Allāh Muḥammad ‘Abd Allāh’s article “ Nihāyat al-Ḥayāh al-Insāniyyah” was important to my work on this topic because he discusses the definition and meaning of death by asking if the spirit dies with the death of the body or if death only occurs to the body alone: Consequently, ‘Abd Allāh presents two different opinions in defining death in relation to the body and spirit, one of which argues that the soul or spirit never dies and the other says that it dies with the body. Moreover, ‘Abd Allāh examines the “traditional” signs of death and the modern medically recognized signs of death; as well as touching upon personal wills and whether a wife may remarry if her spouse has become brain- dead.

Yāsīn, in his article “Nihāyat al-Ḥayāh al-Insāniyyah fī Ḍaw’ Ijtihādāt al-‘Ulamā’ al-Muslimīn wa al-Muṭayyāt al-Ṭibbiyyah” argues that the end of human life is the separation of life— which he identifies as synonymous with soul/spirit— from the body. Therefore, Yāsīn asserts that human life will end when the body can no longer serve the soul/spirit. Yāsīn, moreover, sees the brain-dead person as a dead person and hence supports the harvesting of organs from brain dead persons in-order to transplant them into living, needy people.

Muḥammad S. al-Ashqar, in “Nihāyat Al-Ḥayāh” contends that a person is dead when life separates completely from the physical body. Also, this scholar discusses the traditionally-held signs of death. Like myself and Yāsīn among others, al-Ashqar also agrees that the brain dead person should be considered dead and that his/her organs should be removed (harvested) and transplanted into needy active persons, who are still alive. Specifically, al-Ashqar says the brain dead person’s personal will should not be distributed until complete death has occurred.

Likewise, to present a counterargument I have used Badr al-Mutawallī ‘Abd Al-Bāsiṭ’s article “Nihāyat Al-Ḥayāh Al-Insāniyyah fī Naẓar al-Islām” because he adamantly rejects brain death as a complete death. ‘Abd al-Bāsiṭ forbids the removal of life- support equipment from the brain- dead person, as well as the harvesting of his/her organs for transplantation. Muḥammad al-Mukhtār al-Salāmī in his article, “Matā Tantaḥī Al-Ḥayāh” also agrees with ‘Abd al-Bāsiṭ and others that the brain-dead person is not a dead person— even though that person may only

be able to breathe through artificial life support equipment. Rather, al-Salāmī considers the brain dead person still to be a completely living person.

Nevertheless, I strongly disagree with ‘Abd al-Bāsiṭ and al-Salāmī that brain- death is not a complete death. Instead, I hold the opposite view shared by many other scholars like al-Mahdī and the Al-Ashqar brothers that brain- death is indeed a complete death. Furthermore, it is my personal opinion that the abovementioned scholars-‘Abd al-Bāsiṭ and al-Salāmī— have in their judgment in denying brain- death as a complete death mixed up the case of “a person in a coma” with that of “ a brain-stem dead person”. The two cases are fundamentally and completely different. For instance, unlike in a “coma” induced by a heart attack or some other major injury, a person may fully recover; this is not however the case with brain- death, from which it is next to impossible for a person to recover.

Tawfiq al-Wā ‘ī’s article “Ḥaqīqat Al-Mawt wa Al-Ḥayāh fi al-Qur’ān wa Al-Aḥkām al-Shar‘iyyah” is relevant to my argument on the permissibility of organ harvesting and transplantation from a brain -dead person into a living one, since he strongly supports organ transplantation— though he resolutely rejects brain death as a complete death. Moreover, al-Wā ‘ī also discusses the definitions of death and life; the signs of life and death; and the relationship between the physical body and spirit/soul— all from a linguistic approach towards the relevant Qur’anic verses and the Sunnah (tradition) of the Prophet (pbuh).

As well, Muṣṭaphā Ṣabī Ordoghadow’s article “Nihāyat Al-Ḥayāh Al-Insāniyyah” was useful because he too argues that brain stem death is a complete death. As such, Ordoghadow maintains it is permissible to harvest the brain -dead person’s organs so as to transplant and save the lives of needy living persons. Consequently, Ordoghadow—much like myself—holds that ultimately a living person is better than the dead person, that is to say, the needs of a living person outweigh those of a dead person.

## **Section 2.2 Definitions of the Brain: What is the Brain?**

The first persons who discovered brain death were the French researchers P. Mollaret and M. Goulon, who in 1959 named brain death “the stage after coma”. Then in 1968, the American professor Dr. Henry K. Beecher of the Harvard University Medical School’s Ad Hoc Committee followed suit and used the same term. Since then, there have been countless studies, conferences and discussions about the nature of the brain, specifically as it relates to the concept of death and the signs of death. The difference among medical doctors is largely related to



whether or not brain -death is the end of human life. The human brain consists of three major parts which are:

(1) *Brain*: The basic functions are the regulation and coordination of movement, posture, and balance.

(2) *Middle Brain*: Associated with higher brain functions such as thought and action, reasoning, planning, parts of speech, movement, emotions, problem solving, recognition, perception of stimuli, visual processing, memory, and speech

(3) *Brain Stem*: Responsible for basic vital life functions such as breathing, heartbeat, and blood pressure or blood circulation. The brain stem is a fundamental part of the body, which controls the essential functions of a living human body. If the brain stem is dead or completely damaged, with no hope of re-function, the person is considered dead. A coma is very different from the complete death of the brain stem.

### Section 2.3 The Brain and its Functions

The human brain has several major functions and purposes, which Al-Mahdī identifies in the context of his discussions of whether the soul might be located there:

We now think that the soul of the human being is located in the human brain, because the brain is the receiver of all human senses such as hearing, sight, smell, taste and touch. The brain is only a central receiver for the external world. Additionally, the brain contains and serves as storage of all memories obtained from reading, hearing, sight, previous experiences and innovation. All human behaviors, customs, ethics, morals and cultures; as well as, nature and nurture elements are all stored in the brain. Moreover, all human and animal desires are found in the brain. The brain is the only source for explaining and processing received information into organized actions. If specific parts of the brain are damaged, the person will lose some abilities that have been connected to these sections. For all these human abilities connected to the brain, God has given us rulings for their use and a responsibility (*Khalifah*) as stewards for this world.<sup>261</sup>

Brain-death literally means that the human brain stops all its functions completely, after which it is impossible to return the brain to its normal functions—though a brain -dead person

---

<sup>261</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Maḥūm al-Islāmī*, 2., 336.

could live in a vegetative like state for some time. If the brain stem dies, according to medical doctors the person is considered dead. There are two groups of Muslim medical doctors who argue about whether brain stem death is a complete death: 1) one group of Muslim medical doctors, jurists, theologians, philosophers and ethicists believe that brain stem death is enough to consider a person dead regardless of stoppage of heart beat and blood circulation; 2) another group of Muslim medical doctors believe that brain stem death alone is not sufficient to declare death, but there must be a simultaneous occurrence and stoppage of all three: heartbeat, blood circulation and brain stem death.<sup>262</sup> Life-support equipment is used in three situations. The first is when a patient needs a boost to his or her system (i.e., breathing and heartbeat regulation) back to its normal function. Consequently, once all functions have returned to normal, the medical team takes off all the life support equipment. The second situation is in order to keep the person's organs alive when the complete stoppage of a person's heartbeat and breathing takes place and the person does not respond to any medical assistance. At that moment, the medical doctor pronounces the person-dead because of the stoppage of heartbeat, blood circulation and the fact that brain-stem death has occurred. Therefore, there is no need to keep this person on life support except if their organs are salvageable. The third and last situation is when a person who is in deep coma and all his breathing and heart beat is regulated through synthetic life support equipment. This person is in a vegetative state because he/she is not responding to electrical graphs in the brain and heart. This person's life can be prolonged artificially by keeping them on life support. This is where the controversy (i.e. withholding versus withdrawing argument) arises: Should life support be withdrawn or kept in place?

At the heart of this matter are the following interlocking questions: 1) What is brain - death?; 2) What is the reality of brain stem death?; 3) Does brain- death mean the departure of the soul from the body?; and 4) Are organs then suitable to transplant into another person's body?

In 1985 there was a major conference on brain- death in Kuwait which was prepared by Islamic organizations and included various participants—such as Muslim medical doctors, jurists, philosophers, ethicists, theologians, politicians, social activists and human right groups—who debated if brain- death was a complete death or not. The following year, the

<sup>262</sup> Ahmad Shawqī Ibrahim, "Nihāyat al-Hayāh al-Bashariyyah," in *Al-Hayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2., 376; Tawfīq al-Wa'ī, "Ḥaqīqat al-Mawt wa- al-Hayāh fī al-Qur'an wa- al-Aḥkām al-Shar'īyyah," in *Al-Hayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2., 484; Bakr Ibn 'Abd Allāh Abū Zayd, *Fiḥ al-Nawāzil*, 1<sup>st</sup> ed. vol. 1 and 2 (Beirut: Muassasat al-Risalah, 1996), 219-20.

Islamic Academy of Muslim Jurists and ethicists approved the recommendations made in Amman, Jordan in 1986. During the Amman conference, it was declared that brain -death is a complete death and occurs when the heartbeat stops, and the person's breathing ceases completely, which also means that blood circulation will completely stop. Although, these are obvious and traditional signs of death, in the conference it was declared that brain-stem death is a complete death— as the brain begins to decompose and as evident through electrical signals. If the heartbeat has stopped or the brain-stem has completely died, then that person is considered dead. Some medical doctors claim that the death of the heart causes the death of the brain stem. It is possible that the heart could work while a person is brain stem dead with no feeling or movement— with blood circulation still working without any consciousness.

## Section 2.4 Brain Death

Al-Salāmī's definition of death is derived from his belief that if the patient is injected three times and the medicine does not spread through the body— and all medical instruments show that the body has started to decompose— then this would indicate the state of death, medically as well as religiously.<sup>263</sup> Al-Salāmī, moreover says this has led to considering the possibility and implications of transplanting the brain— a vital organ that cannot be replaced and without which there is no meaning to life— stating that this organ is the factor that ultimately decides between life and death.<sup>264</sup>

Al-Salāmī also maintains that we may divide death into an “indisputable” total condition where a person is dead and a “limited one” where life might continue, even though the person may otherwise be considered dead.<sup>265</sup> Al-Salāmī says that, in this latter state of brain death, a person may bequeath but may not inherit, can be buried, and is no longer capable of sustaining the relationship of marriage.<sup>266</sup> Moreover, al-Salāmī says that if the wife of such a brain- dead person gives birth, she would be allowed to marry someone else, even if his heart, kidneys and lungs continue to function; consequently, he says that the deciding factor between life and death is the death of the brain stem and its decay.<sup>267</sup> Al-Salāmī also cites and agrees with al-Mahdī—who he feels was correct when he said that the true meaning of brain transplantation is the killing of one human being in order to transfer his brain to another who is

<sup>263</sup> Muḥammad al-Mukhtār al-Salāmī, “Zarā ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khaṣṣatan al-Mukh,” in *Al- Ru'yah al- islamiyyah li- zara 'at Ba 'd al-A'dā' al-Bashariyyah*, 6.,107.

<sup>264</sup> Ibid., 107.

<sup>265</sup> Ibid., 106.

<sup>266</sup> Ibid., 107.

<sup>267</sup> Ibid.

already dead.<sup>268</sup> Though, al-Salāmī also says however that al-Mahdī has described brain transplantation as belonging to the world of science fiction and, if it were possible at all, it should be described as the body being transplanted to the brain, and not the other way round, since it would be easier to achieve.<sup>269</sup> Al-Salāmī believes that: 1) brain stem death is the person's complete death. 2) brain stem cell is an organ responsible for a person's life; and 3) It is permissible to donate the brain- dead person's organs to other needy people.<sup>270</sup>

## Section 2.5 Definition of Brain-Stem Death

What is brain-stem death? Is brain-stem death a complete death? This topic of brain-death and brain stem death is a controversial topic in both Muslim and non-Muslim societies. It is a new topic in the world generally and particularly in Muslim countries. It has raised many questions and discussions, not only between jurists, moḥadithūn and mufasssīrūn, but also amongst theologians, philosophers, medical doctors, health professionals and health policymakers. And there is also a lot of discussion and disagreement in the area of international medical law around this issue. For example, there are some countries which consider brain death and brain- stem death as a complete death, although the heart is still beating. Therefore, these countries allow for the removal of all life support equipment even if a brain- dead person's relatives object. Also, there are some other countries which consider that brain death and brain-stem death is not a complete death of the person; consequently they say while the heart is still beating it is a criminal offence and unprofessional to take off all life support equipment. But there are some countries which allow and permit the removing of all life support equipment if there is the permission of the sick person and his/her family.<sup>271</sup>

Aḥmad Sharaf al-Dīn— professor of Civil Law at 'Ayn Shams University and Kuwait University— has discussed some procedures which health professionals have created in America and some Muslim countries which involve the obtaining of the signature of the person who rejects the prolonging of his/her life through life support equipment. Some Muslim countries do allow such actions regarding brain death because a signature to reject prolonging life is permissible ( legally allowed) under two conditions: 1) for the medical team to issue the death certificate declaring the brain-stem dead person is dead; and 2) permission and consent of the brain-stem dead person's family is available. These two conditions must be verified by the legal

---

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Aḥmad Sharaf al-Dīn, *Al-Akhām al-Shar'īyyah lil- a ' mā' al-Ṭibbiyah*. (Kuwait city, Kuwait: Ma'ābi' Times, 1983), 174-77.

and Shari'ah authorities since the maintenance and protection of life at all cost is among the chief priorities in Islam; and therefore, most Muslim governments do not allow someone to commit "mercy killing" or anything that may lead to this outcome such as rejecting the prolonging of life without these two conditions having been met. The religious or legal justification for this is the Qur'anic verse, "And do not throw yourselves into destruction."<sup>272</sup> L39

## Section 2.6 Implications of Brain- Stem Death

Muslims must ask themselves if organ retrieval from semi dead persons (i.e., those afflicted by brain death or brain- stem death) is permissible or not. If it is not permissible, what are the reasons and justifications for it to be deemed impermissible?

To answer the above questions, it should first be said that the brain- dead person medically is a person whose brain stem, blood circulation, heartbeat have all stopped functioning; moreover, there is no hope to return such a person back to their full health. This is the medical definition of the brain dead person. In addition, the signs of death for medical doctors are the death of the brain stem and the decomposition of the brain. By contrast real death for Muslim jurists is the departure of the spirit from the human body completely; in addition, the signs of death for Muslim jurists are the complete stoppage of heartbeat and breathing.<sup>273</sup> The reason for this is that there has been great confusion about which bodily organ human life depends on the most. Some scholars have said it is the heart, others the brain or blood circulation (or even the liver). However, with the advancement of modern medical technology, the medical doctors have come to insist that the brain stem is the critical organ in the human body. Therefore, contemporary scholars and medical doctors have argued regarding brain death that other patients may benefit from the organs of brain dead persons who are going to die. In this regard, medical doctors maintain that there is no life at all in a brain- dead person; consequently, if we wait until the blood circulation and heartbeat fail in conjunction with brain death, the vital organs will become useless and no one will be able to benefit from them. Hence, these scholars and doctors have called on society to harvest the organs while the brain- dead person is still under life-support equipment or artificial breathing.<sup>274</sup>

<sup>272</sup> Ibid., 174-77, 184-87; Ch.2:195.

<sup>L39</sup> See Appendix

<sup>273</sup> Bakr Ibn 'Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/ 2, 220.

<sup>274</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. , 343; Mukhtār al-Mahdī, "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafḥūm al-Islāmī*, 2 , 345; 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-Ṭibbā wa- al-Fuqahā al-Ḥayāh al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafḥūm al-Islāmī", 2. , 354-360; Ḥassan Ḥaṭḥūt. "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafḥūm al-Islāmī*, 2. , 379-380; Bakr Ibn 'Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/ 2, 220.

## Section 2.7 Brain Death and its Causes

There are many different reasons for a person's immediate death. For instance, human life could end quickly by the stoppage of the heartbeat or breathing or the loss of consciousness; consequently, one or all three stoppages will cause the body's organs to begin to die, starting with the brain in the first couple of minutes. The patient's liver, heart, lungs and kidneys could die before other organs because the important living organ—the brain— has already died. The sickness of the other organs could cause critically low blood pressure and lead to the failure of the heart function which itself leads to brain death. Moreover, al-Shirbini says that brain death alone can kill a person although all his other organs are healthy. For instance, road accidents or falls that cause brain hemorrhage or brain tumours— all these situations could cause brain death, and particularly, brain stem death.<sup>275</sup>

In conclusion, human death may occur with the death of the brain stem or it may be caused by the stoppage of the heartbeat or by certain damage to the brain stem. When the brain stem dies it will start to decompose and become rotten immediately; however, it can be kept alive through artificial life-support equipment for a period of time.<sup>276</sup>

## Section 2.8 Signs of a Brain-Dead Person

Muslim medical doctors want to have adequate knowledge of the following complexities when it comes to declaring death:

- 1) A person whose brain is dead but heart is still functioning, as well as other organs;
- 2) A person's heart completely stops beating, he is dead, although his other organs are still functioning. However, if a person's heart still functions without support, he is not dead;
- 3) If a person's heart is beating and functioning solely by life-support equipment (such that if this equipment is removed his/her heart beat will stop immediately) is such a person considered dead or alive?
- 4) Is it possible that the brain can die and the heart continue functioning for days, hours or minutes? Brain-death will immediately cause heart death. Some people are of the opinion that consciousness (or life) and the soul/spirit are hidden in the brain, whereas others point

<sup>275</sup> 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-ʿAṭibbā wa- al-Fuqahā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. , 354-56.

<sup>276</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. , 342.

to the heart. As previously mentioned, death occurs when the body and spirit separate. If a human being is able to see, to hear, and to move by himself, this means the spirit remains inside him. However, if the spirit/ soul has separated from its body, the sight, hearing and movement will completely disappear. The spirit/soul has a connection with both the heart and brain. According to Qur'anic verses, the spirit/soul is located in the heart and when it departs it will reach the throat. There is an argument between the Islamic scholars about whether the soul is located in the heart or in the brain; as well as which bodily organ is responsible for death of the human being ( i.e. heart or brain);

- 5) Is it possible that the spirit separates from the brain, but still remains in the heart?  
Alternatively, if the spirit separates from the brain does this mean the heart will also die?;
- 6) When the heart and brain cease to function, does this mean the spirit and life are both terminated, even through other organs may still function?<sup>277</sup>

## Section 2.9 Brain and Heart: Both are Complete Death

The human brain is directly linked with life and death; since brain function indicates whether a person is alive or not. Ibrāhīm's opinion is that brain -death is a complete death:

Human life ends when the spirit departs or is separated from the body and the soul goes back to its Creator. We know in advance that the spirit/soul, consciousness, understanding, intellect and memory all relate to the brain and that the brain is the only source and centre for all. Then the end of human life is brain- death, or brain stem death. Human death is not the ceasing of breathing or the stopping of the heartbeat or both because if they both cease to function that does not necessarily mean the brain is dead. Therefore, it does not indicate the end of a human life.<sup>278</sup>

In my view, we must further consider the idea that human life ends when a person's brain dies— even if the person's heart beats artificially aided by life-support equipment or his/her lungs still breathe on their own. If brain specialists and medical doctors confirm that the brain is dead, there is no reason to delay the acceptance of the person's death, even if his/her heart and lungs still function. As many medical doctors have shown, brain- death only means

<sup>277</sup> 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-Aṭibbā wa- al-Fuqahā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūl al-Islāmī*, 360.

<sup>278</sup> Aḥmad Shawqī Ibrāhīm, "Nihāyat al-Ḥayāh al-Bashariyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūl al-Islāmī*, 2., 376.

that a person's organs exist in an animalistic or vegetative state, not within a complete human life.<sup>279</sup> There are specific requirements to consider when judging whether or not an organ is dead. For example certain knowledgeable scholars say "heart death" means the heart must completely stop functioning, and similarly the heart must not be able to revive again at all; as well, in the case of brain- death, the brain must completely stop all its functions and must not be able to reactivate and return to use.<sup>280</sup>

There are precise medical procedures that determine whether a brain dead person can engage in any further brain activity. Al-Mahdī elaborates that, "It is important to connect the brain graphic equipment or brain function measurement equipment to any patient with a severely damaged brain". When diagnostic equipment to determine brain stem function— since such equipment is accurate in providing required information—shows the brain is dead and has collapsed, then a team of two or more specialists and medical doctors will be able to clinically diagnose the patient.<sup>281</sup>

Current scholarly views on brain death reflect the development of human knowledge through science and technology, especially the advancement of medical science. One of the most important advances in medical science in al-Shirbīnī's view is the capability for the continuation of human breathing when a person fails to breathe independently on their own, stating that:

Even if a person damages his head and brain in an accident, he is able to breathe artificially, with the assistance of a life- support machine. In this situation, the heart continues to beat for a couple of days while the brain has already died and has started to decompose. Therefore, the concept of determination of brain-stem death functions as a sign of brain death-which is also a complete death of the person.<sup>282</sup>

Ḥaṭḥout offers interesting commentary regarding the issue of brain death in saying that medical science indicates that death is not the stopping of the heartbeat or the ceasing of lung function, but that it is marked by the death of the brain. Subsequently, he maintains that when machines that measure brain- stem function very clearly indicate that electric graphs of the brain

<sup>279</sup> Ibid., 377.

<sup>280</sup> Aḥmad al-Qāḍī, "Al-Qalb wa- 'Alāqatuḥu bi al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 387.

<sup>281</sup> Mukhtār al-Mahdī, "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 345.

<sup>282</sup> Ṭīṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-Aṭibbā wa- al-Fuqahā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 354.



have failed and shut down, “...this means that the brain stem is entirely dead and the rest of the body undoubtedly enters into the field of death. Whatever is used to continue artificial breathing and blood circulation can last for some time, but it is impossible to return a patient to life.”<sup>283</sup>

There are various important facts to consider with respect to the above comments. First, Ḥaṭḥūṭ emphasizes that “brain- death” is real death from the medical point of view. Secondly, he assumes that the minute the brain does not respond to electric shock is the exact time that death occurs. Moreover, he mentions that the value of life -support equipment, such as artificial breathing, is to protect the body and its organs from decomposition. Life- support equipment in this respect helps to keep organs in a good condition until suitable procurement and transplantation into another patient. Furthermore, Ḥaṭḥūṭ’s position clearly shows that the use of life support equipment is not meant to delay death or to maintain life as such; as well as, not to pointlessly increase the suffering of the patient’s family. Instead, he says the general use of life support equipment is not a waste of scarce medical resources simply because they are expensive per se, but rather the problem is the actual misuse of these life support machines that prevent other patients from benefitting from the available medical technology.<sup>284</sup>

## Section 2.10 Diagnosis of Brain-Stem Death

The fully awake human being is characterized by three faculties: feeling, understanding and controlled movement— in contrast to the person who is in a state of “deep sleep” or body-life where there is no feeling, understanding and controlled movement. According to al-Mahdī, the person’s life and soul will end with the death of the brain. However, bodily organs may remain alive in a person’s body after his/her death. Even while the dead person is still on life support equipment and the brain stem is dead, his/her heart could still be beating. The word “life” in this context would not relate to the person, but rather to some of his/her organs which are still alive, such as heart, liver and kidneys, but not to the brain which is already dead. As a result, al-Mahdī and others say that human organs must be retrieved after the brain stem is dead and while the organs are still alive through processes of organ donation, either through the person’s will or from gaining the family’s permission.<sup>285</sup> However, the important question related to this matter is, how do we verify brain death in the first place?

<sup>283</sup> Ḥassān Ḥaṭḥūṭ, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Maḥmū al-Islāmī*, 2., 379.

<sup>284</sup> Ibid., 380.

<sup>285</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 344-45.

The medical signs of brain- death are the following:

- 1) No response by patient to any pain; this means a patient has lost feeling and movement and is in a deep coma (deep unconsciousness);
- 2) Complete failure of spontaneous personal breathing, which can be ascertained by removing synthetic equipment from the patient for two minutes and watching whether a patient will spontaneously breathe or not;
- 3) The enlargement of his pupils and no response to light test;
- 4) The disappearance of electrical waves coming from the brain through brain graphics;
- 5) The failure of the brain and brainstem functions and loss of living organs;
- 6) Blood circulation from the brain stops.<sup>286</sup>

All these medical tests will leave no doubt about the final diagnosis of brain death and they will help to clearly differentiate between a coma, actual brain -death, as well as perhaps even poisoning.<sup>287</sup>

### Section 2.11 Determination of Time of Death

According to al-Mahdī, death occurs four minutes after the heartbeat and breathing stop. At that point, clinically, the person is considered dead. This means such a person has lost feeling, consciousness, understanding and is not responding to anything. There is no movement whatsoever present; no heartbeat or breathing.<sup>288</sup> Yet, from the standpoint of Islamic law no one knows for sure the exact time or moment that death occurs. Similarly, it is the same or even more difficult to determine the exact time when life begins in the human being- even though we have Ibn Mas‘ūd’s Ḥadīth of the Prophet which tells the stages of the creation of the human soul.<sup>289</sup>

In my view, brain- death constitutes the real death of the person, as all medical doctors have agreed. Specifically, the exact time at which all the brain’s electrical activities shut down or cease to function is the time when the person's brain has died and this means all other organs

<sup>286</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 342; ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayāh bayna al-Aṭibbā’ wa- al-Fuqahā,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 356-358.

<sup>287</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 343; ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayāh bayna al-Aṭibbā’ wa- al-Fuqahā,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 355-356.

<sup>288</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 338.

<sup>289</sup> Muḥammad Na‘īm Yāsīn, “Niḥāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimīn,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2., 406.

of that person will follow suit and also die.<sup>290</sup> Once the brain dies, no life-support equipment will succeed in bringing that person back to full life; it can only preserve the physical body from decomposition. In this regard, al-Mahdī says that all necessary available life support equipment should be used for the patient without causing the family to carry the high economic burden.<sup>291</sup>

## Section 2.12 Brain -Stem Death is Not a Complete Death

Contemporary Muslim scholars and thinkers have discussed the question of whether brain death and brain stem death is a complete death or not so long as the heart is still beating. The answer that this group of contemporary Muslim ethicists and scholars has so far presented is that, while the heart is still beating and blood circulation still ongoing, brain death is not a complete death. Instead of just relying on the cessation of blood circulation alone, these scholars have defined complete death as both the cessation of blood circulation and the complete stoppage of the heart beat. This group of scholars includes Bakr Abū Zayd<sup>292</sup>; Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī<sup>293</sup>; Tawfiq al-Wā'ī<sup>294</sup>; Badr al-Mutawallī 'Abd al-Basīṭ<sup>295</sup>, Abd al-Qādir Muḥamed al-'Ammārī<sup>296</sup>; the Fatwa Committee of Ministry of al-Awqāf in Kuwait<sup>297</sup>; Aḥmad al-Qāḍī<sup>298</sup>; Aḥmad Shawqī Ibrāhīm<sup>299</sup>; Muḥammad al-Mukhtār al-Salāmī; al-Nawawī<sup>300</sup>; and Muḥammad al-Shinqīṭī.

The traditional signs of death are the following: a) absence of breathing; and b) absence of movement. The previous 'Ulamā' discussed the absence of breathing as evidence for the absence of life in the human body. Moreover, the lack of chest movement indicates the absence

<sup>290</sup> Ḥassan Ḥaṭḥūt. "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 380; Mukhtār al-Mahdī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 337; Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiq'hī wa- al-Akhlaqī min Qaḍiyyat Zar ' al-A 'da* (Beirut: Dār al-Shāmiyyah, 1994), 33-5.

<sup>291</sup> Mukhtār al-Mahdī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 343.

<sup>292</sup> Bakr Ibn 'Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> cd. vol. 1/ 2, 220.

<sup>293</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī. *Aḥkām Al-Jirāḥah al-Tibbiyyah*. 2<sup>nd</sup> cd. , 344, 352-3.

<sup>294</sup> Tawfiq al-Wā'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur'an wa- al-Aḥkām al-Shar'iyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2., 465.

<sup>295</sup> Badr al-Mutawallī 'Abd al-Basīṭ, "Nihāyat al-Ḥayāh al-Insāniyyah fī Naẓar al-Islam," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2., 448.

<sup>296</sup> 'Abd al-Qādir Muḥammad al-'Ammārī, "Nihāyat al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 485.

<sup>297</sup> Muḥammad Sulayman al-Ashqar, "Nihāyat al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2., 443.

<sup>298</sup> Aḥmad al-Qāḍī, "Al-Qalb wa- 'Alāqatuhū bi al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 383-392.

<sup>299</sup> Aḥmad Shawqī Ibrāhīm, "Nihāyat al-Ḥayāh al-Bashariyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 363-377; Aḥmad Shawqī Ibrāhīm, 'Mata Bada'at Ḥayāh al-Insan," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2., 74-76.

<sup>300</sup> Muḥammad al-Mukhtār al-Salāmī, "Nihāyat al-Ḥayāh Al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmū al-Islāmī*, 2. , 451; Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Rawḍat al-Tālibin*. vol.11 , (1960), 98.

of the presence of life. Both earlier and contemporary Muslim scholars have concurred with the above view on the absence of life through cessation of breathing and chest movements.<sup>301</sup>

Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī has mentioned various Muslim scholars who have agreed that the brain dead person is still a living person.<sup>302</sup> Al-Shinqīṭī quotes Ibn Qudāmah, who mentioned in his book *al-Mughni* the signs of death from the previous Muslim scholars who held that if someone doubted that a person is dead or alive, they must investigate and search carefully for these signs of death.<sup>303</sup> Al-Nawawī also mentions in his book *Rawḍat al-Ṭalibīn* that “If someone has any doubt about a person being dead or alive— for example there are still signs of panic on the person’s face or he/she has entered into a deep coma like state—that person’s burial must be delayed until his/her body’s smell or odour has changed.”<sup>304</sup>

Al-Nawawī’s argument has also been presented and used by different scholars, notably al-Wāṣī and Abū Zayd and many others regarding the case of brain- death.<sup>305</sup>

The argument of the first group of scholars is based on the Qur’anic verse in the Chapter of the Companions of Al-Kahf or the Cave.<sup>306</sup> These scholars, such as al-Wāṣī, argue that in the Chapter of the Companions of the Cave -the youth mentioned in the story had lost their feeling, but were not considered to be dead persons in the sight of Allāh. Although the time which they stayed in the cave was exactly 309 years according to the Qur’ān, these scholars say the Companions of the Cave were not considered to be brain- dead; therefore, they contend, we must not consider contemporary brain dead persons today as completely dead. Moreover, they argue that the period of brain death or coma is a short time and the brain-dead person must not be considered as a dead person on the basis of the absence of feeling and spontaneous movement.<sup>307</sup>

These scholars of the first group have also based their argument on three Islamic rules (Qawā’id), the foremost rule being: “doubt cannot replace or remove reality”.<sup>308</sup> In the case of brain death, the previous life of the person is real and their present death is a doubt. A brain-dead person is still alive because the heart is beating and blood is circulating and warming the

<sup>301</sup> Bakr Ibn ‘Abd Allāh Abū Zayd, *Fiḥ al-Nawāzil*, 1<sup>st</sup> ed. vol. 1/ 2, 226-227.

<sup>302</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah Al-Ṭibbiyyah*, 2<sup>nd</sup> ed. vol. 1/ 2 (Jeddah: Makatabati al-Ṣaḥābah, 1994), 352-353.

<sup>303</sup> Ibid., 349.

<sup>304</sup> Abū Zakariyā Yahyā Ibn Sharaf al-Nawawī, *Rawḍat al-Ṭalibīn*, vol.2 (Cairo: Al-Maktab al-Islāmī, 1960), 98.

<sup>305</sup> Tawfiq al-Wāṣī, “Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar’iyyah,” in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Maḥmūd al-Islāmī*, 2., 478; Bakr bn ‘Abd Allāh Abū Zayd, *Fiḥ al-Nawāzil*, 1<sup>st</sup> ed. vol. 1/2, 227.

<sup>306</sup> Ch.18:9-12.

<sup>307</sup> Tawfiq al-Wāṣī, “Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar’iyyah,” in *Al-Ḥayāt al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Maḥmūd al-Islāmī*, 2., 478.

<sup>308</sup> Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *Al-Ashbāḥ wa- al-Naẓā’ir*, 56; Zayn al- ‘Abidīn Ibn Ibrāhīm Ibn Nujaym, *Al-Ashbāḥ wa- al-Naẓā’ir*, 56.

body. The doubt in brain death is only that the brain is not functioning and there is no feeling at all (i.e. the person is not responding to any action), therefore it is obvious that the brain dead person in question is still alive as a reality based on their previous condition. This will be the reality until we encounter another reality opposed to it, in other words, a verifiable death. Consequently, this is the position taken by Abū Zayd, al-Wā'ī, 'Abd al-Bāsiṭ and al-Salāmī. Accordingly, the second Islamic rule used by the scholars is: "everything stays as it was before, originally" - this is also the argument made by Abū Zayd, Jalāl al-Dīn 'Abd al-Raḥmān al-Suyūṭī—renowned classical Sunni Muslim theologian and Shafi'ite jurist—and Zayn al-'Abidīn Ibn Ibrahim Ibn Nujaym—a classical Sunni Muslim theologian and Ḥanafite jurist—who hold that since there was previous incontestable life in the brain- dead person, we cannot easily deny it until we ascertain with no uncertainty that death has fully occurred.<sup>309</sup> Finally, al-Wā'ī offers the third Islamic rule of "al-naẓar" which means maintaining human life (and is part of necessity), that can also be interpreted to mean protecting and preserving human life as one of the fundamental tents of the Islamic religion; therefore, applying this rule in the case of the brain-dead person means that preserving life is a necessity. Moreover, another rule stipulates that the origin of anything must remain as it is until its opposite comes into existence. Also Al-Wā'ī has argued that truth and facts cannot be replaced doubt.<sup>310</sup>

'Abd al-Bāsiṭ staunchly refutes brain death as a complete death, saying that if the brain is dead and stops its functions, while the rest of the body's systems are functioning thanks to modern medical equipment—and the human body shows the presence of life—how can we then say that death is only when brain- death has occurred, despite knowing the fact that the body's overall systems show there is still real life?<sup>311</sup>

'Abd al-Bāsiṭ later discussed the matter more in depth in Al-Ahrām newspaper by refining his position on a high-profile case which attracted the keen attention of medical experts throughout the world.<sup>312</sup> The case was that of a 32- year old woman from Finland who had delivered her fourth baby, named Marco, while she was in a deep coma ( caused by a brain hemorrhage) of two and a half months duration.

<sup>309</sup> Jalāl al-dīn 'Abd al-Raḥmān al-Suyūṭī, *Al-Ashbah wa- al-Naẓa'ir*, 59; Zayn al-'Abidīn Ibn Ibrahim Ibn Nujaym, *Al-Ashbah wa- al-Naẓa'ir*, 59.

<sup>310</sup> Tawfiq al-Wā'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur'an wa- al-Aḥkām al-Shar'iyyah," in *Al-Ḥayāh al-Insāniyyah : Bid'ayatuha wa- Nihayatuha fī al-Mathūm al-Islāmī*, 2, 478; Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah Al-Ṭibbiyyah*, 348.

<sup>311</sup> Bakr Ibn 'Abd Allāh Abū Zayd, *Fiḥ al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/2, 445.

<sup>312</sup> Ibid., 447.

My position in the debate over brain- death as complete death is that only God alone can know the true reality of brain- death. That being said, all the scholars mentioned so far have nevertheless only superficially discussed the signs of life without the presence of life- support equipment. This is to say, if normal breathing, blood circulation and a heartbeat are present and occurring in the brain-dead person without artificial means, I would wholeheartedly agree with their reasoning. However, the real question facing these scholars and the one at the centre of this debate over brain death is: what happens once the life- support equipment is taken off indefinitely from the brain-dead patient? Would not such a person immediately die as a result? This seems to be an important but not much discussed criterion-is a person dead if she can produce a living being? Can a brain-stem-dead pregnant woman who is pregnant bring her baby to term? No. But a pregnant woman in a coma or even without higher brain function can. So this would indicate that brain-stem death equals complete death, but brain-death does not.

Therefore, in light of the real controversy over the fragility of artificial life-support versus normal breathing, blood circulation and heartbeat— as well as taking into account the existence of modern medical science today in relation to evaluating brain death—there seems to be in my view two overriding scholarly perspectives in the existing literature towards the problem of brain death in Islam. These two perspectives come from two different contexts and backgrounds, hence the evaluation of traditional Muslim jurists and medical doctors tend to be different. The first scholarly perspective is based in the pre-modern Muslim world and its scholarly opinions on the signs of life and death. The other perspective is in the context of today's modern scientific technology existing in the present era. The Muslim scholars, jurists, bioethicists and medical doctors (on both sides of the debate) have looked at the problem of brain death through these two different lenses; however, in my opinion current scholars have forgotten that the reality of brain death in these two epochs (past and present eras) is totally different. Moreover, all the preceding arguments made by the scholars who oppose brain death as a complete death would be valid if life-support equipment is not involved and the human body is functioning in a natural state.

In addition, contemporary scholars who oppose brain death as a complete death must see that the previous Islamic scholars who cast doubt on brain death did so because they did not have any advanced medical knowledge or equipment to diagnose the inner functions of the human brain. Therefore, the past scholars' verdicts and reasoning on brain death came not on the basis of present medical knowledge of today's hospitals and organ- transplantation crisis, but instead according to their own limited knowledge of human anatomy and the science of their

time. The subsequent contemporary theological arguments used and made by al-Wa'ī and others who oppose brain death as a complete death, which is largely based on the work of past scholars and their opinions, must be seen in the context of the pre-modern scholars' desire to protect people's lives back then. Suffice it to say, the pre-modern scholars who doubted brain death possessed no immediate concrete awareness and experience of the possibility of modern-day organ transplantation procedures given the limited technology of their age. Today, the objective situation of our society and medicine are altogether different as a result of the advancement of modern medical science and technology which have made it possible to diagnoses and verify the working status of the brain in relation brain-stem death.

Also, one must take into account the organ- shortage crisis of today in contrast to the past Muslim societies and the traditional scholars who did not witness the high- level pressures caused by today's multi-dimensional burdens facing Muslim families and societies. These burdens are not only financial, medical, psychological but in the case of organ transplantation and the organ- shortage crisis they are all three. Many contemporary scholars in the debate over brain- dead persons have also asked whether the heartbeat— the one beating inside a brain-dead patient— is truly real or natural, given the fact that it is entirely sustained by artificial life-support equipment.<sup>313</sup>

My position on this matter is that brain death is a complete death; hence the heartbeat of a brain-dead person is not a natural one. Moreover, those scholars who compare the case of brain dead persons to the Companions of the Cave are expressly overlooking their basic incompatibility. For example, in the case of the Companions of the Cave as narrated in the Qur'an, it should be recalled that God (Allāh) mentioned in the relevant Qur'anic verses that they continually had feeling and movement— since it was Allāh who turned them on their right and left sides throughout the course of their slumber. The Companions of the Cave, as the Qur'an tells us, also had feelings and were fed by God during their sleep. Evidence for this is that their hair and nails were always growing regularly. More importantly, God did not say or refer to them as “dead people”, but instead as “sleepers” (*ruqūd*). Therefore, in light of these facts with respect to the incompatibility of brain dead persons to the Companions of the Cave, it should be obvious there is a wide difference between the two cases.

Furthermore, when we look at the case of the Companions of the Cave we realize that— unlike brain-death— this was an incredible event in itself. There is no question that the ordeal of the Companions of the Cave as told in the Qur'an was not a normal event that happens to

<sup>313</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Mafhūm al-Islāmī*, 2, 344.

most human beings, unlike brain death which occurs globally and affects a significant number of persons. For these reasons, the case of the Companions of the Cave cannot and should not be used to apply to all human beings, both those who were alive back then or the case of brain dead patients now. Likewise, it is my stance that it is impossible for Muslim scholars, jurists, medical doctors and ethicists to present a robust theological counterargument refuting brain death as a complete death (or even generally discuss contemporary brain death issues) using the Qur'anic verses related to the Companions of the Cave— except perhaps to prove broadly the power of God to sustain human life in the natural world. It should also be recalled that, in the Qur'anic narration of the Companions of the Cave there is no mention of the involvement of any life-sustaining apparatus; their lives were not in any way or shape dependent on any artificial technological intervention for survival. In contrast, the case of brain- dead patients today is that they are inextricably and completely dependent on artificial life-support equipment to survive; without such modern life support equipment (like a ventilator) they would not be able to breathe. Furthermore, if the brain-dead patient (who remains in the degenerative condition solely dependent on respiratory machines) experiences the loss of other outside medical interventions by health staff workers, his/her brain will quickly decompose and liquefy, despite being connected to a machine. If the whole life-support equipment were totally removed, the brain-dead patient would immediately die as a result. For this reason I believe that al-Wā'ī's article "Ḥaḳīqat al-Mawt wa al-Ḥayāh fī al-Qur'ān wa al-Aḥkām al-Shar'īyyah" and other similar scholars' arguments presented so far do not, unfortunately, make a strong or coherent counterargument able to refute brain death as a complete death.<sup>314</sup> The reason is al-Wā'ī and like-minded scholars are not intuned with the dynamic changes brought about by modern science and technology, and for this reason their position is unfortunate, since it would make Islam seem to be static, but as we know Islam is ever-changing and responding to the needs of human beings.

### Section 2.13 Brain Death is a Complete Death, Irregardless of Heart Death

The second group of scholars who believe that brain death is a complete death, irregardless of the stoppage of blood circulation and heartbeat, includes Muḥammad Sulaymān al-Ashqar<sup>315</sup>, 'Umar Sulaymān al-Ashqar<sup>316</sup>, Muḥammad Na'īm Yāsīn<sup>317</sup>, Eike-Henner W.

<sup>314</sup> Tawfīq al-Wā'ī, "Ḥaḳīqat al-Mawt wa al-Ḥayāh fī al-Qur'ān wa al-Aḥkām al-Shar'īyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2., 461-484.

<sup>315</sup> Muḥammad Sulaymān al-Ashqar, "Nihāyat al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2., 429-443.



Kluge, Carl Cohen and Aḥmad Sharaf al-Dīn<sup>318</sup> and Muḥammad ‘Ali Al-Bār—as well as the ruling and declaration of the Islamic Fiqh Academy.<sup>319</sup> In particular, Aḥmad Sharaf al-Dīn believes that brain death is a complete death because the brain- dead person will not recover his/her full health; therefore, he advocates the harvesting of organs of brain-dead persons.<sup>320</sup>

The arguments of this second group of contemporary Muslim and Western ethicists are also based on a philosophical analysis of when the human body fails to function, that is to say, when the physical body fails to accommodate the human soul or life. Specifically, these scholars attempt to find the exact moment when human life ends and a person is no longer considered to have a relationship between the body and soul. The renowned Sunni Muslim scholar and jurist Ibn Qayyim in his definition of the spirit said:

It[spirit] is an entity different than the reality of this physical body which we feed; it is a heavenly light body, which is simply able to move and diffuse into human organs as water pours into a flower, and as oil goes into an olive tree and as fire goes into charcoal/wood. While the human organs are suitable and able to serve this simple, heavenly light body, the two bodies, the spirit/soul and the physical will remain together, with the organs obeying the lightly spirit/soul. Consequently, the spirit (*rūḥ*) will both provide for and be served by the human organs. When the feelings and potential movement of these human organs become unable to serve the simple heavenly light body, the spirit/soul— because of the presence or domination of another heavy material— the spirit will depart from the physical human body and join the world of spirits.<sup>321</sup>

In my analysis, Ibn Qayyim’s abovementioned definition is the true definition of spirit/soul and any other definition will be invalid and useless to the debate on brain death. This is because all evidence— from the Qur’ān, Aḥādīth and the consensus of the Companions

<sup>316</sup> ‘Umar Sulaymān al-Ashqar, “Bidayat al-Ḥayat wa- Nihayatuhā,” *al-Ḥayah al-Insaniyyah : Bidayatuha wa- Nihayatuhā fī al-Maḥmūl al-Islāmī*, 2., 130-153.

<sup>317</sup> Muḥammad Na‘īm Yāsīn, “Nihayat al-Ḥayah al-Insaniyyah fī Daw’ al-Nuṣuṣ al-Shar‘iyyah wa- Ijtihadat al-‘Ulamā’ al-Muslimin,” in *Al-Ḥayah al-Insaniyyah : Bidayatuha wa- Nihayatuhā fī al-Maḥmūl al-Islāmī*, 2., 420-424.

<sup>318</sup> Eike-Henner W. Kluge, “Organ donation and retrieval: Whose body is it anyway?” in *Intervention and Reflection*, Ronald Munson (Wadsworth/ Thomson Learning, 2000), 387-389; Carl Cohen, “The case for presumed consent to transplant human organs after death,” in *Intervention and Reflection*, 773-779; Aḥmad Sharaf al-dīn, *Al-Aḥkām Al-Shar‘iyyah lil- A’ mā l al-Ṭibbiyyah*, 176-77.

<sup>319</sup> Muḥammad ‘Ali al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlaqī min Qaḍiyyat Zar’ al-A’ ḍa’*, 275; Muḥammad Ibn Muḥammad al-Mukhtar al-Shinqī ṭī, *Aḥkam al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed., 345.

<sup>320</sup> Aḥmad Sharaf al-Dīn, *Al-Aḥkām al-Shar‘iyyah lil- A’ mā l al-Ṭibbiyyah*, 176-77.

<sup>321</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Kitāb al- Ruḥ*, 178.

of the Prophet; as well as the informed logical common sense view, has shown the correctness of this definition of the spirit/soul . As a result, many Sunni Muslim scholars have agreed with Ibn Qayyim's definition such as Maḥmūd al-Subkī and the theologian commentator al-Ṭaḥāwī.<sup>322</sup>

Ibn Qayyim's definition corresponds to modern medical terms in that human organs are seen as tools for consciousness and brain functions; hence, human organs serve to indicate the presence of full human life. For instance, modern medical doctor such as Ḥassān Ḥaṭḥūt, Mukhtār al-Mahdī and others have agreed that the living brain-stem cell ultimately indicates that a person is alive. However, Ibn Qayyim did not speak about the brain-stem cell since his era lacked the necessary scientific knowledge about brain functions. Yet, he did mention human spirit/soul or life as being evidenced through bodily organs (which we can say from conjecture would have included the brain-stem cell since the brain is a bodily organ); as well as the separation and interdependence of consciousness (spirit/soul) and the body's organs.

Al-Ghazālī, in his own attempt to clarify the departure of spirit from the body, presents this definition of the soul:

The meaning of the spirit's departure from the body is that the spirit is abandoning the body completely, because the body is no longer obeying the spirit any more. The human organs are the tools used by the spirit and the spirit is the way the physical body interacts with the world. For example the ear listens through the spirit, the eye sees through the spirit, and the brain gains the knowledge through the spirit. The failure of the body which results in death creates a problem for the spirit since it cannot go through the human organs, especially the nerves, anymore.<sup>323</sup>

The spirit—which knows, understands and reasons—may still be in some parts of the human organs despite the person's death; but some other parts of the human body the spirit will leave since it cannot use them and they are not able to obey it. The person's death is a situation in which all organs disobey the spirit and all organs are tools for the spirit. Moreover, a person's death means that the spirit has abandoned the body since the body refuses to become a tool to be used by the spirit.<sup>324</sup>

<sup>322</sup> Muḥammad Na'im Yāsīn, "Nihāyat al-Ḥayāh al-Insāniyyah fī 'Daw' al-Nuṣuṣ al-Shar'īyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mafhum al-Islāmī*, 2., 410.

<sup>323</sup> Muḥammad Ibn Muḥammad Abū Ḥamid al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn: kitāb sharḥi 'ajāib al-qalb*. vol. 3, 3-4.

<sup>324</sup> Ibid., vol.4, 494.

Yāsīn has presented and argued in favour of al-Ghazālī's definition of spirit in his article.<sup>325</sup> Generally the scholars cited in this section also maintain that death entails that the physical body's organs have failed to serve the spirit; consequently, this is evidence that the spirit and body have departed from each other.<sup>326</sup> The case of brain death is obvious evidence for these definitions of the spirit because all organs are not responding to the spirit and its commands. The bodily movements shown by a brain- dead person, sometimes in the form of uncontrolled movements, do not in themselves have any relationship with the spirit or its commands. In this regard, most of the contemporary Muslim ethicists and scholars have ruled that the brain- dead person is a dead person.<sup>327</sup> Al-Shinqīṭī quotes al-Zarkashī (a philosopher, theologian and jurist) as having said: "the permanent life consists in the fact that the spirit is in the body, with selective movement, not spontaneous movement. If someone has killed a person who does not have controlled movement- the killer will not be obligated to pay the blood money because of the victim's situation".<sup>328</sup>

My personal opinion on this topic will be added later on, particularly as to which group is correct in its reasoning and theological arguments. However, it should be mentioned that rare or infrequent cases do not receive much considerations in Islam. The two groups of scholars have a strong disagreement on whether brain- death is a complete death, but nonetheless, they do agree that if the brain is dead and the heartbeat has stopped a person is considered to be a dead person.<sup>329</sup> However, if part of the brain is dead or there is a coma caused by the injection of medication (i.e. poisoned or tainted) that person is not considered a dead person. The two groups also equally disagree that if brain- death is diagnosed by two trustworthy medical doctors (according to medical procedures) and those medical doctors agree that the brain is dead, the person should be considered dead. However, some other Muslim medical doctors along with a few jurists, philosophers, ethicists believe that the person should indisputably be considered dead in a such a context.<sup>330</sup>

<sup>325</sup> Muḥammad Na'im Yāsīn, "Nihāyat al-Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'īyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 409-410.

<sup>326</sup> Muḥammad Ibn Muḥammad Abū Ḥamid Al-Ghazālī, *Iḥyā' 'Ulūm Al-Dīn*. vol. 4, 494.

<sup>327</sup> Mukhtār al-Mahdī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 333-346; Muḥammad Na'im Yāsīn, "Nihāyat al-Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'īyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 409-410; 'Umar Sulaymān al-Ashqar, "Bidāyat al-Ḥayāh wa- Nihāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 130-153; 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-Aṭibba' wa- al-Fuqahā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 347-362.

<sup>328</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. , 352.

<sup>329</sup> Mukhtār al-Mahdī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 333-346.

<sup>330</sup> Mukhtār al-Mahdī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 333-346; 'Iṣām al-dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāh bayna al-Aṭibba' wa- al-Fuqahā," in *Al-Ḥayāh al-*

It is my strong opinion that the brain- dead person is a dead person. This is because some recognized ‘*Ulamā*’ have accepted and stated that human life ends when the human body is unable to serve the soul in all respects, according to the definitions of soul/spirit and its separation from the body as elucidated by al-Ghazālī, Ibn Qayyim and Yāsīn.<sup>331</sup> In such a situation, when it is confirmed that the human body is unable to serve the soul/spirit the person is considered dead. It is very clear and logical that in the case of a person whose brain stem is dead, his/her body cannot serve the soul since all his/her organs cannot respond to the movement and commands of the soul. The uncontrolled movement of the physical body which we see sometimes in the brain- stem dead person is not considered as a regular controlled movement. Yāsīn has cited al-Zarkashī, who held that the sustained-life of the person is the life characterized by the controlled movement of the human body by his/her own will.<sup>332</sup>

Evaluating the abovementioned arguments, it is apparent that the brain-dead person is dead. This is to say, the argument of the scholars who believe the brain-dead person to be a dead person is a sound, valid one. This is because these scholars have showed in detail that the death of the brain- stem signifies without a doubt that the person is really dead— medically speaking, since in the history of modern medicine it has not been recorded (to my knowledge at least) that a brain-dead person has made a full recovery back to his/her previous health status. Of course, there could be exceptions to the rule caused by an initial poor, faulty or false diagnosis by a few medical doctors on what they thought was a seemingly brain-dead person, who then subsequently turned out to make a full recovery. It is not inconceivable, that certain unscrupulous doctors may give false results to show that a particular intervention or medical cocktail worked to reverse “permanent” brain death.

In fact, it could even be argued that since some children have been born without fully functioning brains, the fact alone that they survived a period of time in this situation to later on lead normal lives is definite proof that brain- death is not an irreversible permanent condition, but is recoverable from. Yet, we must situate things as they are and as we all know cases such as these are very rare ; therefore, they cannot be taken to form a comprehensive general rule concerning brain death (not to mention be given much consideration in religious ethics in the ongoing debate over brain death). Rather, such rare cases like these need more research by

---

*Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. , 347-362; Muḥammad Sulaymān al-Ashqar, “Nihāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. , 429-443.

<sup>331</sup> Muḥammad Na ‘īm Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar ‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimin,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. , 409, 410.

<sup>332</sup> Muḥammad Na ‘īm Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar ‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimin,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2. , 411-12.

various medical specialists; as well as a refined (very precise) diagnosis by competent medical professionals throughout the world, who should then make their findings public for us to weigh their applicability—both for and against—in the current debate. Needless to say, it is of the utmost importance to make sure medically that a person's brain stem is dead in order to protect the rights of vulnerable persons from mafia-type groups who are willing to exploit them within the context of the organ commercialization markets throughout the world.

Indeed, it is the special responsibility and duty of national governments, medical professionals, and ethicists to make sure that the rights of at-risk groups are protected from this heinous exploitation known as the human body parts market. The authorities must protect impoverished communities and desperate individuals from gambling away their precious human organs under manipulation by groups who are willing to ignore all moral, legal and ethical principles in exploiting to exploit the needy and vulnerable for personal gain.<sup>333</sup>

#### **Section 2.14 Brain Death and Cultural Policies to Increase Organ Donation**

In the case of brain death, the Japanese—like some Muslims—reject brain death as a complete death and adopt a purely biomedical comprehension of human bodily organs.<sup>334</sup> The acceptable ideology for organ transplantation is the gift ideology or altruism concept. However, the words “gift” and “altruism” as an orthodox or conservative position has been used to hide and conceal the controversy surrounding the transplant procedure.

In fact, the notion of altruism or gift as a methodology has been used and presented to American society to convince the public of organ transplantation ever since it began to be circulated in 1970s.<sup>335</sup> Furthermore, Donald Joralemon has clarified the word “gift of life” as it has been used in medical accounts of transplants in the first American Federal legislative act in 1968. In that legislation, Joralemon says the words “donors” and “recipients” were not mentioned, but instead, the words “generosity”, “altruism”, and “selflessness” were used.<sup>336</sup> Joralemon says these foundational values are given religious sanction when proponents of donation call upon religious authorities to declare their approval of transplantation.<sup>337</sup> As I understand it the words “gift” and “altruism” have been inaccurately used or distorted in some

---

<sup>333</sup> Nancy Scheper-Hughes, “Theft of life: the globalization of organ stealing rumours”, *Anthropology Today*, vol.12, no.3(1996): 3-11.

<sup>334</sup> Donald Joralemon, “Organ wars: The battle for body parts,” in *Medical Anthropology Quarterly, New Series*, vol. 9, no.3 (1995): 342; Margaret Locke, *Twice Dead: Organ Transplants and the Reinvention of Death*. Berkeley (Berkeley: University of California Press, 2002), 140-3.

<sup>335</sup> *Ibid.*, 337.

<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*

way to get people to accept organ transplantation.

Also, medical professionals have shown essential philosophical uncertainty about the idea of brain death and its dimensions. There is a large spectrum of personal perceptions about when human life ends.<sup>338</sup> Moreover, transplantation institutions expect that people will donate their organs for life-saving purposes after they have been educated and that people will recognize the value of life-sustaining efforts. They believe everything will automatically take place to facilitate transplantation, with people signing organ donation cards voluntarily so as to allow hospitals to harvest their organs.<sup>339</sup>

However, the notion that “more education leads to voluntary donation” does not conform to reality. For example, although America is the largest organ supplier in the world, the eligible organ donors in America are only 15% out of the general population.<sup>340</sup> Moreover, the cultural rejection in the U.S. of the notion of organ transplantation can be seen in general societal perception and shows up in opinion polls taken on the behaviour and rate of organ donations. At the same time, advocacy groups miscalculate and misrepresent public opinion giving false impressions of high levels of public approval of organ donation, putting it at approximately 90%.<sup>341</sup> On the contrary, Joralemon illustrates, repeated studies conducted by several researchers have demonstrated that the public has seriously rejected approval of organ transplantation in the critical circumstances of organ donation. This is an indication of persistent cultural resistance to organ transplantation ideas.<sup>342</sup> Moreover, in some other telephone surveys, between 30-40% of Americans have declared that they do not know what to do about their organs; specifically, those surveyed were uncertain as to whether they would donate specific organs of their bodies or not.<sup>343</sup> Also, another significant percentage (approximately 15%) of the American population has rejected giving any answer to questions on organ transplantation.<sup>344</sup>

After looking carefully at these controversial opinions in the U.S., it seems that this society (like many other societies) has not yet digested or come to terms with the value of organ transplantation and the image of their bodies, not to mention dealing with death and its related issues. More importantly, within Muslim countries there is still significant cultural resistance (more so than in the West) to the idea of organ transplantation. However, I believe

---

<sup>338</sup> Ibid., 341.

<sup>339</sup> Ibid., 339.

<sup>340</sup> Ibid.

<sup>341</sup> Ibid.

<sup>342</sup> Ibid.

<sup>343</sup> Ibid.

<sup>344</sup> Ibid.

the problem of cultural resistance will eventually be solved and overcome over a period of time , because people will one day be able to digest it and finally accept organ transplantation as a indispensable life-sustaining treatment. Yet, the hesitation of societies (be they Muslim or Western) seems to be coming from: 1) the prevalence of social injustice; 2) faith and cultural reservations; and 3) inequitable distribution of scarce medical resources.

### Section 2.15 Anthropological Perceptions and Brain-Dead Persons

A person is both body and soul. In many Muslim societies, unlike Western nations, there is no public opinion (such as through surveys) in policymaking, especially as it relates to the individual's physical body; instead, governments are the sole legislators without consulting their subjects. Consequently, organ transplantation policy and public "cultural" perceptions of brain dead persons is shaped and directed by governments in Muslim countries.

Donald Joralemon argues that in the present and near future the so called "cultural success" of transplantation will be measured by how effectively its main ideology suppresses, rather than replaces, traditional concepts of bodily integrity—including the idea that the social relevance of the body to the self does not evaporate with a declaration of brain death.<sup>345</sup>

### Section 2.16 What are Medical Ethics?

Ethics in Islam, whether known as "Adab" or "Akhlāq", means good behaviour, correct manners and good etiquette, as well as (above all else) good practical morals which includes all the abovementioned characteristics. Medical ethics in Islam is known as "Adab al-Ṭabīb"—which means the ethics of the medical doctor.<sup>346</sup> Fazlur Raḥmān says philosophers can only improve the soul; whereas the various physicians or their fields of medicine could improve both body and soul. Moreover, the medical doctor in his opinion can be considered able to imitate (to the best of his abilities) the incredible acts of God to treat the sick.<sup>347</sup> In Islam, ethics and spiritual medicine are seen as being one and belonging to the same field. A majority of people perceive that ethics and spiritual acts cannot be separated from each other completely. For example, the scholar Muḥammad Ibn Zakariyā al-Rāzī (unrelated to Imam Fakhr al-Dīn al-Rāzī) was considered both an ethicist and a spiritual medical doctor.<sup>348</sup>

---

<sup>345</sup> Ibid., 76.

<sup>346</sup> Fazlur Raḥmān, *Health and Medicine in the Islamic Tradition* (Chicago: Kazi Publications Inc., 1998), , 347.

<sup>347</sup> Ibid., 91-2.

<sup>348</sup> Ibid., 92.

## Section 2.17 Medical Ethics and Brain Death

The ethical procedure for physicians in the case of a brain-dead person is that artificial breathing or life-support equipment must not be removed from the patient. Also, it is an ethical obligation of the medical doctor to give all medical care that the patient needs until his heartbeat stops completely.<sup>349</sup>

In addition, there are huge economic costs involved in looking after a brain-dead person in hospital. For instance, the minimal resources and time needed to take care adequately of such a patient and service all his/her medical needs are very expensive. It is costly not only for the person's family, but also (in many countries) for the government since his/her care will consume significant public funds and scarce health-care resources. And despite the expenditure of these resources (both financial and medical), the person will not return to his/her previously healthy conscious state. Brain-dead persons are also liable to die from bed-related injuries or lung infections. Some doctors are even forced to ignore these patients' welfare by deliberately not treating them for new diseases so as to facilitate their death.<sup>350</sup>

## Section 2.18 Providing Care to Brain Dead Persons

Two things are important in providing care to brain-dead persons as the Qur'an explains in reference to the Companions of the Cave. These latter were in a deep, coma-like sleep, but nevertheless received these two critical benefits: (1) The maintenance of warmth in the body; and (2) movement of the body by changing its position on the bed. In terms of the brain-dead patient, these requirements must be provided by family members and hospital staff, who must be at the patient's bedside giving him/her a body massage and full care. The hospital staff must provide the brain-dead person with suitable nourishment via tubes and other available methods. As well, the medical care must also include the removal of bodily waste from the patient's body, Allāh says in regard to the Companions of the Cave:

Thou wouldst have seen the sun, when it rose, declining to the right from their Cave, and when it set, turning away from them to the left, while they lay in the open space in the midst of the Cave. Such are among the Signs of Allāh. He whom Allāh, guides is rightly guided; but he whom Allāh leaves to stray,- for him wilt thou find no protector to lead him to the Right way. Thou wouldst have deemed them awake, whilst they were

<sup>349</sup> Ibid., 92-3.

<sup>350</sup> Mukhtār al-Mahdī, "Nihāyat al-Ḥayāt al-Insāniyyah," in *Al-Ḥayāt al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2., 343.



asleep, and We turned them on their right and on their left sides: their dog stretching forth his two fore-legs on the threshold: if thou hadst come up on to them, thou wouldst have certainly turned back from them in flight, and wouldst certainly have been filled with terror of them.<sup>351</sup>

This story is clear evidence for Muslims that the loss of the sense of touch or feeling continued for 309 years. Although the situation of the Companions of the Cave bears similarities with brain- death, nonetheless, the brain-dead person is different in important respects. The reason is that the brain-dead person's brain will only deteriorate, and unlike the Companions of the Cave he/she is not able to be awakened again. Furthermore, the Companions of the Cave in their slumber were undergoing continuous growth in their bodies (such as in their hair, nails and beards), unlike brain-dead persons who do not have these metabolic and catabolic pathways. Brain-dead patients experience no growth in their beards and nails; and there are no signs of a full body living system. Moreover, the Companions of the Cave during their slumber were completely safe and immune from any internal or external deterioration, unlike brain-dead patients.

### **Section 2.19 Prolonging Life (Coma)**

Dead brain cells cannot be renewed if a comatose person does not regain his/her consciousness, whether it is a complete or partial loss of his/her intellect. Such a person could exist all his life in this situation. This person has what can be called "a body-life", in the sense that he is mentally disabled and needs good quality nursing, medical caregiving and treatment for new diseases. This situation may be complicated by living in a bed for a very prolonged period of time. Such a person will have to take liquid processed food through a tube into the stomach. Moreover, such a person will breathe spontaneously only because his/her brain stem is still alive, but he/she must be in a hospital bed for the remainder of his/her life or until he/she comes out of the coma.<sup>352</sup>

### **Section 2.20 Ethical Issues and the End of Human Life**

Al-Bār says in regard to brain death and withdrawing life support equipment there are many *fatawā* (authoritative legal opinions) allowing withdrawal of all resuscitative measures when

---

<sup>351</sup> Ibid., 340.

<sup>352</sup> Ch. 18: 17-18.

brain death is diagnosed. He says the respirator could be switched off and any drugs being given stopped. The decision on a diagnosis of brain-death is always a medical one and the ending of resuscitative measures should not be left to the family, since it is a medical decision.<sup>353</sup>

Al-Bār also talks about “non-maleficence”, saying that if the treating physician finds a certain modality of treatment is useless or is going to increase the suffering of the patient, that treatment should not be enforced, citing the Prophet (pbuh) who said: “above all do no harm” which is similar to the Hippocratic Oath; consequently, he says this rule of non-maleficence is the cornerstone of all medical ethics.<sup>354</sup>

Similarly, Beauchamp and Childress, two renowned and influential American bioethicists famous for co-authoring *The Principles of Biomedical Ethics*, reiterate the principle of non-maleficence, arguing that the physician is obliged to avoid causing harm to patients.<sup>355</sup> For example, they say that the physician has an ethical duty to consider carefully any harmful effects that prescribed medication may have on patients.<sup>356</sup> Beauchamp and Childress also say the principle of non-maleficence directly asserts an obligation not to inflict harm on others, and that many types of ethical theory have combined non-maleficence with beneficence into a single principle.<sup>357</sup> For instance, William Frankena divides the principle of beneficence into four “ordered” general obligations, the first of which Beauchamp and Childress identify as the obligation of non-maleficence and the other three as obligations of beneficence.<sup>358</sup> Rather than attempting any form of hierarchical ordering (i.e., order of priority from 1 through 4) as in Frankena’s scheme, Beauchamp and Childress group and make a distinction between the principles of non-maleficence and beneficence in an arrangement of four norms:

#### *Non-maleficence*

1. One ought not to inflict harm.

#### *Beneficence*

2. One ought to prevent evil or harm.
3. One ought to remove evil or harm.

<sup>353</sup> Mukhtār al-Mahdī, “Niḥāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Niḥāyatuhā fī al-Maḥmūm al-Islāmī*, 2., 340.

<sup>354</sup> Muḥammad ‘Alī al-Bār, “Nisbat Najāh ‘Amaliyyat Naql al-A ‘dā’ Istibḍāl al-A ‘dā’ al-Bashariyyah bi Ḥayawāniyyah,” in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>; Muḥammad ‘Alī al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlaqī min Qaḍiyyat Zar ‘ al-A ‘dā* (Beirut: Dār al-Shamiyyah, 1994), 40.

<sup>355</sup> Tom Beauchamp and James Childress, *Principles of Biomedical Ethics* (Oxford: Oxford University Press, 2001), 114-121; Muḥammad ‘Alī al-Bār, “Nisbat Najāh ‘Amaliyyat Naql al-A ‘dā’ Istibḍāl al-A ‘dā’ al-Bashariyyah bi Ḥayawāniyyah,” in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>

<sup>356</sup> Tom Beauchamp and James Childress, *Principles of Biomedical Ethics* (Oxford: Oxford University Press, 2001), 114-121.

<sup>357</sup> Ibid., 121.

<sup>358</sup> Ibid., 113-14.

4. One ought to do or promote good.<sup>359</sup>

Moreover, Beauchamp and Childress critically examine the principle of non-maleficence and its implications both for the terminally ill and the seriously ill and injured such as brain dead persons.<sup>360</sup> In particular, they examine distinctions between killing and letting die or withholding and withdrawing treatment. They say that the debate about the principle of non-maleficence and forgoing life-sustaining treatments has centred on the distinction made between withholding (not starting) and withdrawing (stopping) treatment.<sup>361</sup> Consequently, both scholars say many health professionals and family feel justified in withholding treatment they never started, rather than withdrawing treatment already initiated.<sup>362</sup> Moreover, Beauchamp and Childress say the reason for this is that sense on the part of health professionals and family that decisions to stop treatments are more momentous and consequential than decisions not to start them; that is to say, stopping a respirator seems to cause a person's death, whereas not starting the respirator does not seem to have this direct causal role.<sup>363</sup> Caregivers' (i.e., doctors and the medical team) discomfort about withdrawing life-sustaining treatment, in Beauchamp and Childress's opinion, appears to reflect the view that such actions render them "causally" responsible for a patient's death; whereas they feel they are not responsible if they never initiate a life-sustaining treatment.<sup>364</sup> Beauchamp and Childress say however, that the distinction between "withdrawing" and "withholding" treatment is both irrelevant and dangerous. Also, this distinction is unclear in that withdrawing can occur through omission, such as not recharging the batteries that power respirators or not putting the infusion into a feeding tube and that these actions constitute withholding rather than withdrawing; as a result, they say both can cause a patient's death and that both can be instances of "allowing to die" and even "killing".<sup>365</sup> Physicians can do wrong if they have an obligation to act and do nothing, just as individuals can commit a crime by omission if they have an obligation to act.<sup>366</sup>

Consequently, both Beauchamp and Childress say such a judgement depends on whether the doctor has an obligation either to withhold or not to withdraw treatment.<sup>367</sup> If a doctor has a

---

<sup>359</sup> Ibid., 114.

<sup>360</sup> Ibid., 115.

<sup>361</sup> Ibid., 113.

<sup>362</sup> Ibid., 120.

<sup>363</sup> Ibid.

<sup>364</sup> Ibid., 120-1.

<sup>365</sup> Ibid., 121.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

duty to treat, then omission of treatment breaches the duty, whether withholding or withdrawing is involved; but if a doctor does not have a duty to treat or a duty not to treat then omission of either type involves no moral violation.<sup>368</sup> Moreover, if the physician has a duty not to treat, it would be a moral violation not to withdraw the treatment if it has already begun.<sup>369</sup> In the final analysis, Beauchamp and Childress contend that the distinction between withholding and withdrawing is morally untenable and dangerous.<sup>370</sup>

Moreover, they say the decisions about beginning or ending treatment should be based on non-maleficence—considerations of the patient’s rights and welfare- as well as the benefits and burdens of the treatment as judged by a patient or authorized surrogate.<sup>371</sup> Specifically, both Beauchamp and Childress say that if a caregiver makes decisions about treatment using this irrelevant distinction, or allows a surrogate (without efforts at dissuasion) to make such a decision, the caregiver is morally blameworthy for any negative outcomes.<sup>372</sup>

Lastly, Beauchamp and Childress say that the “felt” importance of the distinction between starting and stopping explains the ease with which hospitals and health care professionals have accepted the “do not resuscitate” (DNR) order, i.e., to not attempt cardiopulmonary resuscitation if a cardiac or respiratory arrest occurs—which inevitably occurs in the dying process regardless of the underlying cause of death.<sup>373</sup>

For his part, Al-Bār maintains that stopping a fruitless type of medication or particular measure that supports life will come under the same rule, but the lifting of life support should be decided upon by a committee involving the treating physicians, ethical and community members. He says it should also be discussed with family members. Many *fatwās* regarding the removal of life-support equipment exist to offer guidance in these matters. He notes however that while euthanasia is not allowed in Islam and is absolutely prohibited, nevertheless, stopping a fruitless mode of treatment is another matter and is not prohibited. The end of life should be as smooth as possible and any unnecessary measures that could bring suffering to the dying patient or his relatives should never be used.<sup>374</sup>

In Al-Bār’s view, Islam differs from many other religions in providing a complete code of life that “encompasses” the secular and the spiritual, the mundane with the celestial. Islam

---

<sup>368</sup> Ibid.

<sup>369</sup> Ibid.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid. 126 .

<sup>372</sup> Ibid.

<sup>373</sup> Ibid.

<sup>374</sup> Ibid.

thus provides the basis for the ethical, moral, and even juridical attitudes and laws needed to address any problem or situation.<sup>375</sup>

### Section 2.21 Ethical Evaluation

Death is the end of life, from our standpoint, the end of the individual person in this world. But today, science is delaying this endpoint more and more. Medical technology has become so advanced that it is possible today to retrieve and procure organs from one person in order to transplant them into another. However, there are certain problems and dilemmas faced by medical doctors who wish to retrieve and procure organs from brain- dead persons— persons whose brain has died and there is no hope for survival outside of artificial means. The main dilemma is whether it is morally or ethically right for medical doctors to end the life of a brain- dead person and remove his/her living organs such as heart, liver, or kidneys, to transplant into a desperate person who has no hope of life except by receiving these organs.

### Section 2.22 Mercy Killing, Suicide and Islam

Like any other physician, a Muslim physician's primary goal is to help, treat and relieve disease and suffering as much as he/she can. However, under no circumstances would a Muslim doctor end the life of a patient in order to alleviate his/her pain and suffering. In Islam, the ending of a patient's life in this way is considered killing, which is an impermissible act. In sum, a Muslim doctor should aim to help, treat, and cure his patients' illness. Homicide or assisted suicide in order to end a patient's suffering and discomfort, which may be induced by prolonged and severe illness, is out of the question. As the Qur'an reminds Muslims, "it is not given to any soul to die, save by the leave of God, at an appointed time" and "God gives life, and He makes to die", and hence "A person dies when it is written".<sup>376</sup> Abdulaziz Sachedina, a Muslim bioethicist at Virginia University, argues that no physician or theologian should condone or legitimize homicide or suicide no matter how much discomfort and suffering a patient is going through. Moreover, Sachedina adds that suicide is a disgraceful and indecent act which is punishable with God's Hellfire.<sup>377</sup> Furthermore, many Sunni Muslim scholars believe that human suffering, such as the hunger, war, famine and severe prolonged illness that many people face

<sup>375</sup> Muḥammad 'Alī al-Bār, "Nisbat Najāh 'Amaliyyat Naql al-A 'da' : Istibdāl al-A 'da' al-Bashariyyah bi Ḥayawaniyyah," in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>; Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlāqī min Qaḍiyyat Zar ' al-A 'dā'* (Beirut: Dār al-Shamiyyah, 1994), 37.

<sup>376</sup> Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlāqī min Qaḍiyyat Zar ' al-A 'dā'* (Beirut: Dār al-Shamiyyah, 1994), 37; Ch.3:145.

<sup>377</sup> 'Abdulaziz Sachedina, "Right to die? Muslim views about end of life decisions". (June 7, 2005), 4.

during their lifetime is a divinely ordained act or trial which is meant both to educate the people of God's power and to remind them of His ownership of all things in the whole world, including mankind. Therefore, these Sunni Muslim scholars suggest that it is important that every person ask for and seek God's help and treatment for his/her pain and suffering by ways permissible in Islam, especially when a person is in a difficult situation.<sup>378</sup>

Sachedina in this regard says it is in this state, i.e., when afflicted with illness, that Muslims should beseech God to forgive their sins, rather than contemplate ways to end their life, either by refusal of life-support treatment or by asking to die with active assistance. A Muslim is required to pray for an opportunity to have a fresh start with restored health.<sup>379</sup>

Moreover, another scholar, Rispler-Chaim, says Muslim jurists view all forms of euthanasia as murder.<sup>380</sup> Suicide is completely forbidden in Islamic law, and it is even a sin to pray for death to come.<sup>381</sup> In Islamic law the punishment for killing oneself to escape suffering is that in Hell the person who commits suicide will have to endure suffering caused by the same instrument or means that he/she used on earth to end his/her life (i.e. a sword, an iron bar, poison or falling off a cliff). Needless to say the person who commits suicide will never reach paradise and no prayers will be offered over his/her dead body. He/she will be denied the respect due to any Muslim who dies. Even a person who assisted in the killing of a believer— even with a single word— can expect none of Allah's mercy.<sup>382</sup> Interestingly, Rispler-Chaim also notes that Islamic law does recognize as legitimate one's desire to die because of an unbearable religious situation or in order to defend one's religion. However, some serious limitations of Rispler-Chaim's work is that she did not fully discuss the situation of a brain-dead person; whether or not brain death is a complete death; and she completely excluded the decisions, research papers and outcome presented by various Muslim scholars, theologians, philosophers, ethicists, human-rights advocates, jurists, muḥaddithūn and mufasssīrūn at the 1985, 1994 and 1995 Kuwait conferences organized by the Islamic Organization for Medical Science on the beginning and end of human life and organ transplantation. As well, she did not incorporate the many important *fatāwā* of non-Egyptian 'Ulamā' since 1985 in her research. Instead, she relied solely on the opinions of Egyptian scholars who contend that the body belongs to God and therefore no one has a right to donate his/her organs whatsoever.<sup>383</sup>

---

<sup>378</sup> Ibid.

<sup>379</sup> Ibid., 1-4.

<sup>380</sup> Ibid., 4.

<sup>381</sup> Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century* (Leiden: Brill Academic Publishers, 1993), 95.

<sup>382</sup> Ibid.

<sup>383</sup> Ibid., 94-96.

The mercy killing of a terminally sick patient is forbidden in Islamic law because it ignores Allah's ability to perform miracles and because it interferes with Allah's exclusive control over life and death.<sup>384</sup> Islamic law (sharī'ah) is very clear that the killing of a terminally ill person is equivalent to murder; therefore, euthanasia can be said to be prohibited by Islamic law. Instead, the patient's endurance (*ṣabr*) is the only way that Allāh forgives and purifies the sin of the sick person and his/her soul, which can lead him/her to paradise.

When it comes to end of life decisions, Sachedina believes the patient's so-called "right to die" cannot be negotiated for three reasons:

- 1) Life is a divine trust and cannot be terminated by any form of human intervention.
- 2) Its term (i.e. life) has been fixed by the unalterable divine decree.
- 3) Muslim Law (Sharī'ah) and the Qur'an do not recognize the individual's right to die, or the right to be assisted in dying, whether through "passive" or "active" means.<sup>385</sup>

Moreover, Sachedina says the doctor cannot make any decisions on his own regarding the termination of the terminal patient for two reasons:

- 1) The juridical principle of "non-maleficence" in Islam that states, "No harm shall be inflicted or reciprocated in Islam (*lā ḍarara walā ḍirāra fī al-Islām*)" provides the justificatory basis;
- 2) There is no immunity for the physician who "unilaterally" and actively decides to assist a patient in dying.<sup>386</sup>

---

<sup>384</sup> Ibid.

<sup>385</sup> Ibid., 97.

<sup>386</sup> 'Abdulaziz Sachedina, "Right to die? Muslim views about end of life decisions". (June 7, 2005), 5. <http://www.people.virginia.edu/~aas/article/article3.htm>

## Section 2.23 Pain Relief Treatment and Withdrawal of Life-Sustaining Treatment

However, pain relief treatment, along with withholding or withdrawing “life support treatment” in which there is an intention of allowing the person to die when it is certain that the disease is causing untreatable suffering, are permissible acts, as long as the structures of consultation between all the parties concerned about the well-being of the patient are in place. This however does not change the fact there are no grounds for the justifiable killing of a terminally ill person, whether through voluntary active-euthanasia or physician assisted suicide in Islam.<sup>387</sup>

## Section 2.24 The Muslim Doctor

The Muslim doctor shares two main characteristics with the Muslim patient:

- 1) Faith in God and destiny;
- 2) The conviction that there is a cure for every disease.<sup>388</sup>

However, the Muslim doctor must also attempt to offer the proper “cure”.<sup>389</sup> The Muslim doctor, as Fazlur Rahmān says, being an agent, should believe that the act of healing is not entirely his, but depends on God’s Will.<sup>390</sup> In my opinion, this indicates that medical doctors are more aware than others of the divine power and God’s Will. This may be because medical doctors not only encounter critical life and death cases daily, where destiny or “fate” plays a major role, but they also witness the most unexpected of results.<sup>391</sup> The Prophet (pbuh) on the authority of the Companion Yāsir, said, “For each disease there is a cure; and when the (right) treatment is given, the disease is cured by the Will of Allah.”<sup>392</sup> Modern medical sciences, have been highly respected throughout the ages and closely correlated with religious leadership and quite often seen as congruous with magic and miracles. Consequently, since the beginning of Islam 1,400 years ago, medicine has become a science that has been subject to human innovation, intelligence and discovery. The medical doctor has persistently captured the appreciation and broad respect of his contemporaries, especially since medicine was usually associated with other philosophical and higher social knowledge. In fact, many scholars have confirmed this close relationship between philosophy and medicine and have distinguished the

---

<sup>387</sup> Ibid., 5.

<sup>388</sup> Ibid., 6-7.

<sup>389</sup> Fazlur Rahmān, *Health and Medicine in the Islamic Tradition* (Chicago: Kazi Publications Inc., 1998), 66-77; Emilic Savage-Smith, *Islamic Culture and the Medical Arts* (Bethesda: National Library of Medicine, 1994), 2-28.

<sup>390</sup> Ibid.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.



medical history of Islam.<sup>393</sup> The crucial point here is that, historically, the Muslim doctor's prognosis took into consideration the spiritual, psychological and social well-being of the patient, along with and above the pathological aspects of physical sickness.<sup>394</sup>

### Section 2.25 The Role of a Muslim Doctor

To help us understand the role of the Muslim doctor, we should first have a general idea about the texts in the Qur'an and Ḥadīth relating to treatment. The role of the Muslim physician historically was not just restricted to treatment of physical illness, but also actively endeavouring to find spiritual solace for the suffering patient. This is because moral disease and treatment are referred to in different places in the Qur'an, for instance when Allāh says "O mankind! There has come to you a direction from your Lord and a healing for the (disease) in your hearts, and for those who believe, a guidance and mercy."<sup>395</sup>

### Section 2.26 The Medical Team

It is my belief that, in an Islamic state, all Muslim practicing doctors need to maintain the traditional prognostic attitude of dealing with the spiritual, physical, psychological and social dimensions of the patient. In doing so, they surely will never regret it. The same can be said of doctors from every religious, racial and social background (both Muslim and non-Muslim); they are all in one category as "healers" from the social as well as technological and scientific points of view. However, what makes a Muslim practicing doctor more helper, in my view, is when it comes to practice both religion and medicine together. The practicing Muslim physician in Islam finds him/herself bound by particular professional ethics plus Islamic directives, which issue from his/her belief. Moreover, the practicing Muslim doctor (like his non-Muslim counterparts) is expected to fulfill his professional duties with the utmost care. The practicing Muslim doctor should always display the following: humbleness; modesty; kindness; mercifulness; patience; and tolerance.

---

<sup>393</sup> Fazlur Rahmān, *Health and Medicine in the Islamic Tradition*, 66-77; Emilie Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28; Muslim Ibn Ḥajjāj, *Ṣaḥīḥ Muslim*. 2<sup>nd</sup> ed. vol.2, 1729; Muḥammad Ibn Yazīd Abū 'Abd Allāh Ibn Majāh, *Sunan Ibn Majāh*. 2<sup>nd</sup> ed. vol. 2, 1138.

<sup>394</sup> Fazlur Rahmān, *Health and Medicine in the Islamic Tradition*, 66-77; Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28.

<sup>395</sup> Ibid.

## Section 2.27 The Definition of Medicine and the Responsibilities of the Muslim Doctor

Al-Salāmī defines medicine as being concerned with man's body, as well as his physical and psychological equilibrium.<sup>396</sup> He identifies two particular responsibilities of the doctor:

- 1) Since medicine is concerned with man's body and his physical and psychological equilibrium, the aim of the physician is to protect, preserve and defend against whatever imbalances may occur;
- 2) The responsibility of the doctor is also to be mindful that he/she has access, by virtue of the profession, to what no one else does, such as the private parts and/or the weak spots of whoever is physically or psychologically examined. They are exclusively revealed to the doctor, and secrets kept concealed in the inner recesses of selves or hidden under clothes are disclosed to him/her.<sup>397</sup>

## Section 2.28 The Obligations of the Doctor and his Medical Team

According to my understanding of doctors' responsibilities, once a patient's life becomes, in all probability, dependent on surgery, members of the medical staff are obliged to carry out the operation, and will be rewarded for doing so. Any negligence on their part however would be condemned and considered religiously sinful and the Shari'ah stipulates corporal punishment for such negligence. However, where the patient's condition is not critical, the surgeon's role should be to relieve pain and this would be considered commendable and worthwhile.

## Section 2.29 Islamic Code of Medical Professional Ethics

Emilie Savage-Smith states that medicine was defined by Muslim physicians such as Muḥammad Ibn Zakariyā Al-Rāzī, (841-926 A.D.) and Ibn Sīnā (Avicenna, 980-1036 A.D.), Ibn Qayyim Al-Jawziyyah (d.1350 A.D), Nūr al-dīn Zanjī (d.1175 A.D), Ibn Abī Uṣaybi'a (d.1270 A.D), Abū 'Abd Allah Muḥammad al-Dhahabī (d. 1348 A.D) as the art concerned with the

<sup>396</sup> Ch. 10:57.

<sup>397</sup> Muḥammad al-Mukhtār al-Salāmī, "Al-Tabīb Bayna al-Ī'ān wa- al-Kitmān," in *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah, 3. 2<sup>nd</sup> ed , 75.

preservation of good health, the combatting of disease, and restoration of health to the sick. Moreover, in addition, for several centuries, the world has witnessed and benefitted from the great advances made by Muslim physicians in the area of health sciences.<sup>398</sup> These advances were not just based on “non-technical skill” or “intellectual superiority” but were equally well-founded on a clear understanding of the role of the Muslim physician—as derived from Islamic teachings and philosophy.<sup>399</sup>

### Section 2.30 History of Islamic Medicine and its Contributions

The influence of Muslim doctors in Europe is very clear in the field of medical science. It is clear in at least two cases. Muslim doctors translated some Greek, Indian, Persian, Chinese, Jewish and Middle Eastern Christian medical books into the Arabic language. These Arabic books were later on translated into Latin at the end of the Dark Ages in Europe. The medical works that formed the foundation of modern medicine, such as those written by the Greek scholar Galen and by other non-Muslim doctors—including Jibrā ‘il Ibn Bakhtishū, the Persian Christian physician Yuhannā Ibn Masawayh; the Christian doctor Sinan Ibn Thābit; ‘Ali Ibn ‘Isā (the Good Vizier); and ‘Uthmān al-Dimashqī—come from Arabic translations.<sup>400</sup> Moreover, all the eminent Christian and Jewish physicians and scholars cited above developed medicine under Abbassid rule (750-1257). Later, during the Abbasid era, several medical doctors committed their experiences to writing—especially those doctors working in the “bimaristans” or hospitals—which were famous in all Muslim countries. It was European Orientalists who were the first to discover the importance of Muslim medical doctors and their contributions. Emilie Savage-Smith states that the work of the Muslim physician al-Zahrāwī dominated colleges in Europe and competed with Galen and other Greek medical doctors in fame. Consequently, Al-Zahrāwī became one of the cornerstones of medical science.<sup>401</sup>

In addition, chapter thirty of the major Islamic medical work *Al-Taṣrīf li-man ‘Ajiza ‘an al-ta’līf* was translated and published in European countries at different dates, such as in Italy (1471) and Great Britain (1861).<sup>402</sup>

<sup>398</sup> Ibid., 75-6.

<sup>399</sup> Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28; Rahmān, *Health and Medicine in the Islamic Tradition*, 66-77.

<sup>400</sup> Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28; Rahmān, *Health and Medicine in the Islamic Tradition*, 66-77.

<sup>401</sup> Ibid.

<sup>402</sup> Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28; Rahmān, *Health and Medicine in the Islamic Tradition*, 66-77.

### Section 2.31 Medical Responsibilities in Islam

In regard to medical responsibilities in Islam, the Prophet of Islam (pbuh) said, “Whoever treats without knowledge of medicine is responsible for his mistakes”.<sup>403</sup> Ibn Rushd, who summarized the topic of medical responsibilities in his book *Bidāyat Al-Mujtahid Wa Nihāyat Al-Muqtaṣid*, said: If the medical doctor commits mistakes by his actions and that doctor was known in his performance as a professional doctor, he is not responsible but is required to pay the price of 1/3 of the costs, from his own pocket. However, if a doctor does not have medical knowledge and commits mistakes, he must be punished by slashing, imprisonment and by paying full compensation to the victim as “diyyah”.<sup>404</sup>

Moreover, a person who tries to treat people without previous medical knowledge and experience is considered a criminal in any society. In this regard, Ibn Qayyim al-Jawziyyah defines the five categories of medical doctors thus:

1. The medical doctor who possesses full medical knowledge and is experienced in providing medical services. Moreover, patients and the community at large recognize his/her medical knowledge through performance. Ibn Qayyim says if a patient were to die after giving permission as a result of this doctor’s actions, he/she will not be responsible and there is no blame on him/her.
2. An untrained person who treats people without medical knowledge and experience. If someone dies as a result of this person’s action, Ibn Qayyim says they will be fully responsible and must pay a full compensation— since the victim in good faith thought that the person treating him/her was a real medical doctor with sufficient knowledge in medicine. However, if the victim had known prior that the person treating him/her is ignorant about medicine; and consequently, allowed to be treated by such an ignorant person, the person in question will not be responsible for any injuries arising from the intervention and will not be required to pay any compensation to the victim.
3. A medical doctor who is knowledgeable, experienced and professional, but who by chance causes unexpected mistakes through his/her hands in Ibn Qayyim’s view will be responsible for those mistakes/damages on the victim. If the mistake is equivalent in damages to more than one third under Islamic law, he/she has to pay full compensation

<sup>403</sup> Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*. 2<sup>nd</sup> ed. vol. 2., 1148; Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *al-Ṭibb al-Nabawī* (Beirut: Mu’assasat al-Risalah, 1991), 132-35.

<sup>404</sup> Muḥammad Ibn Aḥmad Ibn Rushd, *Bidāyat al-Mujtahid wa- Nihāyat al-Muqtaṣid*. vol.4 (Cairo: Dār Al-Salām, 1995), 2206.

(diyah). If less than one-third (1/3) Ibn Qayyim says that the amount must be paid from his/her own pocket or either the government or the rulers (in our case the hospital management) must pay the victim.

4. A professional medical doctor who acts in good faith, but who prescribes a wrong medicine to a patient who subsequently dies as a result. In such a case, Ibn-Qayyim says the blood money of the dead person must be paid by the government because the doctor received the permission of the patient beforehand. Another perspective holds that the doctor must pay compensation from his/her own pocket to the victim's family. In today's world, it is the institutions (i.e., hospitals, government ministries, private health agencies, insurance companies etc.) not individual doctors per se, who for the most part shoulder the financial responsibility arising from cases of medical malpractice and other wrongdoing within the medical professions.
5. A professional medical doctor who acts professionally, but who does not get the permission of his/her patient or the permission of the patient's guardian, and consequently makes some mistakes. Ibn Qayyim says this doctor will be responsible for his/her mistakes and must pay the compensation to the victim. Some other opinions say the doctor will not pay any compensation.<sup>405</sup>

Looking at the above categories of medical doctors as defined by Ibn Qayyim al-Jawziyyah in my opinion, it is possible to say there is unanimous agreement that a medical doctor who acts in a professional manner will not be responsible or charged under the following conditions:

1. The doctor who is knowledgeable and experienced and who acted with medical knowledge, not by guess work or imagination. Moreover, he did not seek, through administering treatment, to become famous without knowledge of medicine.
2. The doctor who practices medicine and strictly follows the guideline of medical procedures, knowing that otherwise he/she will be responsible for their mistakes.
3. If the patient is a child or a disabled adult person, the medical doctor must get the patient's permission or the permission of a guardian, such as the immediate family members. According to most Sunni Muslim opinion, the doctor must get the immediate family's permission, because the person has ownership over his/her body and that ownership is transferred to his/her immediate family. However, this is controversial,

---

<sup>405</sup> Muḥammad Ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *al-Ṭibb al-Nabawī*, 135-46.

since other Sunni Muslim opinion holds that only God alone owns the human body. In my opinion, the physical body belongs to both God and the person.

Finally, the Islamic Organization for Medical Science has established the following four medical responsibilities:

1. The first responsibility of the medical doctor is to have a medical degree in the field they are working in and to be qualified in that specific medical field, passing all necessary examinations related to his/her profession, and receiving a certificate of permission to practice from the Ministry of Health in the country of employment.
2. Medical doctor is responsible for getting the permission of the patient before treatment through signing a form of consent.
3. The medical doctor's intention must be to treat people, not to harm them.
4. Medical doctors must not commit major mistakes, which are not accepted in the field of medicine

## Chapter Three: *Organ Transplantation*

### Section 3.1 Organ Transplantation:

#### Introduction

In this chapter, I have relied on important articles by Muslim scholars— both classical and contemporary thinkers— as well as on writings by medical physicians, philosophers, theologians, ethicists and jurists. Some of these scholars advocate and support organ retrieval and organ transplantation, including the buying and selling of human organs under necessity. Personally, I am in favour of organ transplantation for the purposes of life- sustaining treatment and under necessity. Therefore, I tend to agree with the pro-organ-transplantation position. Though the majority of Sunni Muslim scholars have permitted the buying and selling of human organs under necessity for life-sustaining purposes, both the anti-and pro-organ transplantation scholars and their opinions are cited in this discussion. These scholars include the following: Imam Nawawī—who was a jurist, ethicist and traditionalist; al-Shinqīṭī; Imām Shawkānī (as cited by Al-Shinqīṭī); Yūsuf al-Qaraḍāwī—a prominent contemporary Sunni Muslim jurist at the Faculty of Shari‘ah of Qatar University; Al-Salāmī; ‘Umar al-Ashqar; Muḥammad al-Ashqar; Yāsīn; Al-‘Izz Ibn Abd al-Salām— a prominent classical Sunni Muslim jurist; Ibn Nujaym; Ibn ‘Abdīn; Sheikh Al-Ya‘qūbī—a prominent contemporary Sunni Muslim theologian and jurist; Islamic Fiqh Academy in Amman; Abū Zayd; Al-Wā‘i; Badr Al-Mutawallī ‘Abd Al-Bāsiṭ; ‘Abd Al-Qādir Muḥammad al-‘Ammārī; Kuwait Fatwā Panel; Muṣṭaphā Zurqā—a prominent contemporary Sunni Muslim jurist; Ḥaṭḥūt; Al-Mahdī; Nancy Kutner; Imām al-Qurṭubī; Joralemon; al-Taṇṭāwī; Sachedina; Rispler-Chaim; al-Sha‘rāwī; as well as Fayḍ Allāh; al-Shirbīnī; Leon Kass; Nancy Scheper-Hughes; Abū al-Futūḥ; Bā Salāmah; Eike-Henner W. Kluge; Carl Cohen; Jeremy R. Chapman, Mark Deierhoi and Celia Wight; Wahb al-Zuhayli—a prominent contemporary and influential Sunni Muslim theologian, jurist and the former Dean of the Faculty of Shari‘ah at the University of Damascus and current President of the High Council of ‘Ulamā’ in Syria.

#### Section 3.2 Organ Retrieval Procedure

Organ retrieval can be classified as follows:

1. Organ retrieval and transplantation from animal to human.
2. Artificial organ surgery on human beings.

3. Removal of organs and transplantation of these organs from within the same living human being.
4. Organ retrieval and transplantation from human to human. The organ donors may be: a) alive. b) dead.

Similarly, the sources for organs can include:

1. Artificial organs.
2. animal organs.
3. human organs.

### Section 3.3 Artificial Organs and Transplantation

Artificial surgery comes in many different forms and involves transplanting or removing tissue either from within the person's body or from external sources, including plastic joints and legs. Doctors may replace original joints after deterioration due to severe rheumatism or another permanent malignance with plastic joints.<sup>406</sup> Other forms of artificial surgery also include tooth replacement, root canals and tightening teeth with wires so that the person can chew food. All of these transplantations are permissible under human necessity, since necessity is a law unto itself which cannot be avoided or infringed on. However, the necessity must be absolute and irresistible (i.e. preservation of life), as is mentioned in the Qur'an, which permits the use of normally prohibited procedures.<sup>407</sup>

Unfortunately, artificial organs cannot replace human organs, since they cannot perform the same job as natural organs. Every human organ is incredible, and human beings have not yet efficiently replicated ones that function in the same way as the natural kind.<sup>408</sup> However, the trend in technology today offers the possibility of replicating artificial organs that could replace natural organs at a point in the future. An organ may be defined as a natural part or structure in an animal capable of performing some special action (termed its function), which is essential to the life or well being of the whole; such as the heart, lungs and liver, and including tissue, cells,

<sup>406</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām Al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. (Jeddah: Makatabati Al-Ṣaḥābah, 1994), 425.

<sup>407</sup> Ch. 75:25.

<sup>408</sup> Muḥammad 'Alī al-Bār, "Nisbat Najāḥ 'Amaliyyat Naql al-A 'da' :Istibdāl al-A 'da' al-Bashariyyah bi Ḥayawaniyyah," in *Al-Jazecra*, February 21, 1998. <http://www.aljazecra.net>



blood. In animals the organs are generally made of several tissues, one of which usually predominates and determines the principal function of the organ.<sup>409</sup>

### Section 3.4 Organ Transfer from Animals to Humans

It is permissible in Islam to use the organs of lawfully slaughtered animals, such as camels, cows, goats, sheep and horses, for human transplant because the Prophet of Islam, (pbuh), said “O people, treat yourselves”- and it is quoted that the Prophet (pbuh), also encouraged his community to seek remedies, but did not obligate them to do so.<sup>410</sup>

Al-Nawawī (a jurist, ethicist and traditionalist) claims that if a person’s bone is broken, he may repair it with lawful animal bones.<sup>411</sup> Moreover, al-Shinqīṭī says that in *Al-Fatāwā Al-Hindiyyah* it is recorded that “There is nothing wrong if a person repairs his/her broken bone with lawful animals bones from goats, sheep, cows, camels, or horses. However, swine or pig bones are prohibited”. This answer applies to the use of all lawful animal parts whether dry or fresh and the *fatāwa* deem it suitable to use and benefit from these animal part in all purposes, including for treatment.<sup>412</sup> In the case of pigs or swine, al-Shinqīṭī clearly says, “We are not allowed to benefit from the bones of pork, or human beings because using these for treatment is unlawful or not preferable. Instead, we are allowed to use the bones of cows, camels, horses, goats, sheep etc...”<sup>413</sup>

At the same time, al-Shinqīṭī declares that it is not preferable to use the bones of human beings in treatment, and that it is unlawful to benefit from bones of pork.<sup>414</sup> By not preferable, Al-Shinqīṭī means that it is not desirable, although not outright prohibited. In my analysis, these references stipulate that human beings must seek treatment, which is generally permitted by Islam, and to use animal parts to repair their broken bones. In the case of prohibiting the bones and parts of unlawful animals such as pigs, Sunni Muslim scholars argue that it is an unlawful and impermissible treatment because the pig is *najas* or unclean. But what does *najas* connote? While *najas* has many meanings in Islam, in relation to animals it means something that is ritually unclean. Hence, all animals are seen as clean (non-*najas*) except for dogs, pigs and their offspring; as well as, unslaughtered dead animals. Dead human beings, fish and grasshoppers are all considered to be clean (non-*najas*).

<sup>409</sup> John Sinclair, *Collins Cobuild English Dictionary for Advanced Learners* (Glasgow: HarperCollins Canada, 2001), 1087.

<sup>410</sup> Muḥammad Ibn Yaʿzīd Abū ‘Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*. 2<sup>nd</sup> ed. vol. 2, 1137.

<sup>411</sup> Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Majmū’ Sharḥ al-Muḥadḥab*. vol.3, 138.

<sup>412</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkam al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed., 400.

<sup>413</sup> Ibid., 401.

<sup>414</sup> Ibid.

However, unlike these scholars I would contend that the use of the bones of pigs and other unlawful animals is acceptable in Islam for the following reasons:

1. When Muslim scholars say something is “*najas* or unlawful” they refer to something prohibited in Islam, usually something not allowed under Shari’ah law or something which does not conform to legality, moral law or social convention. As well, *najas* applies to anything that is contrary to and forbidden by Islamic law. However, while not disputing the definition of *najas* there may also arise a time when necessity calls for the use of unlawful things, such as animals deemed *najas* (even pigs) if medical doctors see a benefit in them for preserving and improving human life as a result of their expert analysis and opinion.
2. It should be remembered that, during the time of these classical Muslim scholars, certain modern medical technologies and advances were not yet developed.
3. The transplanted pig organs will belong to the human recipients, therefore, the organs will no longer be exclusively pig organs.
4. There is a difference between *external najas* and *internal najas*. For example, inside of us we all have blood, urine, and stool- each of which is considered to be *najas*. If these fluids come out of the body or contaminate our clothes or body via soiling we cannot pray until we clean our bodies and clothes. However, while these fluids remain inside our bodies they are considered acceptable and as not contaminating our bodies. Therefore, the same is true if a pig’s parts are transplanted inside the human body; they will no longer belong to the pig but to the human being and should not be considered *external najas* but *internal najas*.

Muḥammad ‘Ali al-Bār, a professor of medicine at King ‘Abdul ‘Aziz University in Jeddah, discusses the process of organ retrieval and transplantation, saying that: In the case of using animal organs to replace human organs, the percentage of rejection is too high. However, through engineering genes between animals and humans, this could be possible in the near future, in approximately two decades. Human organs are currently in high demand and not available from either living or dead persons. Some organs are not available, except from the

deceased, such as the liver or heart. The number of donors is much lower than the number of individuals who need these organs.<sup>415</sup>

Al-Bār has also written extensively about the possibility of using animal organs to replace human organs.<sup>416</sup> However, the major problem with using animal organs is that the human body may reject them. Also, some animals, such as pigs, have viral diseases that are potentially very dangerous to human beings. Eminent researchers who have looked at the issue of animal to human transplants from several angles point to two problems:

- 1) Since the human body rejects animal organs, how will we reduce this rejection?
- 2) In order to avoid transmitting contagious diseases from animals into human beings, animals can be cultivated, raised and kept in clean, safe areas that are protected from microbes and viral diseases, etc. However, this will cause an economic burden for research institutions, governments, and taxpayers in western countries. The use of animal, instead of human organs, produces so many unknowns that researchers are still attempting to resolve these issues.

Moreover, Mālik Ibn Anas— a renowned Sunni Muslim theologian and jurist— said every living animal is clean, even dogs. Moreover, the influential Sunni scholar Muḥammad ‘Ali Al-Shawkānī even said pork is clean, but that the meat is bad because it is unhealthy. Therefore, we can say with certainty that the *real najas* is the uncleanness, which a person carries outside of his/her system, but the *internal najas* inside their bodily system does not affect them. If pig organs are transplants inside a human being, they will not affect his/her worship (*ṣalāh*) and hence there is nothing wrong with using them for transplantation.<sup>417</sup>

Historically, Muslim scholars such as Al-Nawawī in *Minhāj Al-Ṭālibīn*, Al-Shirbīnī in *Sharḥ Minhāj Al-Ṭālibīn*, and Ibn Qudāmah in *Al-Mughnī* have discussed organ transplantation dealing with teeth and bones.<sup>418</sup> If a bone was broken and could not repair itself, it was possible,

---

<sup>415</sup> Muḥammad ‘Ali al-Bār, “ Nisbat Najāḥ ‘Amaliyyat Naql al-A ‘dā’ : Istibdāl al-A ‘dā’ al-Bashariyyah bi Ḥayawāniyyah,” in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>

<sup>416</sup> Ibid.

<sup>417</sup> Muḥammad ‘Ali al-Bār, “ Nisbat Najāḥ ‘Amaliyyat Naql al-A ‘dā’ : Istibdāl al-A ‘dā’ al-Bashariyyah bi Ḥayawāniyyah,” in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>; Yusuf Al- Qaraḍawī, *Fatawa Mu ‘aṣirah* (Al-Manṣūra, Egypt: Al-Wafa, 1993), 538-539.

<sup>418</sup> Muḥammad ‘Ali al-Bār, “ Nisbat Najāḥ ‘Amaliyyat Naql al-A ‘dā’ : Istibdāl al-A ‘dā’ al-Bashariyyah bi Ḥayawāniyyah,” in *Al-Jazccra*, February 21, 1998. <http://www.aljazccra.net>

they insisted, to add a bone from another human being or a slaughtered or unslaughtered animal.<sup>419</sup> In addition, al-Zahrāwī discussed tooth transplantation and how to extract teeth from cows, saying that doctors used to reduce these in size until they became suitable for transplantation into humans.<sup>420</sup>

### Section 3.5 Single or Paired Organ Transplants

In the case of organ transfers from one living person to another, the classification is either single or paired organs. An incompetent person or disabled persons or their guardians are not allowed to donate single organs such as the heart, liver or brain, even if the other person is dying. In addition, medical doctors and health professionals are prohibited from performing such actions because God prohibited them in the Qur'an.<sup>421</sup> The reason is that God prohibits human self-destruction and self-mutilation. Therefore, the donation of organs that will lead directly to death, is prohibited. God forbids human beings from killing themselves, whether directly or indirectly. Therefore, donating single organs is considered a suicidal action. The medical doctor must not assist anyone to retrieve an organ and transplant it to another person because it would make the medical doctor a partner in committing a crime and, therefore, responsible for intentionally killing a human being.<sup>422</sup>

Some Sunni scholars maintain that organs that are essential for the perpetuation of life cannot be removed as long as the owner remains alive, even if he/she is in their final death throes. They say the reason is that no one can determine the moment that the soul leaves the body. Additionally, scholars say that it is not possible to predict if the would-be recipient, though outwardly in an improved condition, might actually die before the donor.<sup>423</sup>

### Section 3.6 The Donor (Source of Human Organs)

Donors fall into four categories:

1. Adult person whose life is respected and protected under shari'ah law and who has not been convicted of any crime, his/her organs cannot be removed voluntarily or for remuneration;

---

<sup>419</sup> Ibid.

<sup>420</sup> Ibid.

<sup>421</sup> Ch. 2:195; Ch. 4:29.

<sup>422</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. (Jeddah: Makat abati Al-Ṣaḥābah, 1994), 341.

<sup>423</sup> Muḥammad al-Mukhtār al-Salāmī, "Zarā'at khalāyah al-Jihāz al-'Aṣabī wa- khaṣṣatan al-Mukh," in *Al-Ru'yah al-Islamiyyah li-zarā'at Ba'd al-'A'ḍā' al-Bashariyyah*, 6 (1994), 106.

2. Minors or individuals of reduced mental ability whose guardians have no right to dispense with their organs;
3. The foetus (up to four months) - if the foetus was unlawfully aborted, its use would not be permissible; otherwise, if the mother gives her consent, use can be made of some of its organs and tissues, even if their removal requires operating on the mother;
4. Adults whose lives are not protected according to Islam, i.e., those whose blood can be lawfully shed such as apostates, murderers, and adulterers. Their organs may be used in necessity, as when the recipient's life is threatened with death or a long, debilitating illness.<sup>424</sup>

Muhammad Sulaymān al-Ashqar identifies seven permissible sources, and discusses their priority regarding organ procurement for transplant:

- 1) Artificial organs and animal organs: We should start with these and if they are sufficient, we should go no further.
- 2) Organs from the dead: If we cannot find artificial or animal organs, we can take organs from the dead, if permission has been given beforehand.
- 3) Accident victims: al-Ashqar argues the permissibility of taking organs from accident victims who have not donated their organs, since the killing was the result of an accident.<sup>425</sup> He contends that if a doctor takes an organ from the accident victim after losing all hope of preserving his life, we have not killed him; it was the accident that killed him. We must benefit only from those whom we are 100% sure will “unavoidably” die.<sup>426</sup> However, this does not apply to the case of those persons who die of natural death. Taking an organ from them before they die is not permissible, since this would make the removal responsible for the death.<sup>427</sup>
- 4) Donors during life, against no return: al-Ashqar does not elaborate on this case, but it could be that he is referring to brain- dead patients, who are alive but have no possibility of returning to active life.
- 5) Donors during life, against a return: this is a patient with the possibility of recovery.
- 6) The purchase of the organs of a dead man

---

<sup>424</sup> Ibid., 119-20.

<sup>425</sup> Muḥammad Sulaymān al-Ashqar, “Zarā‘at wa- Bay’ al-A ‘dā’,” in *Al-Ru‘yah al-Islāmiyyah li- Ba’di al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣrah, 3. 2<sup>nd</sup> ed (Kuwait: Al-Munazzamah al-Islāmiyyah lil- ‘Ulūm al-Ṭibbiyyah, 1995), 397.

<sup>426</sup> Ibid., 398.

<sup>427</sup> Ibid.

7) Purchase from a living seller: al-Ashqar considers this source or option of donors at the bottom of the list based on his understanding of early Islamic Jurisprudence and from the position of many contemporary jurists.<sup>428</sup>

The four categories of donors may be defined as follows:

**The first category:** The donor is able to exercise free will, and is in control of all of his/her faculties, and is free to do one of the following:

1. To donate part of his/her brain or parts of his/her nervous system without it affecting their life. Though an individual can voluntarily act on their own free will, under the Shari'ah no one has the right to donate his or her life for someone else, which means even though sacrifice in certain circumstance is acceptable in Islam (as in many other religions), nevertheless one cannot donate life-dependent or vital organs which will cause your immediate death while there is no guarantee that the recipient will be able to survive. Nor does the person have the right to donate an irreplaceable part of the body (such as hands, legs, heart, liver etc.) since even the donation of one's finger is not acceptable. However, a person may donate a single kidney, eye and some nerve cells or skin grafts-which are not irreplaceable and can be donated.

2. To sell his/her organs for cash or in exchange for other organs of the body. The ruling outlined above also applies here. Any such contract is unlawful because a human being cannot sell what he does not own, since life and the human body in all its totality is the property of God.<sup>429</sup>

**The second category:** Ownership of the person over his/her body is agreed upon by some scholars such as Al-Salāmi. Here, the donor is not responsible for his actions for one or the other of the following reasons:

1) If he/she is not of sound mind— in this case a guardian or ruler must decide;

---

<sup>428</sup> Ibid., 398.

<sup>429</sup> Muḥammad al-Mukhtār al-Salāmi, "Zarā'at khalāyā al-Jihāz al- 'Aṣabī wa- khaṣṣatan al-Mukh," in *Al-Ru'yah islāmiyyah li-zarā'at Ba'd al-A 'da' al-Bashariyyah*, 6, 108.

- 2) If he/she is under-age, in which case his guardian has no right to donate parts of his/her body, since the guardian is appointed to protect and preserve the body and interests of his charge who is not capable of protecting him/herself.<sup>430</sup>

**The third category:** The donor is an incomplete human entity such as a fetus or an embryo. Al-Salāmi specifies this as being in a state of formation that extends from the point of fertilization of the egg up to 32 cells and cites medical experts who say that cells produced during this period are not specialized for specific functions and are therefore unsuitable for transplant.<sup>431</sup>

**The fourth category:** The donor is a fully-grown adult whose life is no longer respected or protected—such as convicted prisoners sentenced to death in clear-cut cases of murder—according to the shari‘ah. Al-Salāmi says the Qur‘an allows mercy to murderers if the next-of-kin of the victim grants a pardon, citing the Qur‘anic verse, "In the law of equality, there is saving of life to you O ye men of understanding; that ye may restrain yourselves".<sup>432</sup> However, what about cases where the victim's next-of-kin have not forgiven the murderer? Would it be lawful to use parts of the brain or nervous system or cells of such criminals for transplantation purposes? One must consider if this could be justified under conditions of necessity as outlined by the jurists. It may be useful to consider what constitutes necessity in the case of the consumption of human flesh. For instance, some Sunni Muslim scholars have allowed that a person under dire necessity of hunger can kill and eat the flesh of another person whose blood is not respected under shari‘ah law. Imam al-Nawawi has said that it is permissible to kill an unbelieving fighter, an apostate from Islam, a married adulterer and someone who has abandoned prayer. Moreover, al ‘Izz Ibn ‘Abd al-Salām Al-Sulamī has said that if under dire necessity a person were to find one of the abovementioned persons he has a right to kill him/her and eat their flesh to save his/her life.<sup>433</sup> In my opinion a sick person whose heart or kidney is failing is under dire necessity to obtain organs from anyone (living or dead) for life-sustaining purposes just like the person who is suffering from hunger is allowed to consume human flesh. Ultimately this is because the sanctity of a living person is greater than that of a dead person.

---

<sup>430</sup> Ibid., 108.

<sup>431</sup> Ibid., 108.

<sup>432</sup> Ch. 2:179.

<sup>433</sup> Muḥammad al-Mukhtār al-Salāmi, "Zarā‘at khalāya al-Jihāz al-‘Aṣabī wa- khaṣṣatan al-Mukh," in *Al-Ru‘yah al-Islāmiyyah li-zarā‘at Ba‘d al-A‘dā’ al-Bashariyyah*, 6, 108-9; Abū Zakariya Yahya Ibn Sharaf al-Nawawī, *Majmū‘ Sharḥ al-Muḥadḥab*. vol.9, 44; Al ‘Izz Ibn ‘Abd al-Salām al-Sulamī, *Qawā‘id al-Aḥkām Fī Maṣāliḥ al-Anām*, 81.

### Section 3.7 Permissibility of Organ Donation (Before and After Death)

It is permissible for one person to donate his/her organs (because he/she has dual ownership of his/her body with God) to another person provided that the organ(s) donated shall not endanger the donor's life, and as long as trustworthy medical doctors have stated that the recipient will benefit from the transplantation. It is the same as when a person donates his/her labour and its fruits; this can be applied to organ transplantation under the dire necessity principle. The Prophet of Islam (pbuh), once said: "Whoever helps a brother in difficulty, God will help him/her through his/her difficulties on the Day of Judgment."<sup>434</sup>

There is a little dispute over whether it is permissible to procure organs of a dead person to save the lives of others who need that organ, because the rule is that a living person is better than a dead person.<sup>435</sup> However, there are many rules to be observed in this instance.

1) Muslims can carry a donor card, which means that a person is giving permission for his/her organs to be used after his/her death as a treatment for those who need an organ transplant. A person can also donate his/her blood; just as women can donate milk in order to feed a child for another woman, and that milk is part of her body and blood. On the other hand, a person cannot donate his/her heart, liver or single organs while he/she is still alive because these are organs on which life is dependent. Nor can a person donate a hand, leg or any external organs that are destructive to the appearance. However, he/she can donate internal paired organs, such as one kidney, because a person can survive with only one kidney. There are many conditions, as it is not allowed to eliminate destruction with the same or greater destruction. Any damage must be avoided, as much as possible. It is not acceptable for a person to help others by destroying himself. A person's health is the first priority. Moreover, no one knows if the transplant will be successful, except God, even though expert medical doctors can give an educated opinion. Organ transplant operations always depend on the skill of medical doctors and their teams.<sup>436</sup>

2) In the absence of information about the will of the dead person, the next of kin's permission or consent is very important, although opinion has it that the permission of the organ donor is required. In the absence of his/her consent the guardian or inheritant permission is required,

<sup>434</sup> Muḥammad Ibn ʿIsā Abū ʿIsā Al-Tirmidhī, *Sunan al-Tirmidhī*. 2<sup>nd</sup> ed. vol. 4 (Istanbul: Dār Saḥnūn, 1992), 34-5.

<sup>435</sup> Bakr Ibn ʿAbd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/2, 57.

<sup>436</sup> Muḥammad al-Mukhtar al-Salāmī, "Zara ʿat khalayā al-Jihāz al-ʿAṣabī wa- khaṣṣatan al-Mukh," in *Al-Ruʾyah al-Islāmiyyah li-zara ʿat Ba ʿd al-A ʿda ʿ al-Bashariyyah*, 6, 118.



because the protection of a person's dignity is established in Islam and nobody is able or has a right to take this from him/her. That right is an inheritable right accorded to his/her close family members. A person's permission to donate his/her organs is a matter of preference, as God says in the Qur'an.<sup>437</sup> So, the donor's permission before his/her death and the permission of his/her heirs is a fully acceptable, since there is nothing wrong with the living person— who has full competency— to give permission to donate his/her organs following their death. The real question is: What happens when a person has given (or refused) consent to donate his/her organs after death and his/her family refuse to carry out their request and do the opposite?

3) In cases where consent is indeterminable, the proper authorities will have to rule and regulate the use of the unknown persons' organs. In the case of people who do not have relatives and die in Muslim countries, the Muslim ruler is his/her decision-maker. Likewise, for Muslim citizens who die while residing in non-Muslim countries, the non-Muslim rulers have a right to rule over their bodies after death if the above-mentioned conditions are present.

4) The use of organs and tissues from criminals for transplantation could also be allowed. However, the organs would have to be removed only from those rightly condemned to death shortly before execution, but with full precautions being taken to avoid torture or afflicting suffering.<sup>438</sup> Moreover, al-Wa'ī has said that individuals in Muslim countries do not need permission from kinship, but that they can procure organs from any dead person without obtaining permission. In fact, al-Wa'ī informs that some Islamic countries do not seek permission from the dead or their families, but that the governments approve the procurement of organs from the dead for the benefit of the living without seeking the permission of relatives".<sup>439</sup>

5) In the case of medical doctors and organ transplantation procedures, it is not necessary for these doctors to be Muslim. However, in my opinion whoever makes it a condition that the doctors must be Muslims (or even makes it a general condition as such), this is not to be seen as an acceptable condition in Sunni Islam for organ transplantation. The only acceptable and necessary conditions are that the doctor must be knowledgeable in his/her specific medical field,

<sup>437</sup> Ch. 2:195.

<sup>438</sup> Muḥammad al-Mukhtār al-Salāmī, "Zarā'at khalāyā al-Jihāz al-'Aṣabī wa-khaṣṣatan al-Mukh," in *Al-Ru'yah al-Islāmiyyah li-zarā'at Ba'd al-A'dā' al-Bashariyyah*, 6, 116.

<sup>439</sup> Tawfīq al-Wa'ī, "Ḥaqīqat al-Mawt wa-al-Ḥayāh fī al-Qur'an wa-al-Aḥkām al-Shar'iyyah," in *Al-Ḥayāh al-Insāniyyah: Bidayatuha wa-Nihayatuha fī al-Mafḥūm al-Islāmī*, 2, 481.

meaning, they must be a licensed medical doctor. They must also confirm that the person is dying and cannot survive without receiving the organ transplant.

6) If the brain stem ceases to function, it is impossible to restart it. After the brain stem is dead, it might be possible to procure some organs that function for a period. This period can be between six hours to two weeks. Many Sunni Muslim scholars and medical doctors have had a bitter argument concerning observed movement after brain stem death; specifically debating whether the perseverance of pulse is a sign of life. For example, Muḥammad Sulaymān al-Ashqar, his brother ‘Umar Sulaymān al-Ashqar, Yāsīn and the Islamic Fiqh Academy in Amman-Jordan are among the groups that maintain that there are no signs of life— even with the presence of a heartbeat and chest movement— in the brain dead person.<sup>440</sup> On the other hand, some medical doctors and Islamic scholars insist that the presence of a pulse (heartbeat), or bodily movement after brain-stem death are signs of life. This position is held by: Bakr Ibn ‘Abd Allah Abū Zayd, Tawfīq al-Wa‘ī, Sheikh Muḥammad al-Salāmī, Sheikh Badr Mutawallī ‘Abd Al- Basīṭ, Sheikh ‘Abd Al-Qādir Muḥammad al-Ammārī, and the Kuwait Fatwā Panel (their initial fatwā has been changed and now agrees that heartbeat and body movement after brain- death are not signs of life).<sup>441</sup> Furthermore, it is well known that a hanged or beheaded person continues to move and has a pulse for a short period. However, he/she is not considered alive and it would not be possible to bring them back to life. Yet, if they have a pulse, body movement and are kept warm for a while, they may be considered alive. For this reason, medical doctors, philosophers, ethicists and general Muslim scholars are divided concerning this issue. It is my opinion that, when trustworthy professional doctors declare and certify that a person is dead, they must go on to save the life of another person. They might be able to procure human organs from a dead person and use these organs to save another person’s life; consequently, the brain-dead person’s life support equipment will be shut off as a result. This benefits a brain-dead person by easing the suffering which accompanied the painful sickness. Moreover, it is useful to help the recipients to alleviate their suffering and sickness and save their lives. I believe that the brain- stem dead person is completely dead

7) The case of Muslim organ donation to non-Muslims is a controversial subject. For example, when it comes to whether non-Muslims can use the organs of Muslims condemned to death, al-Salāmī says that, according to al-Nawawī, there are two views on this matter cited by al-

<sup>440</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*, 2<sup>nd</sup> ed, 344-45.

<sup>441</sup> Ibid., 344.

Baghawī, though he does not endorse either of them.<sup>442</sup> However, al-Salāmī says that it does not appear to be allowed in Islām.<sup>443</sup> Personally, I believe that Muslims can benefit from one another's organs within the conditions already outlined, but that there is a difference of opinion with respect to non-Muslims. Al-Salāmī's view is that a Muslim cannot donate his/her organs to a non-Muslim. Yet, I disagree with the position of al-Salāmī on this matter and instead agree with al-Qaradāwī, Ḥassan Ḥaṭḥut and Shaykh Muṣṭafā Zurqā who allow for interchangeable organ donation between Muslims and non-Muslims on the basis that human organs do not in themselves believe or disbelieve.<sup>444</sup> So, we can take this to mean that all human organs are Muslim, and every organ which is inside a Muslim body obeys God, as God says in the Qur'an: "There is no creature of God unless that creature is obeying God."<sup>445</sup> Therefore, it is permissible for a Muslim to receive a non-Muslim's organs, as it is also permissible for non-Muslim to receive Muslim organs.<sup>446</sup> Al-Qaradāwī has justified this by saying that non-Muslim are less generous than Muslims, but since even they are giving their organs to Muslims, then Muslims must give their organs to non-Muslims.<sup>447</sup> Moreover, how would it be acceptable and fair for non-Muslims to give their organs to Muslims, but for Muslims not to give theirs to non-Muslims?

Regarding the matter of organ donors and recipients, these should be seen as one unit. In addition, I would like to discuss whether it is permissible to transplant parts of the body within the same body. For example, al-Mahdi points out that organ transplantation began with transplanting the cells of animals within their own bodies, such as cells taken from the suprarenal gland, which produces dopamine.<sup>448</sup> Consequently, in my view, it is clear that it is permissible to transplant organs or tissues of the same person within his/her own body, in which case, the donor is also the recipient. It is also acceptable to amputate a limb for that purpose, and then it would similarly be permissible, to transfer a limb or a portion of it from one part of the body to another.

In cases where the donor and recipient are relatives, the situation becomes altogether different. That is to say, the transplants from live donors raise a special set of ethical questions,

<sup>442</sup> Muḥammad al-Mukhtār al-Salāmī, "Zarā 'at khalāyā al-Jihāz al-'Aṣabī wa-khaṣṣatan al-Mukh," in *Al-Ru'yah al-Islāmiyyah li-zarā 'at Ba 'd al-A 'dā' al-Bashariyyah*, 6, 115.

<sup>443</sup> Ibid., 115.

<sup>444</sup> Yūsuf al-Qaradāwī, *Fatawā Mu 'aṣirah*, 534.

<sup>445</sup> Ch. 17:44.

<sup>446</sup> Muṣṭafā al-Zurqā, *Fatawā*, 232.

<sup>447</sup> Yūsuf al-Qaradāwī, *Fatawā Mu 'aṣirah*, 532.

<sup>448</sup> Mukhtār al-Mahdī, "Zarā 'at khalāyā al-Mukh : Majālātuḥu wa-afaquḥu al-Mustaqbaliyyah," in *Al-Ru'yah al-Islāmiyyah li-zarā 'at Ba 'd al-A 'dā' al-Bashariyyah, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah*, 6., 62-64.

though interestingly, European countries avoid these issues by depending almost totally on cadaver donors in their transplant programs.<sup>449</sup> Nancy Kutner explains that approximately 30 percent of all kidneys transplanted annually in the United States are obtained from living, related donors and that the likelihood of a close tissue match between donor and recipient increases when the donor is a relative, thereby increasing the survival rate.<sup>450</sup>

Non-related living donation is problematic, but a possible solution offered has been the so-called international living donor and recipient “exchange”—where families are used who have been tissue-typed, but who cannot donate to their own family member because the tissue match is not immunologically acceptable. Arguments against these types of exchanges usually highlight that it is difficult to imagine that individuals would donate organs within such a system unless they were assured that their family member would benefit within the exchange system or that they themselves might be financially rewarded. Consequently, the latter possibility of financial compensation for human organs has been the focus of considerable discussion.<sup>451</sup>

### Section 3.8 The Conditions of Acceptable Permission

There are four conditions of acceptable permission for organ donation, i.e.:

1. Acceptable permission to donate organs must come from the donor or from his/her immediate family members. If the donor cannot directly donate his/her organs, such as in the case of a disabled person, the immediate family members of the donor (i.e., parents, brothers, sisters, guardians) or the ruler or government shall decide. If the donor has the ability to state his/her wishes, then no one can act on behalf of the donor, and if someone else attempts to exercise that right, the permission of that person is invalid.
2. The donor must be an adult, who is not drunk or psychologically disturbed by any circumstance. That means if the donor is a child, handicapped, intoxicated, or mentally ill, his/her permission will be invalid. In addition, the guardian must not be mentally ill, intoxicated or unfit, otherwise, his/her permission will be invalid.
3. The donor and his/her guardian must give permission without any kind of pressure. According to the Qur'an, anyone who is under threat or pressure for his/her actions or

---

<sup>449</sup> Nancy G. Kutner, “Issues in the Application of High Cost Medical Technology: The Case of Organ Transplantation,” in *Journal of Health and Social Behaviour*, vol. 28, no. 1(1987), 28.

<sup>450</sup> Ibid.

<sup>451</sup> Ibid.

statements is invalidated. As al-Qurṭubī explains in his *tafsīr*, all Sunni Muslim ‘Ulamā’ have agreed that the person’s statement under threat or pressure without choice is invalidated.<sup>452</sup>

4. Generally, surgeons in western societies need a signature of consent giving the permission of the sick person or of his/her guardian in order to perform surgery.

### Section 3.9 Organ Donor:

Human organ retrieval and transplantation with compensation in its four ways:

1. Skin retrieval from a person and then, a transplant into the same person’s body.
2. Organ retrieval from a person and its transplant into another person, like a blood transfusion under the donation process to replace defective organs.<sup>453</sup> I am discussing organ transplantations into living persons, and organ retrieval and transplantation from brain-dead persons into living persons. Organ retrieval and transplantation from within the same person is not disputed and it is unanimously allowed.
3. Organ retrieval and transplantation from a living person into another living person, for treatment.
4. Organ retrieval and transplant from a dead person into a living person, for life sustaining treatment.

Organ retrieval and transplant can be effected in the following organs:

1. Eye;
2. Kidney;
3. Bones;
4. Veins from the legs into the heart;
5. Intestinal re-connection after removing defective parts;
6. Joints;
7. Pancreas and its cells;
8. Heart transplant;
9. Liver transplant;
10. Lungs transplant;
11. Reproductive organ transplant;

---

<sup>452</sup> Abū ‘Abd Allāh Ibn Muḥammad al-Qurṭubī al-Anṣārī, *Al-Jam‘i li-Aḥkām al-Qur‘ān*. vol. 1, 181-182 .

<sup>453</sup> Bakr Ibn ‘Abd Allāh Abu Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/2, 47.

## 12. Reproductive glands.<sup>454</sup>

### Section 3.10 General Conditions on Organ Retrieval and Transplantation

There are five general conditions for organ retrieval and transplantation:

1. There must be a necessity ( i.e., this means the condition of being essential or indispensable);
2. There must not be permissible replacement items available (plastic organs, or others);
3. There is a greater chance of success in the transplant than there is of failure;
4. There is no life-threatening danger to the donor;
5. The donor provides his/her organ(s) without any pressure or interference.<sup>455</sup>

### Section 3.11 Islamic Conception of Ownership of the Body

The underlying Islamic conception of ownership of the human body is that it directly relates to the divine honour conferred upon man by Allāh. As such, scholars like al-Ṭanṭāwī, the current Grand Mufti of Egypt have referred to and commented on the creation and moulding of man in such Qur'ānic verses as, "By the fig, by the olive, by Mount Sinai, by the yonder secure city, assuredly we have created man in the goodliest mould."<sup>456</sup> And Allāh also admonishes: "O Man! What hath beguiled thee concerning the Lord, the bountiful who created thee, then moulded thee, then proportioned thee in whatsoever form he listed he constructed thee."<sup>457</sup> According to al-Ṭanṭāwī, among the features of man's honour in Islam is the notion that his body is absolutely owned by Allāh. Therefore, it is not permissible for anyone to dispose of or sell human parts in a harmful way. Scholars refer to Qur'ānic verses and sound Ḥadīth as the basis for this reasoning. Al-Ṭanṭāwī cites Ṣaḥīḥ al-Bukhārī and Ṣaḥīḥ Ibn Ḥibbān in this connection, where suicide and intentional self-harm are expressly forbidden.<sup>458</sup>

Al-Ṭanṭāwī also cites as evidence Ibn Ḥibbān's statement on the authority of Jābir Ibn Samurah that, "A man was suffering from a troublesome lesion. He took a knife and slew himself. The Prophet (pbuh), refrained from performing the death prayer over him."<sup>459</sup> However,

---

<sup>454</sup> Ibid., 48-9.

<sup>455</sup> Ibid., 47-49.

<sup>456</sup> Ch.95:1-4.

<sup>457</sup> Ch. 82:6-8.

<sup>458</sup> Ch.2:195.

<sup>459</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Ḥukm Bay' A'da' al-Insān li- 'Uḍwīn min A'da' ihī aw al-Tabarru' Bihi," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Tibbiyyah*, 308.

these Qur'ānic verses and Aḥādīth do not necessarily directly address the issue of whether a person has a right to donate a bodily organ to a relative. What implications therefore arise in acknowledging an individual's possession or ownership of his/her body? Some scholars such as al-Mahdī see contradictions arising among the Islamic scholars over such ownership.<sup>460</sup> For example, Islamic scholars generally hold the view that the body and soul ultimately belong to Allāh—since he moulded and created them, man cannot grant or dispose of something that he does not own.<sup>461</sup> Moreover, these Islamic scholars contend that because Allāh has created and harnessed human organs for man's beneficial use, He will hold him to account for their use or misuse.<sup>462</sup> Yet, scholars seem to acknowledge man's ownership over his body, in the sense of being accountable for how it is used, but also for indemnity or "diyah" for loss or damage of any organ, caused by an assault.<sup>463</sup> Hence, if the person harmed in an assault can receive diyah, does it validate man's ownership over his body? Some scholars, notably al-Mahdī, acknowledge that man has a lawful ownership over his organs and raise no objection against donation of any bodily organ to a relative on the verge of death.<sup>464</sup>

### Section 3.12 Western Opinions on Human Body Ownership

The human body has a price and a value in the Qur'an and under shari'ah law. According to the provision for "blood money" the human body/organs have a price and value and people have the right to sell or not to sell.<sup>465</sup> The evidence offered is that people must give their authority or consent for organ donation by signing donor cards.<sup>466</sup> Property rights include the human body parts, both bodily organs and tissues. Human organs and tissues come under the provisions of property rights, such as the right to sell and buy. This is because individuals have full authority and property rights over their complete body. However, some groups argue that the rights of individuals to control their bodies will not prevent hospitals, medical doctors, or nurses from making a profit on human organs, which have been donated by individuals and family members.<sup>467</sup>

<sup>460</sup> Mukhtar al-Mahdī, "A 'dā' al-Insān Bayna al-Hibati wa- al-Bay' wa- al-Akhdh bilā Waṣiyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumarasat al-Ṭibbiyyah*, 3., 297-8.

<sup>461</sup> Ibid.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

<sup>464</sup> Mukhtar al-Mahdī, "A 'dā' al-Insān Bayna al-Hibati wa- al-Bay' wa- al-Akhdh bilā Waṣiyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumarasat al-Ṭibbiyyah*, 3., 298.

<sup>465</sup> Ch. 5:45.

<sup>466</sup> Donald Joralemon, "Organ wars: The battle for body parts" *Medical Anthropology Quarterly*, New Series, vol. 9, no.3 (1995):336.

<sup>467</sup> Ibid.

Margaret Radin, a legal expert and scholar of property rights, discusses the ideology of making human body parts like any other commercial goods, even though human beings are different from other commodified goods:

In our understanding of personhood, we are committed to an ideal of individual uniqueness that does not cohere with the idea that each person's attributes are fungible, that they can be traded off against those of other people. Universal market rhetoric transforms our world of concrete persons, whose uniqueness and individuality is expressed in specific personal attributes into a world of disembodied, fungible, attribute-less entities possessing a wealth of alienable, severable objects.<sup>468</sup>

In addition, Radin has discussed raising the level of commercialization and commodification of human body parts on the market. The ideology of human body marketing and commodification is currently shifting from pure medicinal purposes to political movements with explicit free market rhetoric, for which lawyers and business professionals/interest groups have long been lobbying.<sup>469</sup>

### Section 3.13 Human Body Ownership

Some Islamic contemporary ethicists argue that the body belongs to God, thus, a person cannot donate his/her organs. My answer to this argument is: First, the universe belongs totally to God, including the heavens, earth and everything in between. Several Qur'anic verses mention that human beings often claim their money, houses and assets as theirs, but in reality all a person's wealth and possessions belong completely to God.<sup>470</sup> In the Qur'an, God says, "O people, give part of God's wealth, which he has given to you." and "People give a portion of what God has given to you."<sup>471</sup> For this reason, human assets and wealth belong to God, and he has bestowed them on human beings. Keeping this in mind, we give organs charity, as some people donate parts of their wealth to continuous or non-continuous charities, whether these charities are obligatory or un-obligatory. Therefore, people donate or even sell their blood, and they have the right to donate their organs. Moreover, life depends on blood, as part of the human body.<sup>472</sup>

---

<sup>468</sup> Ibid., 345.

<sup>469</sup> Ibid.

<sup>470</sup> Ch.22: 18.

<sup>471</sup> Ibid., 297-8.

<sup>472</sup> Yūsuf al-Qaradāwī, *Fatāwa Mu'asirah* (Al-Manṣūra, Egypt: al-Wafā, 1993), 532.



As al-Ṭanṭāwī affirms, a person can donate his/her blood, since a woman can donate milk in order to feed a child for another woman, and that milk is part of her body and blood.<sup>473</sup> Again, there is no contradiction between organ donation and the fact that Allāh owns everything as cited in the Qur'ānic verse, "Blest be He who hath revealed the criterion unto his bondman that he may be unto the worlds a Warner. He whose is the dominion of the heavens and the earth."<sup>474</sup> In this respect, al-Qarāḍāwī has focused on the relationship between the fact that man is owned by Allāh and the impermissibility of selling any of his organs. That is, al-Qarāḍāwī looks at whether Allāh has absolute ownership and thus man is unable to sell what he does not own; or whether on the other hand, man does possess the ownership of his body for sale and purchase based on Qur'ānic verses and Prophetic tradition.<sup>475</sup> Moreover, Allāh has "honoured" man on the grounds of "honouring" (i.e., intelligence, knowledge, speech, power of innovation given to man and the fact that God commanded the Angels to prostrate in front of Adam, proves man is God's vicegerent on Earth and is the master of the world in his capacity as a caretaker). But Allāh did not honour man on the grounds of being owned or not.<sup>476</sup> Sheikh al-Ṭanṭāwī agrees that everything is owned by Allāh, but believes that man, besides being owned by Allāh, is also responsible for his body.<sup>477</sup> Consequently, al-Ṭanṭāwī says there is a difference between two sorts of ownership:

- 1) Where man's body and soul are owned by Allāh, in the sense that Allāh created man and entrusted him with his body and commanded that man should not use his body except in what is good.
- 2) Ownership in the sense that Allāh made all things: the earth, stars, sun, and moon, under the disposal of man and at his service.<sup>478</sup>

In fact, al-Ṭanṭāwī claims that there is no contradiction between these two types of ownership, since "...Allāh in reality is the owner of everything. Whereas man, by virtue of viceroyship, is the owner of things other than, "man". There is no contradiction between the two opinions."<sup>479</sup> Muḥammad al-Ashqar holds the view that the concept that man is owned by Allāh does not mean that it is "merely" a question of formality, but that "...it is indisputable that man

<sup>473</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Bay' al-'Adā al-'Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Tibbiyyah*, (1995), 342-363.

<sup>474</sup> Ch.25:1-2.

<sup>475</sup> Yūsuf al-Qarāḍāwī, *Fatāwā Mu'aṣirah*, 531-2.

<sup>476</sup> Ch.2:34.

<sup>477</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Bay' al-'Adā al-'Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Tibbiyyah*, 342-363, 386.

<sup>478</sup> Ibid., 387.

<sup>479</sup> Ibid.

is owned by Allāh and not by himself.”<sup>480</sup> Al-Ashqar means that this absolute ownership over man does not entitle man to take the “price of his self”. He says in this regard:

I do not own my hand, or my head, or my leg. I am not the one who created them. From where did I take them? Moreover, from where did I obtain them? Allah has placed them under my administration. The legal guardian does not own the one over whom he exercises guardianship. If I have a little child I do not own him nor can dispose of him as I am not his creator, nor provider.<sup>481</sup>

‘Abdulaziz Sachedina differentiates between human beings having “stewardship” (i.e., one who manages his/her body) and ownership ( i.e., a person has dual ownership with God over his/her body) over their bodies.<sup>482</sup> When it comes to human “stewardship” of the human body, Sachedina discussed that the case points to the cultural and religious attitudes, and underscores the view that human beings have the stewardship, not the ownership of the body to enable them to assert their right to handle it in the way they please. This is to say, the human being is merely the caretaker and that the real owner is Allāh, the Creator. As a caretaker it is the person’s duty to take all the necessary steps to preserve the body in a manner that would assist him in seeking the good of both this world and the next.<sup>483</sup> Yet, to whom does the human body belong? Is the human body under the trust of a person or does the body belong to that person? Does the human body belong to God or to the servant? Or to both, God and the person? And who has more rights over the other?

If the body belongs to the person, does he/she have the right to do whatever she/he desires? Does he/she have the right to sell or donate it in whole or in part for private and public interest? If the body belongs to God, as a creator of this body, what is God’s right over the human body? Is it to worship God and be obedient, and is there a right of the person over his/her body? Finally, does this right include or go beyond simply to use, enjoy and benefit from his/her body? As we know, if someone commits a crime against another’s body, for example cutting parts of his/her body, the victim then has a right to forgive the criminal— like an act of donation driven by mercy/pity, or he/she can use their full legal right to take the criminal into

---

<sup>480</sup> Muḥammad Sulaymān al-Ashqar, “Zarā‘at wa- Bay’ al-A ‘dā,” in *Al-Ru’yah al-Islāmiyyah li Ba’d al-Mumārāsāt al-Tibbiyyah*, 3, 2<sup>nd</sup> ed, 396.

<sup>481</sup> Ibid.

<sup>482</sup> ‘Abdulaziz Sachedina, “Right to die? Muslim views about end of life decisions”. (June 7, 2005):1-7.

<http://www.people.virginia.edu/~aas/article/article3.htm>

<sup>483</sup> Ibid.

the justice system to obtain amends. Similarly, a person also has the right to put his/her life into real danger under certain contexts like someone who volunteers to go to war knowing that he/she may well die or become injured as a result. In addition, we all know that Allāh has rights over both human bodies and souls. If a person neglects the rights of God, God has the right to punish or forgive that person. God has created human beings for one purpose, which is: to worship him.<sup>484</sup>

### Section 3.14 Life-Sustaining Treatment

The protection and sustaining of human life is a principal value of Islam. The sanctity and preservation of Muslim blood or any other organ of the body is considered a paramount necessity. God encourages Muslims and non-Muslims to save lives and sustain them from destruction and death, as much as possible. In this respect, God says in the Qur'an, "We ordained for the Children of Israel that if any one slew a person-unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people."<sup>485</sup> Disease and sickness is destruction; therefore, a Muslim has the right to save human life and prevent death or destruction, such as by donating his/her blood, organs or tissue.

The organ donation process is not considered part of human destruction, like revenge or disrespect of a human being. Organ retrieval, the procurement process, and organ transplantation all operate under a highly delicate and respectful process. Ostensibly, this can be done when the donor is brain-dead, but who is to say whether it may one day be possible that scientists will be able to reactivate the human brain as doctors have long sought to do, as well as transplant heart, liver, kidneys and other organs. 'Abd al-Bāsiṭ discussed the opinions of some '*ulama*' who have given permission to benefit from the organs of brain- dead persons in order to save the lives of living persons. 'Abd al-Bāsiṭ says that this cannot happen except after doctors make sure the organ donor has nearly died; the heart and liver of such a person must be kept in a suitable environment with modern technology so that others may benefit from it.<sup>486</sup>

<sup>484</sup> Bakr Ibn 'Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1/2 (Beirut: Muassasat al-Risālah, 1996), 29.

<sup>485</sup> Ch.5:32.

<sup>486</sup> Shaykh Badr al-Mutawallī 'Abd al-Bāsiṭ, "Nihayat al-Hayāh al-Insāniyyah fī Nazar al-Islām," in *Al-Hayāh al-Insāniyyah-Bidayatuha wa-Nihayatuha fi al-Mafhum al-Islāmī, Al-Islām wa-al-Mushkilat al-Ṭibbiyyah al-Mu'asirah*, 2., 448.

‘Abd al-Basīṭ concludes his argument by saying "I do not think that the Shari‘ah Scholar is able to give a Fatwā permitting removal of a heart from a person who is still alive even if it is a simple life by any circumstances."<sup>487</sup> L<sup>40</sup>

### Section 3.15 Medical Actions and the Human Body

The following medical actions or procedures are permissible according to the Shari‘ah:

1. Operations that are simple, such as the removal of the appendix or male circumcision are all permissible without disagreement or dispute among scholars;
2. Operations consisting in an exchange between two or more persons, including: 1) blood transfusion; 2) organ transfer within the same person; 3) transplantation from a living person into another person; 4) transplantation from a dead person (such as brain dead person) into a living person.<sup>488</sup>

Human dissection is permitted for the sake of any of these four purposes:

- a) To discover murderous and criminal action;
- b) To discover disease and sickness;
- c) For learning medicine and teaching purposes;
- d) For a life-sustaining operation.<sup>489</sup>

### Section 3.16 Human Organ Transplantation

Generally, organ transplantation is considered one of the most important modern medical procedures. In the past, no one could ever have believed that it would one day be possible. Muslim scholars of earlier centuries never talked about human-to-human organ transplantation, whether alive or dead, but did occasionally mention organ transplantation from animal to human. Current Muslim thinkers discuss the ethics of organ transplantation in order to establish the Islamic position regarding this controversial issue. Therefore, Muslim scholars and institutions have issued multiple fatawā offering contradictory opinions regarding the same topic. For example, the Kuwait Fatwā Panel issued a contradictory fatwa on brain-dead persons,

---

<sup>487</sup> Ibid., 448.

<sup>L40</sup> See Appendix

<sup>488</sup> Bakr Ibn ‘Abd Allāh Abu Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1-2, 23.

<sup>489</sup> Ibid.

because there are no Qur'anic verses or Aḥādīth on the topic.<sup>490</sup> Therefore, some Sunni Muslim scholars have given rulings of permissibility while others have issued prohibitions.<sup>491</sup> Thus, I have divided the scholars into two groups and will discuss them more in-depth further on. Bearing in mind that the purpose of organ transplantation is life-sustaining treatment, the purposes of organ retrieval and transplantation are divided into three sections:

1. Necessity – meaning urgency of life sustaining treatment, without which the recipient will directly die as a result;
2. The needy – like patients who need eye transplants;
3. Cosmetic surgery – such as lip grafts, or “nose jobs”.<sup>492</sup>

### Section 3.17 History of Organ Transplantation

The history of organ transplantation began with blood transfusion, skin grafts, teeth and bone replacement and so on between 1930 and 1950. The first liver transplant was in 1960 and the first heart transplant in 1967 in South Africa.<sup>493</sup> In 1986 a significant medical breakthrough was achieved in England when medical professionals there were able to retrieve and transplant heart, kidney and lungs at the same time in one operation.<sup>494</sup> As well, the first kidney transplant was in 1954 and the first lung transplant was made in 1969.<sup>495</sup>

With the development of medical technology and the concomitant increase in the number of organ transplantation procedures, Muslim scholars in the 1970s and 1980s reacted with alarm and stressed the urgency to discuss and evaluate the topic of human organ transplantation. Since then Muslim scholars have discussed the moral ramifications of organ transplantation. The debate over the topic of organ transplantation among Muslim and non-Muslim doctors, jurists, ethicists, philosophers, theologians and scientists is still going on.<sup>496</sup> The basic position is that organs such as the liver, heart, lungs, and kidneys must be removed before the person's death, when the body is still functioning through life support equipment.

<sup>490</sup> Muḥammad Sulaymān al-Ashqar, “Nihāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. (1985), 436.

<sup>491</sup> Badr al-Mutawallī ‘Abd al-Basīṭ, “Nihāyat al-Ḥayāh al-Insāniyyah fī Naẓar al-Islām,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. (1985), 447.

<sup>492</sup> Bakr Ibn ‘Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. vol. 1-2, 50.

<sup>493</sup> Muḥammad ‘Alī al-Bār, *Al-Mawqif al-fiqhī wa-al-Akhḥāq min Qaḍiyyat Zar ‘al-A‘ḍā’*, 80; Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, 28.

<sup>494</sup> Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, 28.

<sup>495</sup> Muḥammad ‘Alī al-Bār, *Al-Mawqif al-fiqhī wa-al-Akhḥāq min qaḍiyyati Zar ‘i al-a ‘ḍā’*, 69-76.

<sup>496</sup> Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century* (Leiden: Brill Academic Publishers, 1993), 28.

Al-Ya'qūbī and other scholars would permit moribund persons and their relatives to donate his/her organs.<sup>497</sup> Al-Ya'qūbī claims that the living person has more rights and privileges than the dead person.<sup>498</sup> Therefore, Muslims are encouraged to sacrifice for the sake of their family or loved ones. The donation of organs should be viewed as a sacrifice made for the benefit of others and as a noble act.<sup>499</sup>

Organ transplantation is generally acceptable in Islam, but there are some controversial issues. Some of these issues relate to: whether it endangers human sanctity; who can be donors; who has a right to decide the donation; how to determine the time of death; the permissibility to buy/sell organs for necessity as life-sustaining treatment; and what to do about organs rejected by a recipient's body, for example, whether should they be buried with its original owner or destroyed.

### Section 3.18 The Question of Brain Transplantation

Some have asked if it is possible to transplant a brain from one person into another. Mukhtār al-Mahdī comments that if organ transplantation is possible, then what about brain procurement and its transplantation into a dying person?<sup>500</sup> The general rule is to transplant only living organs, but a living brain only exists in a living person. Therefore, brain transplantation would kill the donor- something which is not permissible under the ethics of Islam. Moreover, brain transplantation is more difficult to perform because such an operation requires brain procurement with the spinal chord, as well as other brain related organs (i.e. optic, olfactory and other nerves, etc).<sup>501</sup>

<sup>497</sup> Shaykh Ibrāhīm al-Ya'qūbī, *Shifā' al-Tabāhīr wa al-Adwā' fī Ḥukm al-Tashrīḥ wa Naql al-'Aqā'*, 38; Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, 30-1.

<sup>498</sup> Shaykh Ibrāhīm al-Ya'qūbī, *Shifā' al-Tabāhīr wa al-Adwā' fī Ḥukm al-Tashrīḥ wa Naql al-'Aqā'*, 41-3.

<sup>499</sup> Vardit Rispler-Chaim, *Islamic Medical Ethics in the Twentieth Century*, 33.

<sup>500</sup> Mukhtār al-Mahdī, "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Maḥūm al-Islāmī*, 2., 343.

<sup>501</sup> Mukhtār al-Mahdī, "Niḥāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Maḥūm al-Islāmī*, 2., 343.

### Section 3.19 Is Brain Transplantation Possible?

According to al-Mahdī, the simple answer regarding the possibility and permissibility of brain transplantation is that it is absolutely impossible.<sup>502</sup> The reason for this is that taking a living brain which is inside a living person to transplant to another person is no different than killing one person for the sake of another person. Therefore, from the standpoint of common sense, ethics, morals and the Islamic religion, it is absolutely prohibited and not allowed by any means.<sup>503</sup>

The main question which is often asked with respect to those convicted and condemned to death is: Would it be permissible to retrieve the brain of a condemned person before he is killed and transplant it into another person, whether that person is a blood relative or a stranger? I think today it would be very difficult and complicated to transplant a complete brain. This is because such a transplantation procedure would require removing with the brain everything related to it such as eyes, spinal cord (a thick cord of nerves inside our spine which connects the brain with nerves throughout our body), nose, nerves, veins etc.

### Section 3.20 The Possibility of Brain Transplantation and Future Science

Al-Salāmī, the Muftī of Tunis, says that the human brain is dead when it cannot give its commands and cannot respond to an electric test; this is proof that death has occurred and there is no life.<sup>L41</sup> According to him, life is stable with the presence of sound and free movement connected to a functioning brain.<sup>504</sup> The life which is sustained under synthetic equipment is not however the same as real life with natural movement, even though blood circulation is present. The brain-dead person is not mobile. It should be noted that medical doctors are more knowledgeable when it comes to the end of human life than Islamic scholars. For this reason, Yāsīn has raised two important questions on this matter, namely:

- 1) Is it possible that the day will come when human knowledge and science will be able to restore brain capacity through electrical shock or make it possible to retrieve and transplant the brain stem from one person into another person?

---

<sup>502</sup> Ibid., 343.

<sup>503</sup> Ibid., 353.

<sup>L41</sup> See Appendix

<sup>504</sup> Muḥammad Sulaymān al-Ashqar, "Nihāyat al-Ḥayāh," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2., 452-453.

- 2) Is our present-day ignorance compelling us to enforce and claim that real death is brain death and not heart death?<sup>505</sup>

These questions (and speculations) illustrate that it may be possible one day for modern science and scientists to be able to reactivate the human brain just as doctors have succeeded in implanting the heart, liver, kidneys and other organs.<sup>506</sup> Al-Salāmī has argued that it is possible that scientific and medical professionals will be able to re-stimulate the brain stem and return it to its original functional state. He emphasizes that today there are new tools and specific medical equipment designed for the brain that have entered the medical field and which have made it easy for medical surgeons to perform crucial operations.<sup>507</sup> Consequently, in his opinion, medical technology would seem to have achieved a great success, even though we still cannot give a specific definition for death.<sup>508</sup> Sheikh al-Salāmī also stresses that this is because knowledge of death, as well as the necessary technology, is still developing and not complete.<sup>509</sup> Moreover, al-Salāmī says if it is possible today that medical doctors can “re-stimulate the heartbeat” systematically, then what obstacle is there then to prevent them from also finding a way to one day stimulate the brain stem and return it to its functioning role?<sup>510</sup> Lastly, al-Salāmī believes that this will be so, especially given the fact that an electronic brain has now been developed for use in the operating room.<sup>511</sup>

It is my opinion that brain transplantation is basically a scenario where the brain of person A is put in the body of person B. We tend to speak of this as brain transplantation, as if person B is receiving something from person A. This thinking is on the model of other forms of transplantation, such as that of a kidney. But given the importance of the brain to the psychological capacities that make us individual persons, shouldn't we instead see this procedure as “whole body transplantation”—i.e., person A, now just a brain, receives the body of person B, without its brain? If so, how does this change the ethical issues?

<sup>505</sup> Muḥammad Na'im Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'īyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhum al-Islāmī*, 2., 425.

<sup>506</sup> Badr al-Mutawallī 'Abd al-Basīṭ, “Nihāyat al-Ḥayāh al-Insāniyyah Fī Nazar al-Islām,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhum al-Islāmī*, 2., 448.

<sup>507</sup> Muḥammad al-Mukhtar al-Salāmī, “Nihāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhum al-Islāmī*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu'asirah, 2., 453.

<sup>508</sup> Ibid., 453.

<sup>509</sup> Ibid.

<sup>510</sup> Ibid.

<sup>511</sup> Ibid.



It is in my opinion that person “A”—the one to whom the brain belongs, is the receiver of person “B”—the one to whom the body belongs. So the question in this context then becomes: Which one is the donor and which one is the receiver? My answer is that the brain which has been transplanted will “own” the new body in the sense that the brain is the real person and other organs are serving the brain as instruments. Therefore, we should not look at all at the body where the brain has been transplanted since the brain is the real person. For example, if a person’s physical body is not functioning well or has become destroyed in some way to render it useless, but that person’s brain is altogether intact in perfect functioning condition, then that person exists, that is to say, his/her personality is as it was before the physical disability. However, if a person’s brain stem is dead, all bodily organs will follow and soon die; therefore, that person is considered dead. Overall, this case or subject needs more research in the future because it could raise many ethical questions, such as dealing with the reproductive organs: To whom do they belong? Or for that matter genes. Moreover, is organ transplantation violating the originality of God’s creation, by changing the human being in his original form (including all the defects that come with it)?

Though some Muslim scholars have completely rejected organ retrieval from a dead person out of respect for the dead person’s body, the Prophet (pbuh) has said: “The breaking of a dead person’s bones is similar to the breaking of a living person’s bones, but the respect for a living person is greater than the respect for a dead person.”<sup>512</sup> Therefore, many Sunni Muslim scholars have given their fatāwa or allowed the permissibility of organ retrieval, procurement and transplantation from a dead person into a living person.<sup>513</sup>

Knowledge of the condition and functioning of the human brain, including its sickness, health, living and death is a contemporary medical development; one which is not important in religious cases involving brain dead persons. The Prophet (pbuh), has told us to refer contemporary cases to those who have expertise. Today, if we have Muslim medical scientists and are confident about their practical knowledge and opinion on current matters, then we must accept and apply what they have told us.

Moreover, the Kuwaiti Fatwā Panel basically concluded that the case of brain- death needed more research by medical doctors, scientists, and Islamic scholars in all fields.<sup>514</sup> The panel retreated from their previous questionable Fatwa and reissued or revised to say that a

<sup>512</sup> Sulaymān Ibn al-Ash‘ath Abū Dawūd al-Sijistānī, *Sunan Abī-Dawūd*, 2<sup>nd</sup> ed. vol. 1, 554; Muḥammad ibn Yazīd Abū ‘Abd Allah Ibn Mājah, *Sunan Ibn Mājah*, 2<sup>nd</sup> ed. vol. 1, 516.

<sup>513</sup> Muḥammad Na‘īm Yāsīn, “Nihāyat al-Ḥayāh al-Insāniyyah fī Daw’ al-Nuṣuṣ al-Shar‘iyyah wa- Ijtihādāt al-‘Ulamā’ al-Muslimīn,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2., 425.

<sup>514</sup> Muḥammad al-Mukhtār al-Salāmī, “Nihāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Maḥmūd al-Islāmī*, 2., 433-4.

person must not be ruled dead except when all equipment supporting the body stops functioning and the body itself becomes dysfunctional.<sup>515</sup> Consequently, is it permissible to retrieve organs from a deceased or living person and transplant them into a living person?

### Section 3.21 Arguments against the Permissibility of Organ Transplantation

Some contemporary Muslim ethicists and scholars disagree on the permissibility of organ transplantation altogether. One group rules that it is impermissible to retrieve and transplant human organs into another human being. This group includes Shaykh Muḥammad Mutawallī al-Sha'rāwī, a famous Qur'ānic commentator cited by al-Ṭanṭāwī— Muftī of Egypt— who believes that, because human beings do not have ownership of their bodies, therefore, they cannot donate or sell organs by any means.<sup>516</sup> Al- Ṭanṭāwī also rejects organ retrieval and organ transplantation because Allāh has honoured human beings according to various Qur'ānic verses such as Ch.17: 70.<sup>517</sup> The arguments presented by al-Ṭanṭāwī and al-Sha'rāwī in my opinion are only partially valid because they do not take into account that the human being shares ownership over the physical body with Allāh. However, al-Ṭanṭāwī and Al-Sha'rāwī do make a point when they say that human organs cannot be sold as commodities because this will cause suffering for the person who has sold his organs.<sup>518</sup>

Muslim scholars, ethicists and philosophers who reject organ retrieval and transplantation often base their arguments using on this and other Qur'ānic verses. For example, they use scripture to show that organ transplantation and donation puts human life in danger and that it destroys the value of organs. Consequently, they say that removing the organ's benefit from the original person could lead to his/her death.<sup>519</sup> Secondly, these scholars argue using other Qur'ānic verses to probe if the removal of human organs is included in this verse and could lead to the commission of prohibited acts.<sup>520</sup> Thirdly, these scholars argue, on the basis of the Qur'ānic verse saying that God prohibited human beings from killing themselves (suicide) and others (aggravated assault), that any case that can lead to this outcome is prohibited.<sup>521</sup> They say that one of the causes or situations that can lead to this is organ transplantation from one person into another person. In addition, the second verse shows that if there is an active plot

---

<sup>515</sup> Ibid.

<sup>516</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Ḥukm Bay' A 'da' al-Insān li- 'Uḍwīn min A 'da'ihi aw al-Tabarru' Bihi," in *Al-Ru'yah al-Islamiyyah li-Ba 'd al-Mumarasat al-Tibbiyyah*, 3., 308-9.

<sup>517</sup> Ibid., 308-9.

<sup>518</sup> Ibid., 308-10.

<sup>519</sup> Ch. 2:195.

<sup>520</sup> Ch. 4:119.

<sup>521</sup> Ch. 4: 29-30.

managed by doctors and health professionals where the donor is pressured or coerced, that God will punish them all. Fourth, they argue that God has dignified human beings in his lifetime and in the afterlife; therefore, to take one organ from one person in his lifetime or in the afterlife is disrespectful.<sup>522</sup>

Through analogy (*qiyās*) some scholars have shown that it is not allowed to take and cut human organs; it is also not permitted to cut and retrieve parts of these organs from the original body. In addition, these scholars argue on the strength of the legal rule (*qā'ida fiqhiyyah*) which says, “destruction cannot repair more destruction”.<sup>523</sup> What this means is that, the organ that has been transplanted into a person with a defect, will cause the destruction of the donor and eventually lead to his/her death.

Additionally, these Sunni Muslim scholars argue that something that can be sold, can also be donated, but that something that a person cannot sell, cannot be donated. Consequently, they say it is not allowed for any person to donate his/her organs because they do not belong to him, but to God. Their arguments are based on previous scholars' statements.<sup>524</sup>

### Section 3.22 Arguments in favour of the Permissibility of Organ Transplantation

The second group of contemporary Muslim ethicists, scholars, philosophers, jurists and medical doctors say that human organ retrieval and transplantation is permissible.

This group, whose articles I used, have ruled that, “It is permissible to consider that brain stem death as a complete and real death. It is not necessary to wait until the heart beat or blood circulation stops”.<sup>525</sup>

This group's argument is based on Qur'anic verses, Prophetic Aḥādīth, reason, the intellect Islamic principals, previous Islamic scholars' statements, contemporary Muslim ethicists' opinions, philosophers and theologians. In my understanding of the Qur'anic verse 6:145 there is a clear evidence for exceptional cases to the general rule on the basis of dire necessity—which permits the use of prohibited things. For example, the case of a sick person who needs to receive organs from donors is included under dire necessity, because his/her life is

<sup>522</sup> Ch.17:70.

<sup>523</sup> Jalāl al-Dīn 'Abd al-Rahmān al-Suyūṭī, *Al-Ashbah wa al-Nazā'ir* (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyyah, 1964), 95; Zayn al-'Abidin Ibn Ibrahim Ibn Nujaym, *Al-Ashbah wa al-Nazā'ir* (Beirut: Dār al-Kutub al-'ilmiyyah, 1993), 87.

<sup>524</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. (Jeddah: Makatabat al-Ṣaḥābah, 1994), 371.

<sup>525</sup> Shaykh Ibrāhīm al-Ya'qūbī, *Shifā' al-Tabāḥir wa al-Adwā' fī Ḥukm al-Tashrīḥ wa Naql al-A'dā'*. 1<sup>st</sup> ed, 19-34; Muḥammad Sulaymān al-Ashqar, “Nihayat al-Ḥayah,” in *Al-Ḥayah al-Insaniyyah: Bidayatuha wa Nihayatuha fī al-Mafḥūm al-Islāmī*, 2., 428-39; 'Umar Sulaymān al-Ashqar, “Bidayat al-Ḥayah wa Nihayatuha,” in *Al-Ḥayah al-Insaniyyah: Bidayatuha wa Nihayatuha fī al-Mafḥūm al-Islāmī*, 2., 146; Muḥammad Na'im Yāsīn, “Nihayat al-Ḥayah al-Insaniyyah fī Daw al-Nuṣuṣ al-Shar'iyyah wa Ijtihadat al-'Ulamā' al-Muslimīn,” in *Al-Ḥayah al-Insaniyyah: Bidayatuha wa Nihayatuha fī al-Mafḥūm al-Islāmī*, 2., 420-24; Aḥmad Sharaf al-Dīn, *Al-Akhām al-Shar'iyyah li-l- a'māl al-Ṭibbiyyah*, 128.

in danger, such as a person whose kidney is failing or heart is defected.<sup>526</sup> Another verse is 5:32 – In my opinion this verse also clearly commands to save human life, which includes organ donation to another person (maybe one of his/her very close relatives, such as a brother, sister, father, mother, son, daughter, etc). The Sunni Muslim scholars argue over the following Qur'anic verses: 2:185, 4:28, 5:6, and 22:78. Moreover, all these Qur'anic verses provide evidence that Islam makes things easy for all human beings and has never made things hard on them. The permissibility of organ retrieval and transplant is based on Islamic accommodation of humans and mercifulness towards sick people who are in great need to reduce their pain. All these facilitations, which include organ transplantation, are permissible under the purposes of saving life and dire necessity in Islam. In addition, these scholars say the rejection of human organ retrieval and transplantation poses a great difficulty to human beings and sick people's interests; consequently, they say it goes contrary to these above-mentioned Qur'anic verses.<sup>527</sup>

These scholars say that it is permissible to retrieve organs from a brain-dead person and transplant them to those who need it under necessity of treatment and life sustaining purposes; however, they stress that it is not for commercialization purposes. Specifically, this is the position taken by the Islamic Fiqh Academy in Jordan in their declaration (1397 H.) and Islamic Fiqh Academy in Saudi Arabia (Fatawā 99, 6/11/1402 ) and the High Council of 'Ulamā' of Saudi Arabia; the Government of Jordan; the Government of Kuwait (26/10/1989); and the Government of Egypt (8/02/1989).<sup>528</sup> In addition, organ donation is considered charity and God rewards the donor when the recipient gains benefit from the donated organs. It is a continuous charity, especially if the dead person has given permission through a will to donate his/her organs after or prior to death.<sup>529</sup>

Muslim ethicists also argue that humans are allowed to manage their bodies for the public and private interest. Therefore, the person's permission to donate needed organs is considered a noble action. These ethicists who allow organ retrieval and transplantation present their evidence from the following general Islamic principles:

<sup>526</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed, 372; Aḥmad Sharaf al-Dīn, *Al-Aḥkām al-Shar'iyyah lil- a' māl al-Ṭibbiyyah*, 132-33 .

<sup>527</sup> Shaykh Ibrāhīm al- Ya 'qūbī, *Shifā' al-Tabāḥīr wa- al-Adwā' fī Ḥukm al-Tash'rīh wa- Naql al-A'qā'* . 1<sup>st</sup> ed (Damascus: Khalid Ibn al-Walid Printing, 1986), 19-34.

<sup>528</sup> The Islamic Fiqh Academy in Saudi Arabia, on 28 January 1985, put four conditions on the permissibility of organ donation: 1) No harm to the donor; 2) donor makes voluntary and uncoerced choice; 3) organ transplantation is for treatment; 4) High probability for successful outcome. High Council of 'Ulamā' in Saudi Arabia has given permission for organ transplantation. Government of Jordan has given permission through a Fatawā Panel led by Dr. al-'Abbādī and other Fatwā Scholars in Jordan on 11/4/1984 (1/7/1404 hijriyyah]. Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlaqī min Qaḍiyyat Zar' al-A'qā'* (Beirut: Dār al-Shāmiyyah, 1994), 286-305.

<sup>529</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah* . 2<sup>nd</sup> ed, 375 .

- 1) The annoyance or distraction must be removed.<sup>530</sup>
- 2) Necessity permits use of unlawful things.<sup>531</sup>
- 3) If two destructive things contradict, it is necessary to avoid the most dangerous and it is allowed to do the less dangerous thing”.<sup>532</sup> This means we can take organs from living or dead persons (with some pain and discomfort) and perform dissections on brain-dead persons in order to save a person’s life. Both situations are destructive, but the destruction of someone who is dying is greater than taking an organ from a living or brain dead person.
- 4) “The rules of Islam are always changing with the changing times”.<sup>533</sup>

It is my opinion that 40 years ago organ retrieval and transplantation was considered harmful, difficult and dangerous before further medical developments. However, after medical technologies advanced and modernized, the rules that once prohibited it no longer came to apply and organ transplants have since become permissible and lawful today. Organ transplantation is lawful because medical operations are now safer and easier; as well, there is an availability of suitable drugs for patients. Today, organ transplantation treatment has become very useful for many Muslims and non-Muslims. If the intention of the organ transplantation is to offer a human being life sustaining treatment, that practice is considered a noble action that is lawful and permissible. This is because the sanctity of human life is recognized in all religions and preserving life is a noble action among human beings. However, there is a small minority of philosophers who reject the sanctity of human life such as Peter Singer and Helga Kuhse—who co-authored *Unsanctity of Human Life*—and others.<sup>534</sup> On the other hand, if the intention of the retrieval and procurement of organs is meant for commercialization and commodifying of human body parts, then this intention is considered as an unlawful action and is prohibited.<sup>535</sup> Contemporary Sunni Muslim thinkers who support organ transplantation use the statements and rulings of classical Muslim thinkers against the anti-organ transplantation group.

<sup>530</sup> Jalāl al-Dīn ‘Abd al-Rahmān al-Suyūṭī, *Al-Ashbah wa- al-Naẓā’ir*, 92-3 ; Zayn al- ‘Abidīn Ibn Ibrāhīm Ibn Nujaym, *Al-Ashbah wa- al-Naẓā’ir*, 85 ; Bakr Ibn ‘Abd Allāh Abu Zayd, *Fiqh al-Nawāzil*. 1<sup>st</sup> cd. vol. 1/2, 14; Shaykh Ibrāhīm al- Ya’qubī, *Shifā’ al-Tabaḥīr wa- al-Adwā’ fī Ḥukm al-Tashrīḥ wa- Naql al-A’ḍā’*. 1<sup>st</sup> cd, 21.

<sup>531</sup> Shaykh Ibrāhīm al- Ya’qubī, *Shifā’ al-Tabaḥīr wa- al-Adwā’ fī Ḥukm al-Tashrīḥ wa- Naql al-A’ḍā’*. 1<sup>st</sup> cd, 21; Jalāl al-Dīn ‘Abd al-Rahmān al-Suyūṭī, *Al-Ashbah wa- al-Naẓā’ir*, 93; Zayn al- ‘Abidīn Ibn Ibrāhīm Ibn Nujaym, *Al-Ashbah wa- al-Naẓā’ir*, 85.

<sup>532</sup> Jalāl al-Dīn ‘Abd al-Rahmān al-Suyūṭī, *Al-Ashbah wa- al-Naẓā’ir*, 96; Zayn al- ‘Abidīn Ibn Ibrāhīm Ibn Nujaym, *Al-Ashbah wa- al-Naẓā’ir*, 89.

<sup>533</sup> Shaykh Ibrāhīm al- Ya’qubī, *Shifā’ al-Tabaḥīr wa- al-Adwā’ fī Ḥukm al-Tashrīḥ wa- Naql al-A’ḍā’*. 1<sup>st</sup> cd, 21.

<sup>534</sup> Peter Singer and Helga Kuhse, *Unsanctifying Human Life: Essays on Ethics*, 265-278 .

<sup>535</sup> Shaykh Ibrāhīm al- Ya’qubī, *Shifā’ al-Tabaḥīr wa- al-Adwā’ fī Ḥukm al-Tashrīḥ wa- Naql al-A’ḍā’*. 1<sup>st</sup> cd, 21-35.

One of the most convincing arguments goes as follows: Every person knows that a sick person is under necessity, being in the condition which puts his/her life in immediate peril, and is desperately in need to save one's life, just like the one who needs a liver, heart, eye, kidney, and lungs. That sick person has a right to search for organs, just as he/she is allowed to search out for food to sustain his/her life. Suffice it to say, a living person is better than a dead person.

Al-'Izz Ibn 'Abd al-Salām states that the needy person under necessity is allowed to eat the meat of a, “non-Muslim fighter, an adulterer, gay man; a lesbian woman; one who has abandoned the five daily prayers; those who block the travellers' road and kill and threaten travellers.”<sup>536</sup> My personal opinion on this matter is that what is required is to exclusively use human organs as life-sustaining treatment—which is allowed and permitted in Islam. Al-Nawawī has also stated in this respect that, “It is permissible to kill a non-Muslim fighter who is fighting against Muslims; a person who has committed adultery after he/she tasted lawful marriage; a person who denounced Islam after becoming Muslim; and the person who denounced prayer after becoming Muslim.”<sup>537</sup> Consequently, the scholars say it is permissible for a needy person to eat the flesh of the above-mentioned persons. As well, the use of human organs as life-sustaining treatment is permissible and lawful. Al-Nawawī has further said that, “If a starving person finds nothing except the dead body of a Muslim, he/she is allowed to eat in order to save his/her life from death except the flesh of the Prophets.”<sup>538</sup>

In the case of the Prophetic ḥadīth, “Breaking the bone of a dead person is equal to breaking the bone of a living person.”<sup>539</sup> My comment on this is that medical doctors today do not break organs or bones, but instead treat them with care. The procurement of organs must be done in suitable conditions; that is, there must be available solvents, cooling systems, etc. that must be utilized to keep the organs alive and in perfect condition or otherwise the transplantation process will not be successful.

<sup>536</sup> Al-'Izz Ibn 'Abd al-Salām al-Sulamī, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, 81.

<sup>537</sup> Abū Zakariya Yaḥyā Ibn Sharaf al-Nawawī, *Majmū' Sharḥ al-Muḥadḍab*. vol.9, 44.

<sup>538</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed, 380.

<sup>539</sup> Sulaymān Ibn al-Ash 'ath Abū Dawūd al-Sijistānī, *Sunan Abī Dawūd*. 2<sup>nd</sup> ed., vol. 1, 544; Muḥammad ibn Yazīd Abū 'Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*. 2<sup>nd</sup> ed. vol. 1, 516.

### Section 3.23 Organ Transplantation: Permissible or Not?

It is my belief that organ transplantation is acceptable and valuable; in addition, it is a necessity for modern medical treatment as stipulated in various verses in the Qur'an.<sup>540</sup> All these Qur'anic verses show that necessity is a law in itself, overriding all other rules. The sick person who is dying for an organ is under dire necessity to save his/her life from the threat of death, such as the person whose liver, kidney and heart have failed—such a person is under dire necessity, as al-Ya'qūbi has stated.<sup>541</sup> Also, the Qur'an that shows the necessity of life and the virtuousness of saving a life includes the donor, donated organs, seller and buyers who endeavour to sustain human lives, as the Fatwā Committee in Algeria confirms in a binding fatwā.<sup>542</sup> Also, all these verses support the permissibility of organ transplantation as treatment for those who are under threat of death and do not have any other way to treat themselves, as al-Ya'qūbi explains in his book *Shifā' al-Tabāḥīr*.<sup>543</sup> The organs from someone who has died, when transplanted into someone else who is saved, constitute charity on the part of the dead person, as the Fatwā Committee in Jordan ruled in 1984. According to the Qur'anic verse 59:9, it can be said that saving or sustaining the life of someone through giving organs (either as donation or gift or through buying and selling) is better than giving food and water, since giving an organ guarantees a person's survival more so than the simple eating of food. Furthermore, the person has a shared right to his/her body with Allāh (God). Therefore, the person who gives his/her organs to save someone else's life without endangering his own life deliberately, will get a reward for saving a life. There is no difference between saving a Muslim and non-Muslim person's life—they are both equally worth saving. All Qur'anic verses and Aḥādīth of the Prophet are very clear on the need to save human life.<sup>544</sup> Since Muslims may take organs from non-Muslims and vice-versa, it is only just and correct that Muslim and non-Muslim lives should be accorded the same priority. Indeed, there is no strong evidence stating that Muslims cannot give their organs to non-Muslims; the arguments of the scholars who have rejected such transplantation are very weak. Muslim scholars have, on the contrary, unanimously agreed to the fiqh point of view of these Qur'anic verses and the rules pertaining to the rights and duties of Muslims with respect to safeguarding all human life from peril.<sup>545</sup>

<sup>540</sup> Ch. 2:173, Ch. 5: 3, Ch. 6:118, 119, 145.

<sup>541</sup> Shaykh Ibrahim al-Ya'qūbi, *Shifā' al-Tabāḥīr wa- al-Adwā' fī Ḥukm al-Tash'rīḥ wa- Naql al-A' ḡā'*. 1<sup>st</sup> ed, 19-34.

<sup>542</sup> Ch. 5:32; Muḥammad 'Alī al-Bār, *Al-Mawqif al-fiqhī wa al-Akhlaqī min Qaḍiyyat Zar' al-a' ḡā'*, 286-305.

<sup>543</sup> Shaykh Ibrahim al-Ya'qūbi, *Shifā' al-Tabāḥīr wa- al-Adwā' fī Ḥukm al-Tash'rīḥ wa- Naql al-A' ḡā'*. 1<sup>st</sup> ed, 84; Ch. 2: 185, Ch. 4:28, Ch. 5:6, Ch. 22:78.

<sup>544</sup> Yūsuf al-Qarāḍāwī, *Fatāwā Mu'asirah*, 532-34.

<sup>545</sup> Ibid.

In the case of human body ownership, as was noted earlier, the human being has the right to manage his/her bodily organs for private or public interest. The organ donor will gain a reward from his Creator in this world and the afterlife since Allāh loves those who help others and assist humanity. Organ donation is a noble action that sustains human life and treats sickness. In order to sustain human life, God even permits us to eat pork, drink wine, and eat dead animals and so on, if nothing else is available. We can also see organ donation as transferring or sharing “stewardship” between two persons. The one thing of paramount importance however is that the donation not cause the death of the donor.

### Section 3.24 Anti-Sale and Donation Arguments

Some Sunni Muslim scholars agree upon the impermissibility and invalidity of selling a free person. Yāsīn maintains that these scholars do not consider a human being as “money”, based on the authentic Ḥadīth of the Prophet (pbuh):

Allāh, the Mighty, the Majestic said: I will be an opponent of three persons on the Day of Judgement: One who makes a covenant in My Name, but proves treacherous; one who sells a free person (as a slave) and eats the price; and one who employs a labourer and gets the full work done by him but does not pay him his wages.<sup>546</sup>

The basis for these scholars’ denial and rejection of the free person as money or property comes largely from notions of human dignity; specifically, from the Qur’ānic verse, “And assuredly we have honoured the Children of Adam.”<sup>547</sup> In this context, some scholars have considered the permissibility of buying and selling organs under necessity, as long as it does not contradict the honour of the human being.<sup>548</sup>

When it comes to human organs, scholars have agreed that they should not be conceived as “money” and therefore, should not be subject to sale. It could be said these scholars conceive all the parts of the human body as sacred and as equally honoured to the extent that to remove

<sup>546</sup> Aḥmad Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.11, 417; Muḥammad Sayyid al-Ṭanṭawī, “Ḥukm Bay‘ A ‘ḍā’ al-Insān li- ‘Uḍwīn min A ‘ḍā’ihī aw al-Tabarru’ Bihi,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 309; Muḥammad Na‘īm Yāsīn, “Bay‘ al- A ‘ḍā’ al-Ādamiyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 347.

<sup>547</sup> Ch.17:70.

<sup>548</sup> Muḥammad Na‘īm Yāsīn, “Bay‘ al- A ‘ḍā’ al-Ādamiyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 342-363.



one organ, even it serves some benefit, is tantamount to disrespecting the overall sanctity of the person.<sup>549</sup>

The Grand Mufti of Egypt, Muḥammad Sayyid al-Ṭanṭāwī, argues that man is not permitted to sell any bodily organs. He cites three major reasons:

- 1) Man's body is an edifice built by Allāh and is elevated above sale and purchase. Therefore, the commodification of human organs dishonours Allāh's creation. Sunni Muslim scholars of this view often cite Qur'ānic verses and Aḥādīth to confirm the fact that Allāh categorically prohibits the trading of human organs.<sup>550</sup>
- 2) The Creator owns human bodies; therefore, man serves only as a guardian and not an owner of his body. Some Sunni Muslim Scholars believe that since man is not an owner, any sale of his organs would be impermissible. Specifically, al-Ṭanṭāwī says that man's disposition of his body is "prohibited and considered null and void due to the fact that he improperly disposes of that which he does not own, thus evidencing lack of religion, foolishness of mind and absurdity."<sup>551</sup>
- 3) Sunni scholars put strict limits on applying the "principle of necessity" to human organ sales. The principle of dire necessity is here defined as the preservation of life as if two persons are on the same boat and one must die for the other to live, that is, the survivor is justified in having thrown the other from the boat who consequently drowned. According to this scenario, dire necessity becomes itself a law which cannot be infringed or ignored. However, these scholars hold as highly dubious the application of the principle that "necessity knows no law" to allowing human organ sales, since, in their opinion, it does not take into account that necessity is only made permissible by Allāh with divine limitations. Indeed, in their words Allāh does state that "But whosoever is driven by necessity neither lusting [*sic*] nor transgressing, for him is no sin". Yet, they point out it is not lawfully permitted in Islam for a hungry man to steal or take food from another hungry man, since this would be equivalent to eliminating harm by causing harm, similar or greater in degree. Some Sunni Muslim scholars even believe that it is "indisputable" that the sale of human organs constitutes "severe harm" to the human body, which they see as greater than the case of a man who suffers poverty, distress or need, because they state that, unlike deprivations caused by poverty, the loss of a human organ is scarcely compensated.

<sup>549</sup> Muḥammad Na'im Yāsīn, "Bay' al-A 'da' al-Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 347-8.

<sup>550</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Ḥukm Bay' A 'da' al-Insān li- 'Uḍwin min A 'da'ihi aw al-Tabarru' Bihi," in *Al-Ru'yah al-Islāmiyyah li-Ba 'd al-Mumārāsāt al-Ṭibbiyyah*, 308.

<sup>551</sup> Ibid., 309.

Interestingly, when it comes to the donation of a human organ to another person in need, some Sunni Muslim scholars do not differentiate between the two cases of donation and sale. In Al-Ṭanṭāwī's words, these scholars hold the view that both cases are impermissible on the basis that "...donation of a thing is made through its owner, but the real owner of man's body is Allāh". This affirms that man is only a guardian of his body and donation would hence be in contradiction of the Qur'ānic injunction that states, "And cast not yourselves with your hands into perdition."<sup>552</sup> Moreover, al-Ṭanṭāwī and al-Sha'rāwī have said in this regard that a "...donation of a thing is a branch of possession in the sense that you donate that which you wholly or partly own, but you do not donate a thing you do not own, and hence, donation becomes lawfully invalid."<sup>553</sup> Additionally, when it comes to "transferring" the organ of a deceased person to another we must remember that the Shari'ah "honours" the human body, whether it is living or dead, and has prohibited its abuse, disfigurement or assault in any way whatsoever. In addition, scholars such as al-Ṭanṭāwī also contend (here quoting al-Sha'rāwī) that a person and his inheritors or others cannot donate human organs whether in life or in death, because the only one who can dispose of "the body and soul" of man is the Creator.<sup>554</sup> As far as the permissibility of donating human organs after death, if it is unlawful during life for someone to donate his bodily organs because, since one does not have ownership over the body to begin with, it would even be more unlawful for that person's relatives/inheritors to donate his body after death.<sup>555</sup>

In my comments on both al-Ṭanṭāwī and al-Sha'rāwī, I would like to present four points, namely:

- 1) A man's body parts are considered as being owned by him and Allāh in a shared ownership. Blood money is not a price, but is a kind of retaliation and right. This point should be clear, since the mandatory punishment for cutting a body part is first retaliation and not blood money. It could proceed from retaliation to reconciliation, with the two parties resolving their conflict, if retaliation is hard to implement.

<sup>552</sup> Ch.2:195; Muḥammad Sayyid al-Ṭanṭāwī, "Ḥukm Bay' A 'dā' al-Insān li- 'Uḍwīn min A'dā'ihi aw al-Tabarru' Bihi," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 311.

<sup>553</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Bay' al- A 'dā' al-Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 311.

<sup>554</sup> Ibid.

<sup>555</sup> Ibid.

- 2) Secondly, Muslims believe that Allāh's ownership over all things in the universe is an established fact, as is the honouring of man as his vicegerent on earth. Therefore, all things except man can possibly become a commodity or property. In the case of property— sacrifice, withholding and giving are restricted. Moreover, all things to which man inclines, feels permissible and takes as possession and in return for which he may take something are considered his property. Hence, in this manner one can understand the difference between Allāh's ownership and man's ownership.
- 3) The third point is that, since I believe that man is both owned by Allāh and by "himself", one has to apply this rule even to the case of donation, because donation is only effected in things owned by man. Donation means giving what you possess. If you do possess something, then donating it is valid.
- 4) The fourth point is that donation should take place only in the interests of giving precedence to someone over oneself and by giving to others what one personally needs. Furthermore, altruism applies only to permissible things and there is no self-denial when it comes to what is impermissible. Moreover, it is impermissible for some agencies to purchase children from poor countries or impoverished individuals so as to use them for organ transplantation.

Similarly, 'Umar al-Ashqar presents arguments for the impermissibility of the sale of human organs, including deception and coercion. He holds the view that making organ sales permissible would be a "great evil" to Muslims from those who are in power, those who have prejudices and the wealthy— since they will procure the organs of the poor and needy with or without their consent.<sup>556</sup>

Tawfīq al-Wā'ī also offers arguments for the impermissibility of organ sales due to the sanctity of the human body; and moreover, he rejects dire necessity. Al-Wā'ī showcases the core argument for those who reject the donation and sale of human organs. Specifically, he says that by allowing the sale of organs (and thus violating the sanctity of the human body) the pro-organ transplantation camp wants to inject the aspect of dire necessity to warrant such a purchase and create a new slave trade.<sup>557</sup> He questions the idea of applying dire necessity to all cases; saying that if an accident occurs and victims are great in number, what obstacles exist now that jurists have allowed the procurement of organs? Moreover, he says, what is the necessity that arises

<sup>556</sup> 'Umar Sulaymān al-Ashqar, "Bidāyat al-Ḥayāh wa- Nihāyatuhā," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mathum al-Islāmī*, 2. , 399.

<sup>557</sup> Tawfīq al-Wā'ī, "Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur'an wa- al-Aḥkām al-Shar'īyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mathum al-Islāmī*, 2. , 400.

and makes us not only permit purchase and sale of organs with no controls, but also feel very enthusiastic about doing so? Al-Wā'ī even cautions that non-Muslims—who according to him do not believe in the invaluableity of man—have not shown any enthusiasm so far for permitting organ sales.<sup>558</sup> Specifically, he says that even when we know that the practice of organ sales is evil and the jurists have absolutely prohibited it—and also find no absolute necessity involved—we should not then permit something without first establishing a dire need. Finally, al-Wā'ī says we should not presume there is a necessity, when there is in fact none.<sup>559</sup>

Some Sunni Muslim scholars are of the opinion that the reason for the impermissibility of human organ sales stems not only from man's lack of ownership over his body, but also from the potential negative effects entailed if such sales were religiously sanctioned.<sup>560</sup> In particular, Abū al-Futūḥ maintains that the overriding reason that the Islamic shari'ah does not approve of the sale of human organs is fear of encouraging people to sell organs for money.<sup>561</sup>

Muḥammad Fayḍ Allāh argues that it is not permissible in Islam to sell a man or any of his organs, whether in life or death. In fact, such a sale would not be legitimate but would be “invalid” and should be abrogated in his view since it not admissible and not subject to the rules of proscription.<sup>562</sup> In other words, such sales would not be binding under Islamic law by money paid or conditions made. Fayḍ Allāh also cites an authentic Ḥadīth narrated by Al-Suyūṭī which indicates the prohibition against selling a free man:

“Extremely great is the sin of the seller who derives any benefit whatsoever from such sale, because the one who sells a free man unlawfully usurps a subject of Allāh, to whom nobody has a right except Allāh.”<sup>563</sup>

### Section 3.25 Arguments in favour of the Sale of Human Organs Under Necessity

#### Push/Pull factors for recipients/donors

The reasons behind the selling and purchasing, as well as donating, of human organs are too many and disparate in nature to cover in one chapter alone. However, despite this we can

<sup>558</sup> Ibid., 401.

<sup>559</sup> Ibid.

<sup>560</sup> Muḥammad Yaḥyā Aḥmad Abū al-Futūḥ, “Bay ‘ al-A‘dā’ al-Bashariyyah fī Mīzan al-Mashrū‘iyyah,” in *Al-Ru'yah al-Islamiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, no. 3, 367-69.

<sup>561</sup> Ibid., 367-69.

<sup>562</sup> Muḥammad Fawzi Fayḍ Allāh, “Al-Taṣarruf fī A‘dā’ al-Insān,” in *Al-Ru'yah al-Islamiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu‘aṣirah.3. 2<sup>nd</sup> ed, 330.

<sup>563</sup> Ibid.

divide them roughly into “push/pull” factors that operate equally for recipients and donors. These “push/pull” factors should be seen as forming a complex relationship, whereby each pushes and pulls the recipients and donors (in some cases blood relatives and in others complete strangers) in the transplantation of organs from one human body to another.

#### **Pull Factor for Recipients: Allure of Using Wealth**

Any person in the dire context of awaiting an organ/organs, who faces imminent or prolonged death, would not turn down any means at their disposal to acquire organs to save themselves. For wealthy persons “the pull” of using their economic resources and potentialities to save themselves or their loved one is just too great for many to turn down.<sup>564</sup> If a patient is in need of an organ transplant, they may be willing to pay all the money they can afford; this leads to questions regarding the permissibility of human organ sale, specifically, whether it is permissible for a man to sell part of his body or whether to sell organs from the dead.<sup>565</sup> In this regard, al-Shirbīnī says:

It is well known that a former legal opinion (*fatwā*) was released to the effect of the permissibility of a living man donating an organ of his to save the life of a patient. However, those who released this fatwa did not permit the sale of organs because procurement of an organ implies the separation of a living organ through a surgical operation, which involves certain risks.<sup>566</sup>

Many scholars are concerned that if the sale of organs is permitted, it will lead to a trade in human organs and exploitation of the poor by the rich. There may be “exploitation” on the part of some people who harp on the need of patients and doctors for organs, but, in fact, turn it into a trade in which people are exploited or assaulted for their organs.<sup>567</sup>

Below, is a summary of the four major opinions of Muslim scholars and experts on the permissibility of organ sales and donation:

---

<sup>564</sup> Mukhtār al-Mahdī, “A ‘ḍ a’ al-Insān Bayna al-Hibati wa- al-Bay’ wa- al-Akhdh bilā Waṣiyyah,” in *Al-Ru’yah al-Islamiyyah li-Ba’ ḍ al-Mumarasāt al-Ṭibbiyyah*, 3, 301.

<sup>565</sup> ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayāh Bayna al-Aṭibbā wa- al-Fuqahā,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuha wa- Nihāyatuha fī al-Mafhum al-Islāmī*, 2., 377.

<sup>566</sup> Ibid., 377.

<sup>567</sup> Ibid.

- The first opinion holds that necessity exists to warrant organ sales. Additionally, this opinion holds that the door should not be closed to organ transplantation, but kept open within fixed conditions and restrictions. This opinion also believes that donation scarcely occurs.
- The second opinion argues that donations, besides road accidents and cadavers, are all sufficient to provide organs that could be utilized for transplantation (i.e., of kidneys or other organs). The scholars who hold this opinion also recognize the importance of necessity to permit sale.
- The third opinion approves the sale and purchase of organs, so long as the permissibility of sale will consequently lead to that of purchase.
- The fourth opinion argues that the question of the permissibility of organ sale needs further study, and that it should be referred to the Islamic opinion (i.e., ad hoc administration).<sup>568</sup>

There are three reasons for an individual to resort to the sale and purchase of human organs:

1. The dire need of the patient for organs to preserve his life;
2. Since donors and those who give their organs within the limits permitted by secular law and the Islamic shari'ah are quite few, this fact alone constitutes another cause for resorting to purchase;
3. The availability of financial resources of the patient to buy organs coupled with prospective organ donors' own need for money to save their lives or those of their loved ones.<sup>569</sup> Moreover, patients in need of life-saving organs throughout the Islamic world have hardly any option other than purchase when it comes to life-saving organs when they find no proper blood relative as a donor. In

<sup>568</sup> Muḥammad Na'im Yāsīn, "Bay' al- A'dā' al-Ādamiyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 350-9; Mukhtār al-Mahdī, "A 'd a' al-Insān Bayna al-Hibātī wa- al-Bay' wa- al-Akhdh bilā Waṣiyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 3., 301-2.

<sup>569</sup> Muḥammad Yahyā Aḥmad Abu al-Futūḥ, "Bay' al- A'dā' al-Bashariyyah fī Mīzān al-Mashrū'iyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, no. 3, 365.

addition, the procurement of organs from recently dead persons outside the Islamic world has almost ceased in such countries as Kuwait, for instance.<sup>570</sup>

Al-Salāmi has moreover disclosed that when it comes to the recipient, there is full agreement that organ transplantation is permissible from one Muslim to another and from a non-Muslim to a Muslim. However, the transplanting of Muslim organs into those under Muslim protection is a matter subject to some disagreement, while the transplantation of Muslim organs into non-Muslims is not permitted.<sup>571</sup>

#### Push/Pull Factors for Donors:

##### Moral

Many people are willing to donate any organ in their body in order to save the life of a loved one, especially when faced by the harrowing experience of seeing a blood relative—say a child, brother, sister, father or mother—in dire need of a transplant. We may look upon such acts as a noble sacrifice, reflecting spiritual values and generosity, especially when there are many potential risks to the donor.<sup>572</sup> In this context, Leon Kass states that, despite his own arguments to the contrary, he would (like most people) probably make every effort and “spare no expense” to obtain a suitable life-saving organ for his child, if his own were unsuitable.<sup>573</sup> Moreover, although he is otherwise disinclined to be an organ donor, he would readily sell one of his kidneys, were the practice legal—if it were the only way to pay for a life-saving operation for his children and wife.<sup>574</sup> Consequently, Kass argues that these “powerful” feelings of love for one’s own are widely shared and for this reason they cannot be left out of any honest consideration of the motivations of organ donors.<sup>575</sup>

However, al-Mahdī maintains that the motive of a blood relative to accept the risk for the sake of a loved one does not pertain to donors without a blood relation, except in negligible

---

<sup>570</sup> Mukhtār al-Mahdī, “A ‘d a al-Insān Bayna al-Hibati wa- al-Bay’ wa- al-Akhdh bilā Waṣiyyah,” in *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 3., 300.

<sup>571</sup> Muḥammad al-Mukhtār al-Salāmi, “Zarā ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khāṣṣatan al-Mukh,” in *Al-Ru’yah al-Islāmiyyah li-zarā ‘at Ba ‘d al-A ‘ḍā’ al-Bashariyyah*, 6, 120.

<sup>572</sup> Muḥammad al-Mukhtār al-Salāmi, “Zarā ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khāṣṣatan al-Mukh,” in *Al-Ru’yah al-Islāmiyyah li-zarā ‘at Ba ‘d al-A ‘ḍā’ al-Bashariyyah*, 6, 301.

<sup>573</sup> Leon Kass, “Organs for sale? Propriety, property, and the price of progress,” in *Public Interest*, reprinted in *Intervention and Reflection*, 2.

<sup>574</sup> Ibid., 2.

<sup>575</sup> Ibid.

cases. In fact his verdict on non-blood related donors is based on purely economic and material considerations of the motivations for sale and donation of human organs.<sup>576</sup>

### Economic Factors and Organ Sales

Nancy Scheper-Hughes found that the organ donors she studied in Brazil tended to be in “desperate” situations, that is they were chronically under-employed, frequently unemployed and often tempted by the thought that somewhere out there a rich person might desire one of their organs.<sup>577</sup> In fact, there are many healthy people around the world who, as a result of a “desperate situation”, find themselves in dire need of money. Conversely, there are those individuals who, because of their “love of money” and desire to be wealthy, are willing to sell an organ for the right price. Scholars such as Professor Abū al-Futūḥ—a consultant on Law at the Kuwaiti Ministry of Health—holds that to engage in the sale and purchase of human organs is to engage in a lawful interest between the seller and purchaser, and hence, it does not contradict the Islamic sharī‘ah.<sup>578</sup>

Regarding economic factors and organ sales, I believe that some of these prospective donors are in dire need to survive and support their families and children. For example, impoverished persons who donate the organs of their deceased loved ones know that they will benefit someone but may also want to derive some benefit for themselves and their family in the process. In my view, the real problem here is not the ways in which poor people acquire money, but rather the endemic existence of poverty itself— which has so far evaded elimination. Moreover, it is a self-evident fact that people will never be economically equal on earth, since there will always be a “poor-rich gap” as Allāh says in the Qur‘ān.<sup>579</sup>

### Section 3.26 The Ethics of Organ Sales

Mukhtār al-Mahdī points out that some Western countries have decidedly settled the issue of human organ sales, with the majority having banned it altogether.<sup>580</sup> For instance, in the United States, offering human organs is prohibited if in conjunction with material benefit, based on the belief that trading in human organs is immoral. Some scholars even believe that

---

<sup>576</sup> Muḥammad al-Mukhtār al-Salāmī, “Zarā ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khāṣṣatan al-Mukh,” in *Al-Ru‘yah al-Islāmiyyah li-zarā ‘at Ba ‘d al-A ‘da’ al-Bashariyyah*, 6., 300.

<sup>577</sup> Nancy Scheper-Hughes, “Theft of life: The globalization of organ -stealing rumours”, *Anthropology Today*, vol.12, no.3 (1996): 8.

<sup>578</sup> Muḥammad Yaḥyā Aḥmad Abū Al-Futūḥ, “Bay’ al-A ‘da’ al-Bashariyah fī Mīzan al-Mashrū ‘iyyah” *al-Ru‘yah al-Islāmiyyah li-Ba ‘d al-Mumarasat al-Ṭibbiyyah*, no. 3., 366.

<sup>579</sup> Ch.43: 32.

<sup>580</sup> Mukhtār al-Mahdī, “A ‘d ā’ al-Insān Bayna al- Hibati wa- al-Bay’ wa- al-Akhdh bilā Waṣiyyah,” in *Al-Ru‘yah al-Islāmiyyah li-Ba ‘d al-Mumarasat al-Ṭibbiyyah*, 3., 298-9.



permitting such trading will be conducive to the "...emergence of markets for such needed commodities, the appearance of wholesalers and middlemen, in addition to newspaper advertisements for persons willing to sell or purchase human organs."<sup>581</sup> In this respect, Al-Mahdī states that newspaper advertisements for persons seeking to sell or purchase human organs are already appearing in India and South America—where there are regular advertisements for the sale of human organs from living people for a sum of money.<sup>582</sup> Consequently, al-Mahdī says, the United States in 1984 enacted a strict law providing for a punishment of five years imprisonment and/or a fine of \$50, 000 for anyone who engages in the sale or purchase of human organs.<sup>583</sup> Similarly, al-Mahdī also cites the case of England where it is "preferable" not to take kidneys from donors without establishing their blood relation, except in cases of dire necessity and when a kidney of a dead donor or a living relative is not available. In such situations, al-Mahdī cautions that guarantees should be made so that there is no extortion nor exploitation. That amount of money received by the donor, should not exceed the expenses needed to compensate him/her for the loss of earnings during and after the surgery when he/she stays at hospital and is unable to work.<sup>584</sup>

There are some extreme minority opinions in certain Muslim countries that deem the sale of any organ naturally impermissible because we may give an organ to an infidel whom Muslims—according to these extremists—are obliged to eradicate, not help to sustain his/her life. However, Ḥaṭḥut holds that there is no difference between the body of a Muslim and a non-Muslim, since the Prophet(pbuh), stood up in honour of a dead man's funeral procession, and when people said that it was the coffin of a Jew, he replied, "Is not he a living being?"<sup>585</sup>

Of the three options available to those who want organ transplants— purchase, donation or procurement of organs from the dead—each option carries potential drawbacks and benefits, namely:

- Purchase: Purchase and sale of the human body are permissible in my view because both Allāh and the individual own the physical body in contrast to earlier scholars' views

---

<sup>581</sup> Ibid.

<sup>582</sup> Ibid.

<sup>583</sup> Ibid.

<sup>584</sup> Ibid.

<sup>585</sup> Ḥassan Ḥaṭḥut, "Munāqa shat al-Abḥath al-Muta'alliqah bi- Zara'at wa- Bay' al-A'da", in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārasāt al-Ṭibbiyyah*, 393.

presented. Conversely, such a purchase can become illegal if it involves and causes exploitation of either the individual selling his/her organs or those who are buying.

- **Donation:** This altruistic option is permissible and generally looked upon favourably as a charitable act in Islam in comparison to organ sales; however it is not “void” of harm, whether little or great. Certain individuals, despite acting upon unselfish concern for the welfare of others, can endanger their own lives in the process of donating an organ.
- **Procurement of organs from the dead:** Some scholars have looked upon this option favourably since the deceased person no longer needs his/her organs, which can then be salvaged and transplanted into the living needy persons. However, in this matter the scholar, Muḥammad Mukhtār al-Salāmī, has contradicted himself by acknowledging that it is Allāh who owns the body and the soul, not the family of the deceased hence allowing for the procurement of organs from the dead. However, he at the same time has also said it is necessary to seek the permission of the deceased person’s relatives when procuring organs from the dead, so as to not infringe upon the rights of the person and his/her family.

### Section 3.27 Economic Issues and Social Injustice

Scheper-Hughes, in her investigation into organ-trafficking in the Third World, especially in Brazil and in Eastern Europe, has found that organ-stealing stories seem to have originated in Central and South America and later surfaced in Eastern Europe, in particular Poland and Russia. These stories often say that the body parts of poor children were being sold to rich Arabs for transplant surgery.<sup>586</sup> In Scheper-Hughes’s opinion, after analyzing these stories, the basis for these organ stealing rumours in the Third World is poor people’s perception that their bodies might be worth more to the rich if dead than alive:

In all, the organ stealing rumour has its basis in poor people’s perceptions, grounded in a social and biomedical reality that their bodies and those of their children might be worth more dead than alive to the rich and the powerful. They can all too easily imagine that their bodies, and the bodies of their young children, may be eyed longingly by those with money. As poor people in shantytowns see it, the ring of organ exchange proceeds

---

<sup>586</sup> Nancy Scheper-Hughes, “Theft of life: The globalization of organ stealing rumours,” in *Anthropology Today*, vol.12, no.3 (1996), 3.

from the bodies of the young, the poor, and the beautiful to the bodies of the old, the rich and the ugly, and from poor nations in the South to rich nations in the North.<sup>587</sup>

In addition, Scheper-Hughes says the commodification of the human body creates fear and apprehension in poor people towards organ transplantation. Specifically, she says, underlying the basic mistrust of medicine is the radical commodification of the body and of body parts; consequently, even poor and illiterate people in the world's shantytowns know that the business of organ transplantation is conducted in a trans-national space.<sup>588</sup> She says poor people are aware and acutely conscious of the global market in poor people's blood and solid organs and they also "know" of, or suspect, the existence of a covert and illegal traffic in blood and human organs existing in their own countries.<sup>589</sup>

Lastly, she looks at the idea of commodification in the form of newspaper ads placed by people who are willing to sell their organs. For instance she says, the classified sections of Brazil's major newspapers frequently carried ads in which poor people (who were ready to put religious scruples aside due to desperation and hunger) offered to sell their organs, until such ads were prohibited by the government.<sup>590</sup> Moreover, Scheper-Hughes says hospitals in Brazil have harvested organs to cancel the hospital bills of the poor, observing that:

...the rumours testify to the way that poor people's bodies are mishandled, disrespected and abused in mundane medical encounters. Not only are poor people's bodies mixed up and lost in the cemetery, making it difficult to honour the dead in small Catholic rituals of visitation, prayer, and attention to the grave, but their bodies are also mixed up and not infrequently 'lost' in the public hospitals and clinics in the city. Illiterate people carrying 'anonymous' or non-specific country names (such as Maria or Joao da Silva) are prematurely assumed to be unknown or abandoned. When they die in hospital—as they do with alarming frequency—the bodies are claimed by the State.<sup>591</sup>

### Section 3.28 Pro-Sale and Donation Arguments

Sunni Muslim jurists in the past never dealt directly with the implications of modern medical and scientific innovations, such as organ transplantation and blood transfusion.

---

<sup>587</sup> Ibid., 7.

<sup>588</sup> Ibid.

<sup>589</sup> Ibid.

<sup>590</sup> Ibid.

<sup>591</sup> Ibid., 5.

This is because such scholars could never have conceived that it would be possible one day to derive benefit from any human organ that had been separated from the body. Nor did these scholars ever imagine the possibility of benefiting from such an exchange without disrespecting human honour.

There were some parallels to draw upon, however. On the subject of the sale of human hair, past Sunni Muslim scholars stipulated that it was impermissible on the grounds of the Prophet's saying, "Allāh has cursed the woman who artificially lengthens her or someone's hair, and the one who gets her hair lengthened, both by someone else's hair."<sup>592</sup> In regard to human bones and skin, past scholars unanimously agreed on the impermissibility of their sale based on the impossibility of deriving benefit from them, except through methods that would violate the honour and respect bestowed upon man by Allāh. However, concerning the sale of woman's milk, these scholars rendered its sale permissible on the grounds that it was pure and of benefit.<sup>593</sup>

Currently, Sunni Muslim scholars can only extrapolate from past scholarly work and use their own discretion based on interpretation of the Aḥādīth and Qur'ān. Some contemporary Sunni Muslim scholars and medical doctors call for a radical "re-consideration" of past rulings on the permissibility of organ sales, since today one can certainly derive benefit from the transplantation of an organ or even blood transfusion, without sacrificing human dignity.<sup>594</sup> For example Yāsīn opposes the sale of human organs for the purpose of profit, trade or material gain, but believes some sales would be permissible today within particular limits and restrictions.<sup>595</sup> Ostensibly, Yāsīn's position would not conflict with the three main justifications applied by scholars who oppose human organ sales and deem the practice impermissible.

These scholars allow human organ sales to save patients from "al-mawt" or death and contend that the organs should be used for the purpose they were created so that there would be no harm to human dignity. Consequently, the sale of an organ should be subject to the following conditions:

- 1) It must be used for the purposes for which it was created;
- 2) It must bring no material gain, since the aim is to save the life of the patient;

---

<sup>592</sup> Muḥammad Na'im Yāsīn, "Bay ' al-A 'dā' al-Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 351.

<sup>593</sup> Ibid.

<sup>594</sup> Ibid., 352.

<sup>595</sup> Ibid.

3) It must come from a free man, who was not sold for this purpose.<sup>596</sup>

Second, these scholars say that the sale of human organs under the above-mentioned conditions would not contradict man's freedom, since if a person sells part of his/her blood or kidney they would not lose any part of their freedom.<sup>597</sup> Third, these scholars say the analogy used by certain of the scholars who oppose organ sales, that is, that the separated human organ is like that of an animal's— does not apply. Those who use this analogy of the "impermissibility" and "invalidity" of cutting out an animal's organs do so because the carcass is impure.<sup>598</sup> However, Yāsīn says that the human body, unlike the animal's carcass, is pure in all cases and his organs are also pure [whether they are separated from him or not]. Yāsīn, moreover, asserts that it is permissible to sell human organs if the purpose is to prevent a greater harm, like in the case of a person who is in need of purchasing a kidney and cannot find any other way except by selling an organ of his own and does not threaten his/her life.<sup>599</sup> In addition, such an act is permissible if the procurement of the organ will save a life from definite loss.<sup>600</sup>

Although, I personally believe it is permissible to buy and sell human organs, there are many Sunni Muslim scholars who oppose this view. Many Muslims frequently ask if it is permissible in Islam that someone may sell his/her organs in his/her lifetime or after death for the benefit of his/her loved ones, such as family and children? It is my position that the person has a right to do what he/she wants with his/her body if the action is not against the Qur'an and Sunnah of the Prophet. According to the Qur'an, a person has the ownership of his body, although it is a shared one between him/her and Allāh—who has the final ownership of this world including the person and his/her assets.<sup>602</sup> On this basis the person has a right to the blood money of his/her organs when making a decision to allow or to forgive; otherwise, it would be said or argued by offenders that he/she damaged the assets of Allāh and not someone else's body and so is not entitled to pay anything to the injured party! Furthermore, in Islam, dire necessity has its own law and that law makes exceptions in all cases. This means, the dire necessity of the person makes what would otherwise be prohibited permissible, and organ selling

---

<sup>596</sup> Ibid., 353.

<sup>597</sup> Ibid.

<sup>598</sup> Ibid., 353-4.

<sup>599</sup> Ibid., 354.

<sup>600</sup> Ibid.

<sup>602</sup> Ch. 5:45.

and buying under necessity is allowed in specific cases for life sustaining purposes, although it is completely impermissible for use in organ commercialization on a general basis.<sup>603</sup>

Organ selling and buying for the sake of sustaining life is not dishonouring, undignifying or slavery of the human being at all. Instead, it is a charitable act and a good deed since it saves another person's life and ensures their well-being. Moreover, the transplanted organs will be within another human being who is already dignified and honoured by God. So the grounds or argument that it is slavery or dishonouring of the person does not apply here. Moreover, there is no complete sale of a person or even half of a person in the context of organ sales, so the arguments of those who reject organ buying and selling on this basis are very weak here. Their argument is valid only in the case of the commercialization of human organs to make a profit (like the trade of other goods). In addition, the money which has been paid for an organ by a rich person does not hurt him/her financially in relation to what he/she will get in return. Equally, the organ transaction will be useful and of great benefit for the poor person who is selling his organs, that is, if we look at purely from an economic position. Yet, the real problem of exploitation in these transactions arises from poverty, which in my opinion is endemic and cannot be eliminated as God mentions in the Qur'an.<sup>604</sup>

Human organs vary in their value or price under Islamic shari'ah, as God has similarly indicated in the Qur'an.<sup>605</sup> Today, the prices paid for human organs are not the same. For example, in the modern world the price of a kidney in India would obviously not have the same price in Western societies. However, the overall importance lies in the satisfaction of both parties (the donor and the receiver/recipient) in the agreement or transaction, without commercialization. In fact, it does not matter whether the transaction is called a present, gift or donation or whether it is strictly referred to as buying and selling under dire necessity—religiously, what matters is that the correct conditions as stipulated by Yāsīn be in place and that both parties are satisfied with the outcome/agreement.<sup>606</sup>

---

<sup>603</sup> Muḥammad Na'im Yāsīn, "Bay' al-A 'ḍā' al-Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, (1995), 352.

<sup>604</sup> Ch. 43:32

<sup>605</sup> Ch. 5: 45.

<sup>606</sup> Muḥammad Na'im Yāsīn, "Bay' al-A 'ḍā' al-Ādamiyyah," in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, (1995), 354-7.

Yet, Yāsīn holds that there is no doubt about the impermissibility of selling a living human being's vital organs, such as the heart, since this would be tantamount to suicide.<sup>607</sup> However, the sale of human blood is permissible if the donor's health will not be harmed. Above all, Yāsīn argues that it is impermissible to sell human organs for material gain: in order to raise more money, promote trade or even with an intention of seeking fame.<sup>608</sup> Yāsīn concludes that, when judged necessary, it is permissible to sell human organs under the following six provisions:

- The sale does not contradict human dignity, in the sense that the purpose of sale is not profit, trade or circulation;
- The organ should be utilized for the function it was created;
- The sale repels harm greater than the loss of the organ;
- The sale should not contradict a shari'ah text (as in the case of "hair"), or any other shari'ah principle (such as semen);
- There is no available artificial substitute for the required organ;
- The sale and purchase should be made under the supervision of a reliable official in a specialized institution, to verify that the aforementioned conditions are fulfilled.<sup>609</sup>

### Section 3.29 Conditions of Human Organ Donation

Other Sunni Islamic scholars, namely al-Ṭanṭāwī, Jād al-Ḥaqq 'Alī Jād al-Ḥaqq and al-Qaraḍāwī hold the view that donation of a human organ from one person to another is permissible within certain situations.<sup>610</sup> Al-Ṭanṭāwī identifies three such conditions:

- 1) A reliable Muslim doctor states that the transfer of the organ would not entail serious detriment to the donor;
- 2) That the life of the recipient and recovery from an incurable disease, are both contingent upon such a transfer;
- 3) A precondition that no serious detriment to other organs may result from the transfer.<sup>611</sup>

<sup>607</sup> Ibid., 354-7.

<sup>608</sup> Ibid., 357.

<sup>609</sup> Ibid., 359.

<sup>610</sup> Muḥammad Sayyid al-Ṭanṭāwī, "Ḥukm Bay' A 'da' al-Insān li- 'Uḍwīn min A 'da' ihī aw al-Tabarr ' Bihi," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumarasat al-Ṭibbiyyah*, (1995), 314.

<sup>611</sup> Ibid., 315.

Al-Ṭanṭāwī uses the given conditions as a basis or justification for the permissibility of organ donation, because he believes the donor exercises a legal administration over the self, within the limits of two Qur'ānic verses, “And slay not yourselves, And cast not yourselves with your hands into perdition.”<sup>612</sup> Also, according to al-Ṭanṭāwī, there are scholars who support transferring organs from the deceased to the living on the condition that the, “...transfer conduces to a necessary benefit to the recipient, for which there is no alternative, and that the case be decided by a competent and reliable doctor”, and adding that, “It is a necessary procedure to seek permission from the inheritors.”<sup>613</sup> Here, al-Ṭanṭāwī, in my opinion contradicts himself by saying the human body belongs to God and on the other hand, recognizing inheritance rights and asking permission. Moreover, in cases where there are no inheritors, these scholars say that permission should be taken from the Public Prosecution or the particular Government with jurisdiction over the territory.<sup>614</sup> The scholars say that such permission taken from the Public Prosecution or authorities is not compulsory for reliable doctors to undertake a life-saving operation (i.e., the removal of an organ from a dead person so as to transfer it to a living person) in emergency cases to save a patient from imminent death.<sup>615</sup> Consequently, these scholars’ arguments are based on the famous juristic rule that the most harmful detriment is removable by the less harmful one, the lesser of two evils. In this regard, al-Ṭanṭāwī comes to five conclusions on the sale and donation of human organs:

- The more harmful detriment is represented in keeping a living man exposed to a severe illness and expected demise, whereas the less harmful detriment stands for the procurement of a human organ of a deceased person to treat another living one;
- The Sharī‘ah of Islam honours the body of man, living or dead, and prohibits abuse against it or any organ thereof;
- Man’s sale of any of his organs is lawfully invalid and prohibited. Such sale is only permissible in rare cases decided by reliable doctors, when they deem a patient’s life contingent upon that sale;
- Man’s donation of any of his organs is permissible by all jurists, but under the conditions and necessities already specified;

<sup>612</sup> Ch. 2:195.

<sup>613</sup> Muḥammad Sayyid al-Ṭanṭāwī, “Ḥukm Bay‘ A ‘dā’ al-Insān li- ‘Uḍwīn min A ‘dā’ihī aw al-Tabarru’ Bihi,” in *Al-Ru‘yah al-Islāmiyyah li-Ba’d al-Mumarasat al-Ṭibbiyyah*, (1995), 314.

<sup>614</sup> Ibid., 314.

<sup>615</sup> Ibid., 314.



- Procurement of an organ of a dead body to save the life of a living one or to cure him from an incurable disease is almost permitted within the aforementioned limits.<sup>616</sup>

### Section 3.30 Definition of Donation and Sale

Donation can be defined as a broader form of giving, as it also involves almsgiving, charity, and self-denial. Consequently, in many texts Islam highly recommends charity, altruism and offering. This principle is exemplified by the Companions of the Prophet, who were willing to sacrifice themselves for the sake of the Messenger of Allāh (pbuh). Moreover, the dictionary definition of donation as “something which someone gives to a charity” and to donate as “like blood or part of your body” can be re-contextualized here as “donate an organ to someone”, which is permissible in Islam. Moreover, the Islamic shari‘ah facilitates donation as it consolidates links and enhances ties among people, whereas sale is based upon bargain, cleverness and reciprocity.”<sup>617</sup>

Fawzi Fayḍ Allāh, a professor at the Faculty of Islamic Shari‘ah and Islamic Studies at Kuwait University, differentiates between sale and donation, stating that:

...sale and gift or donation is extremely different. That is why the sale of organs is prohibited, whereas gift-giving is permissible. They both share the element of property and ownership, that is true, but the difference is that sale involves commonness, humiliation and indifference, as proved by the existence of reciprocity, whereas a donation or gift implies esteem and honouring since a gift is offered for no return.<sup>618</sup>

Consequently, Fayḍ Allāh argues that the best way for cutting and transplanting organs is through donation and gift-giving, since they show altruism, the revival of other souls and offer a way to please Allāh.<sup>619</sup> Muḥammad al-Ashqar, for his part, rejects the link between donation, gift and sale, stating his view that “...when we compare the question of donation and that of sale, we say that donation is something other than a gift. In fact, it is not a real gift but a sort of

<sup>616</sup> Ibid., 315.

<sup>617</sup> John Sinclair, *Collins Cobuild English Dictionary for Advanced Learners* (Toronto: HarperCollins Canada, 2001), 455.

<sup>618</sup> Muḥammad Fawzi Fayḍ Allāh, “Al-Taṣarruf fī A‘dā al-Insān,” in *Al-Ru‘yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 3. 2<sup>nd</sup> ed, 402.

<sup>619</sup> Ibid., 402.

permissibility and waiver of the authority over this specific organ.”<sup>620</sup> In addition, there is no doubt that one who is permitted to give an organ as a present is also permitted to sell it.

### Section 3.31 Gift of Organs/Donation/Altruism

Al- Ṭanṭāwī has looked at donation in comparison to organ sales, commenting that:

On the other hand, as far as the question of donation is concerned, I believe that such a case is a rare one, that a man donates an organ in his body, unless in dire need. I do not donate part of my organs except to my dear ones. My body is so significant that I will not give it away irresponsibly. Perhaps I will not donate any of my organs unless I find my brother, son or dearest friend in dire need for donation. Then I place trust in Allāh and donate my organ within the conditions we and the other colleagues mentioned, that donation is made possible only when a reliable doctor expresses the opinion that it entails no appreciable harm to the donor. I say harm because each organ has a specific function. Yet, such benefits vary in degree.<sup>621</sup>

Both al-Qaraḍāwī and al-Ṭanṭāwī, along with likeminded scholars, say that Islam does not allow the commercialization of human body parts in any situation. The reasoning for this is that human organs are not like material goods since God has dignified human beings as mentioned in the Qur’ān.<sup>622</sup> Therefore, it is not permissible to equate human organs with goods in a shop. There is unanimous agreement among all scholars concerning this, but opinions differ regarding buying and selling for necessity.<sup>623</sup> People realize that certain countries, such as India, Brazil and other Third World countries are poverty stricken. As a result, some opportunists who need transplants approach the poor to purchase their organs. Al-Qaraḍāwī says Islam does not accept the buying and selling of organs since Muslim scholars have defined sale as “the exchange of assets for another assets”; but human organs in his view cannot be assets. Moreover, the buying and selling of human organs is not valid and is a prohibited transaction, except under dire necessity.<sup>624</sup> However, al-Qaraḍāwī accepts that organ sales are permissible if

<sup>620</sup> Muḥammad Sulaymān al-Ashqar, “Bidāyat al-Ḥayāh,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2. , 397.

<sup>621</sup> Muḥammad Sayyid al- Ṭanṭāwī, “Munāqashat al-Abḥāth al-Muta ‘alliqah bi- Zārā‘at wa-Bay‘ al-A ‘ḍā’,” in *Al-Ru‘yah al-Islāmiyyah li- Ba ‘d al-Mumārāsāt al-Ṭibbiyyah*, 3. 2<sup>nd</sup> ed, 405.

<sup>622</sup> Ch. 17:70.

<sup>623</sup> Muḥammad Na‘īm Yāsīn, “Bay‘ al- A ‘ḍā’ al-Ādamiyyah,” in *Al-Ru‘yah al-Islāmiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, 350-1.

<sup>624</sup> Yūsuf al-Qaraḍāwī, *Fatāwā Mu‘āṣirah*, 530-40.

a person has received a donated organ as a gift and he gives the donor some money, as a present.<sup>625</sup> For this reason, al-Qaraḍāwī wholeheartedly rejects “the bargain” between the donor and the recipient for a fixed price.<sup>626</sup>

The main problem with al-Qaraḍāwī and others who believe the same is that he, along with Al-Ṭanṭāwī and others who reject the agreement between the recipient and donor, have ignored the reality that there are not many people willing to give their organs for free. While these scholars reject and want to change the name or label of “buying and selling”, they have nevertheless accepted the involvement of money and other material benefits. For this reason, I believe that human organs cannot be goods sold like sugar, rice or spaghetti. The organ transplantation process today does not only involve Muslims, but non-Muslims as well, in terms of treatment and therapy.

Secondly, al-Qaraḍāwī says human beings cannot be sold— whether Muslim or non-Muslim. In this regard I agree with him that human beings are free; and therefore, no one can sell them. Moreover, many scholars who hold al-Qaraḍāwī’s view have cited the Prophet (pbuh) when he said, “Three people I will be against on the day of judgement are: a man who sold a free man and consumed his money...”<sup>627</sup> Basing himself on this prophetic ḥadīth, al-Qaraḍāwī adds that the sale and purchase of a free man or his organs is not allowed by any means, but acknowledges that it is acceptable to donate an organ as a gift and for a recipient to give back a limited present.<sup>628</sup> The deficiency of al-Qaraḍāwī’s arguments and initial interpretation of the ḥadīth is that there is no sale of a complete person. The abovementioned ḥadīth talks about a person who sold another person and swallowed the money; whereas a person who sells his/her organ is the one who benefits from his organ, not someone else. In addition, the Ḥadīth also does not have a direct involvement in this case, since there is no slavery or forced bondage involved in the transaction. For these reasons, I do not see any limits or restrictions placed on giving organs as gifts or receiving presents in exchange for organs. Clearly, if we look at the widespread sale and importation of blood from Western countries into Muslim countries, no one has considered this to be a process of “slavery” or the destruction of human dignity.

Finally, I can strongly assert that anyone who prohibits sale and permits donation falls into contradiction—as evidenced by the fact that sale implies exchange and ownership, while

---

<sup>625</sup> Ibid., 530-40.

<sup>626</sup> Ibid.

<sup>627</sup> Aḥmad Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. vol.4, 417.

<sup>628</sup> Yūsuf al-Qaraḍāwī, *Fatāwa Muʿāṣirah*, 534-5.

donation also implies ownership. A common Islamic rule holds that something that is sellable is donable, and something that is unsellable is not donable.<sup>629</sup> According to my understanding the opposite is also valid, namely, something that is donable is sellable and something that is not donable is not sellable. Therefore, a person cannot donate or sell what does not belong to him/her and herein lies the contradiction of those who say “you can donate, but not sell”.

### Section 3.32 Organ Sale for a Gift or Donation

Abū Al-Futūḥ also discusses the criteria for allowing the permissible transfer of human organs from one person to another in exchange for presents, but not sale:

- 1) If a person offers an organ against no material return and the recipient wants to show gratitude by offering him a present, the value of the present should be evaluated in relation to the benefit derived from the human organ. If the two values ( i.e., the price tag of the organs and the gifts) are equal, or the value of the present is greater, then such an act is called a sale, since the present is only a disguise for a sale;
- 2) If the act is done in good faith as a donation, then the action taken implies donation irrespective of the value of the present;
- 3) Although the value of organs is already measured in the Islamic shari‘ah law, people are acting within their own self-defined pricing system which varies from country to country. There is no ethical similarity or comparison at all between the rich and the poor under necessity, which is a law unto itself. The poor usually have their own standards of satisfaction in the context of their poverty to compel them to sell their organs as a means of survival. As for the rich, it could be that the rich do not see the amount of money they are paying to the poor to acquire the organs as a great sum for them.<sup>630</sup>

Important consequences stemmed from a 1985 ad hoc ruling by the Kuwaiti Ministry of Waqfs and Islamic Affairs, on justifying the sale of human organs in cases driven by dire necessity. They used the Qur’anic verse as justification, “While He hath surely detailed unto you that which he hath forbidden, unless ye are driven thereto.”<sup>631</sup> The Kuwait ruling read as follows:

<sup>629</sup> Muḥammad Ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. , 365.

<sup>630</sup> Muḥammad Yaḥyā Aḥmad Abū al-Futūḥ, “ Bay‘ al-A ‘ḍā al-Bashariyyah fī Mīzān al-Mashrū ‘iyyah,” in *Al-Ru‘yah al-Islamiyyah li-Ba’d al-Mumarasat al-Ṭibbiyyah*, 3., 372.

<sup>631</sup> Ch.6:119.

As for the patient's purchase of a kidney from another person, the rule is that such act is impermissible, because Allāh has honoured man, so it is not permitted to cut some of his organs and sell them at any price whatsoever. However, if the patient does not find a donor to give him his kidney, and his life is endangered, while he cannot find any other means to cure his illness, then purchase of organs is permissible, because then the patient is driven by dire necessity.<sup>632</sup>

Muḥammad Yaḥya Abū Al-Futūḥ, a legal adviser to the Ministry of Public Health in Kuwait, mentions three conditions derived from the Kuwaiti ruling for the permissibility of organ sale and purchase:

- If the patient does not find a donor to give him the needed organ;
- If there is a danger imperilling the life of the patient;
- If the patient does not find any other means to cure the illness.<sup>633</sup>

It is my opinion that, on the basis of necessity, the benefits and rights of a dying person are of greater importance than the rights of dead person. As a famous Somali folk saying has it, "The shoes of a dead person are better than that person". Moreover, the dignity of a dead person is less than the dignity and the value of living person.

Al- Ṭanṭāwī's justification for allowing organ transplants from the dead are based on this "lesser of two evils" principle. Specifically, he argues that organ sales are permissible when the life of a man is contingent upon this while there is no relative or anyone else to donate an organ to save his life; in this rare case, he says "it is permissible to purchase from any person to save the life of this man".<sup>634</sup> Tawfīq al-Wā'ī also cites al-Ṭanṭāwī's arguments for the permissibility of organ sale and donation, arguing that a person can also obtain organs from the dead as a last resort through purchase.<sup>635</sup>

<sup>632</sup> Muḥammad Yaḥya Aḥmad Abū al-Futūḥ, "Bay' al-A 'ḍa' al-Bashariyyah fī Mīzan al-Mashrū' iyyah," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumarasat al-Ṭibbiyyah*, 3., 372.

<sup>633</sup> Ibid., 372.

<sup>634</sup> Muḥammad Sayyid al- Ṭanṭāwī, "Ḥukm Bay' A 'ḍa' al-Insān li- 'Uḍwin min A 'ḍa' iḥi aw al-Tabarru' Bihi," in *Al-Ru'yah al-Islamiyyah li-Ba'd al-Mumarasat al-Ṭibbiyyah*, 312.

<sup>635</sup> Tawfīq al-Wā'ī, "Ḥaqqat al-Mawt wa- al-Ḥayah fī al-Qur'an wa- al-Aḥkām al-Shar' iyyah," in *Al-Ḥayah al-Insāniyyah : Bidayatuha wa- Nihayatuha fī al-Mathum al-Islāmī*, 2., 384.

Equally, ‘Abdallah Bā Salāmah contends that organ donation and sale is permissible because the process essentially transplants two parts owned by Allāh into one another.<sup>636</sup> However, some scholars say this issue may appear differently when we consider taking a kidney from the body of a non-Muslim and transplanting it into the body of a Muslim who praises, exalts and prays to Allah. Nevertheless, other scholars say this action may contribute to the salvation of the non-believer from hellfire, God willing.<sup>637</sup> Muḥammad Al-Mukhtār Al-Salāmī observes that, while jurists have disagreed regarding blood sales, Muslims residing in both the East and West currently approve of the permissibility of selling blood based on dire necessity, because surgeons cannot perform complicated or simple medical operations without the availability of blood.<sup>638</sup> Connected to the permissibility of blood under dire necessity, are related issues such as, whether it is permissible for a man to eat part of his body or another human being or a dead body out of dire necessity. Regarding this matter, many jurists hold the view that it is permissible for a person to eat the dead, so as to preserve his/her own life, citing as justification the Qur’ānic verse allowing prohibited actions out of dire necessity, “But whosoever is driven by necessity, neither alluding nor transgressing.”<sup>639</sup>

Al-Salāmī furthermore, deems organ sale and donation permissible under two conditions:

- 1) If doctors submit a report that the patient will certainly die if he/she does not receive an organ, either through donation or purchase;
- 2) Procurement of the organs does not involve or infringe on what the Prophet (pbuh) said, “Breaking the bone of the dead is tantamount to breaking the bone of the living.”<sup>640</sup>

### Section 3.33 Organ Sales under Necessity

Mukhtār al-Mahdī argues in favour of organ sales. He says that although we dislike the notion of the human body becoming a saleable commodity, if we found ourselves in a situation of dire need, we would, in all likelihood, choose to purchase on the rationale that, “necessity knows no law”.<sup>641</sup> Even if a person wishes to waive or sell a part of his/her body to a patient of

<sup>636</sup> ‘Abd Allāh Basālamah, “Munāqashat al-Abḥāth al-Muta ‘alliqah bi- Zarā ‘at wa- Bay ‘ al-A ‘da’,” in *Al-Ru’yah al-Islāmiyyah li-ba’d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah, 3., 386.

<sup>637</sup> Ibid., 386.

<sup>638</sup> Muḥammad al-Mukhtār al-Salāmī, “Munāqashat al-Abḥāth al-Muta ‘alliqah bi- Zarā ‘at wa- Bay ‘ al-A ‘da’,” in *Al-Ru’yah al-Islāmiyyah li-ba’d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah, 3., 388.

<sup>639</sup> Ch.2:173.

<sup>640</sup> Sulaymān Ibn al-Ash’ath Abū Dāwūd al-Sijistānī, *Sunan Abī-Dāwūd*. 2<sup>nd</sup> ed. vol. 1, 544 ; Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Majāh, *Sunan Ibn Majāh*. 2<sup>nd</sup> ed. vol. 1, 516.

<sup>641</sup> Mukhtār al-Mahdī, “A ‘d ā’ al-Insan Bayna al-Hibati wa- al-Bay ‘ wa- al-Akhdh bilā Wa ṣiyyah,” in *Al-Ru’yah al-Islāmiyyah li-ba’d al-Mumārāsāt al-Ṭibbiyyah*, 3., 301.

no blood relation for material compensation, we should not be so quick to denounce it, because the payment may go toward the treatment of a son who is verging upon death, for instance.<sup>642</sup> Al-Mahdī believes that Muslim religious authorities must assume more important tasks and become engaged by calling for donation after death in accordance with procedures agreed upon, such as registration in a transplant association, a medical society or joint committees to procure human organs after death, according to the will of the dead and without referring to relatives.<sup>643</sup>

Moreover, al-Mahdī also holds the opinion that calling for donation will be willingly accepted among Muslims, because donation brings life to all mankind. A donor, in saving one or more persons may thereby contribute to an ongoing charity which will reflect well on the deceased even after death.<sup>644</sup> In addition, Abū al-Futūḥ contends that because of the limited Islamic rulings on the sale of human organs, interested scholars and experts resort to “independent reasoning” to reach discretionary opinions, either from their personal vantage point or by weighing the benefits and problems from the organ sale.<sup>645</sup> Abū al-Futūḥ believes a patient’s need for an organ is, in all cases, a dire need to save his/her life and that there is nothing that lawfully prevents a patient from purchasing the organ, for a price agreed between him and the other party.<sup>646</sup> He also argues that there are exceptions in the fundamental Islamic rule of prohibition, in relation to the sale of human organs, in certain cases, which involve “dire necessity”. In particular, Abū al-Futūḥ says that the, “Islamic Shari‘ah may permit the sale of a human organ, in cases of dire necessity, where both subject and the reason of contract are lawful, and the contract becomes valid, to produce entire effects binding to both parties.”<sup>647</sup> Lastly, he also differentiates between sale (which is impermissible) and donation (which is permissible) by saying:

The reason behind the impermissibility of selling human organs is that the person receives a material reward for the organs. However, if one does not accept a payment, then his act is one of donation. This is lawfully permitted, as the reasons and the purposes are here lawful, since they extend help to a dying patient, with no return, and

---

<sup>642</sup> Ibid., 301.

<sup>643</sup> Ibid., 307.

<sup>644</sup> Ibid., 301-7.

<sup>645</sup> Muḥammad Yahyā Aḥmad Abū al-Futūḥ, “Bay‘ al-A‘ḍā’ al-Bashariyyah fī Mizān al-Mashrū‘iyyah,” in *Al-Ru‘yah al-Islamiyyah li-Ba’d al-Mumarasat al-Ṭibbiyyah*, 3., 368.

<sup>646</sup> Ibid., 368.

<sup>647</sup> Ibid.

that is why positive laws, including the Kuwaiti Law, make donation and bequeathing of human organs permissible though originally prohibiting sale.<sup>648</sup>

The scholar Al-Salāmī also makes a clear distinction between “purchasing” organs, which he deems permissible, and “selling” organs, which he deems impermissible. Consequently, he argues:

The one who purchases an organ is driven by dire necessity to preserve his life by money. On the other hand, take the person who receives money by selling a part of his body, like a kidney; I believe that it is impermissible for him to do so, as this reflects a degradation of the human soul and destruction of Islamic fabric.<sup>649</sup>

At the heart of al-Salāmī’s arguments in favour of accepting an individual’s right (out of dire necessity) to purchase organs while rejecting the selling of organs, is that he firmly believes any structure that puts a human being in a secondary rank to money, is not approved by Islam, since it contradicts the honouring of man.<sup>650</sup> In my opinion, the buyer and seller are both in dire necessity, since the buyer will not be able to obtain an organ if there is no seller. Thus, both are the same.

The difference between sale and purchase is also discussed by Muḥammad al-Ashqar who differentiates between sale and purchase, permitting the latter but not the former. According to him, the difference lies in the fact that purchase does not necessitate sale, whereas sale necessitates purchase.<sup>651</sup> Moreover, Muḥammad al-Ashqar says that that the seller should not be given the option to sell his organs in the form of an auction.<sup>652</sup> Yet, if organ selling becomes necessary, Muḥammad Al-Ashqar proposes that we follow the same procedures as blood banks, where a government agency takes over and fixes a standard price that cannot be raised nor reduced. This, in his opinion, prevents any bargain in the process and assures that someone’s rights have not been transgressed upon or exploited.<sup>653</sup> Personally, I believe both buyer and seller can be understood as being in dire necessity in this context.

---

<sup>648</sup> Ibid., 369-70.

<sup>649</sup> Muḥammad al-Mukhtār al-Salāmī, “Munāqashāt al-Abḥāth al-Muta‘alliqah bi Zarāt wa- Bay‘ al-A‘dā’,” in *Al-Ru‘yah al-Islāmiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, 3. 2<sup>nd</sup> ed, 389.

<sup>650</sup> Ibid., 389.

<sup>651</sup> Muḥammad Sulaymān al-Ashqar, “Bid‘at al-Ḥayāh,” in *Al-Ḥayāt al-Insāniyyah : Bid‘atuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 2., 398.

<sup>652</sup> Ibid., 398.

<sup>653</sup> Ibid., 398.



### Section 3.34 Necessity of Organ Sale and Purchase

‘Umar al-Ashqar contends that organ sales are permissible, saying “If an opinion is given on the permissibility of making use of organs of the dead, and that man will be rewarded for saving another one in dire need of an organ, I believe that we may open the door, or that it is permissible to sell organs...Sale is allowed provided that it does not conflict with moral dignity, in the sense that the purpose of sale is not profit or trade...”<sup>654</sup>

Similarly, Yāsīn maintains that necessity applies to both seller and purchaser, not just the purchaser, stating:

My first remark concerns those who differentiate between the seller and the purchaser in terms of necessity. I believe that most speakers allow the purchaser to buy organs under necessity, but not the seller. I do not know if they put in mind that the sellers are not Muslim and that necessity does not apply to them. If the seller is a Muslim and the buyer is also a Muslim, then why do we not apply the principle of necessity to them both?<sup>655</sup>

Yāsīn continues by elaborating further and agreeing with ‘Umar al-Ashqar’s above-mentioned arguments:

What my brother, ‘Umar al-Ashqar, has said is true: that the necessity of the seller may be less. Allow me to cite an example: Where should the mother go? The mother whose abdomen the jurists permit cutting open to take out the baby. Supposing that the baby suffers complete renal failure and needs a kidney, whereas the mother’s kidneys do not fit. She has no other choice except to obtain money by selling her own kidney. You may ask me where she should go in this case. I have said that there is a ‘complex’ for necessities under the supervision of a specialized formal institution, in the sense that it must be ascertained that a man suffers actual necessity. I have not talked or expatiated

<sup>654</sup> ‘Umar Sulaymān al-Ashqar, “Munāqashat al-Abhāth al-Muta‘alliqah bi-Zarā‘at wa-Bay‘ al-A‘dā’,” in *Al-Ru‘yah al-Islāmiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, Al-Islām wa-al-Mushkilat al-Ṭibbiyyah al-Mu‘aṣirah, 3., 400.

<sup>655</sup> Muḥammad Sayyid al-Ṭantāwī, “Munāqashat al-Abhāth al-Muta‘alliqah bi-Zarā‘at wa-Bay‘ al-A‘dā’,” in *Al-Ru‘yah al-Islāmiyyah li-Ba‘d al-Mumārāsāt al-Ṭibbiyyah*, 3. 2<sup>nd</sup> ed, 406.

on the words of my dear brothers. Yet, I have applied the principle of necessity to the seller as well as to the buyer.<sup>656</sup>

Finally, Yāsīn highlights flaws in the arguments made by certain scholars against applying the principle of necessity to the seller:

I have added the seller to the buyer in terms of necessity, as if there were a separation between both, and as if the dear brothers wonder how there could be purchase without sale. How could you allow this? You have permitted purchase. How could you permit the buyer to purchase organs? How could the buyer purchase organs? He should look upon the seller from this angle.<sup>657</sup>

Lastly, Ḥaṭḥūt argues that organ sale is permissible in order to save a life.<sup>658</sup>

### Section 3.35 Definition of Dire Necessity

In defining dire necessity, Muḥammad al-Salāmī cites those *‘ulamā’* who agree that it by “dire” is meant hopelessness, desperation, extreme danger, in other words, a fear or dread or terror; and that by necessity is meant the condition of being essential or indispensable, for example for the preservation of life. Necessity is present in cases of starvation and where there is inability to walk, ride or move, and where there is a fear of being left behind or of contracting a threatening disease.<sup>659</sup> In these cases, al-Salāmī says there may be justification for the consumption of human flesh; consequently, adding that a danger of this kind does not have to be imminent, but the mere threat of it is sufficient enough for the victim to perceive the threatened danger.<sup>660</sup>

---

<sup>656</sup> Ibid.,406.

<sup>657</sup> Ibid.,406.

<sup>658</sup> Ḥaṣṣan Ḥaṭḥūt, “Munāqashat al-Abḥāth al-Muta‘alliqah bi Zārā‘at wa-Bay‘ al-A‘dā,” in *Al-Ru‘yah al-Islāmiyyah liba‘dī al-Mumārāsāt al-Ṭibbiyyah*, no.3, 2<sup>nd</sup> ed( 1995), 393.

<sup>659</sup> Muḥammad al-Mukhtār al-Salāmī, “Zārā‘at khalāyā al-Jihāz al-‘Aṣabī wa khāṣṣatan al-Mukh,” in *Al-Ru‘yah al-Islāmiyyah li-zārā‘at Ba‘d al-A‘dā’ al-Bashariyyah*, 6., 115.

<sup>660</sup> Ibid.,115.

### Section 3.36 What is Dire Necessity in the Case of Illness?

A person under dire necessity in such circumstances is one who is caught between dying and doing a prohibited thing; in other words, to save life or to sin. In this context, the Qur'an has allowed a person to engage in a prohibited thing in order to save his life. Specifically, the Qur'an says, "Allāh has explained to you in details, what is forbidden to you except under compulsion of necessity."<sup>661</sup> The Qur'an further instructs, "Allāh has forbidden you dead animals, blood, and flesh of swine, and that which is slaughtered for idols. But if one is forced by necessity without wilful disobedience or transgressing due limits, then there is no sin on him; Allāh is most forgiving, most merciful."<sup>662</sup> The unanimous opinion of all Sunni Muslim scholars is that a person who is under dire necessity has a right to save his/her life by doing forbidden things.<sup>663</sup>

Dire necessity calls for removing difficulties and affliction from human beings and protecting their lives, wealth and religion from any destruction. In other words, necessity means destruction or a burden is weighing on human beings which is forcing them to be afraid of death or loss of parts of their bodies if he/she does not do a prohibited thing.<sup>664</sup> Moreover, dire necessity could also mean a dangerous situation that has come upon a person which has made him/her to be afraid to die, suffer the loss of an organ or of intellect. At that moment the person is allowed to commit the use of prohibited thing to save his/her life or organ. For instance, there are many things prohibited in Islam, some of which are specifically mentioned in the Qur'an.<sup>665</sup> In the ḥadīth, the Prophet (pbuh) has prohibited the eating of un-slaughtered dead animals, wild animals, birds, domestic donkeys or mules.<sup>666</sup> The Prophet (pbuh) has also prohibited mankind to eat any wild animal which bites with teeth and birds which have nails to fight.<sup>667</sup> Moreover, the Prophet (pbuh) has prohibited the eating of any wild animal which fights with teeth.<sup>668</sup> Although, the Prophet (pbuh) has prohibited the consumption of domestic donkeys, he however has allowed as a necessity the eating of horses.<sup>669</sup> All the pertinent Qur'anic verses and authentic ḥadīth which have prohibited eating or using certain things have nevertheless made exceptions to cover necessity, that is, dire necessity has made them permissible to use. When it comes to organ transplantation and dire necessity, if a trustworthy Muslim or a non-Muslim professional

---

<sup>661</sup> Ch. 6 :119.

<sup>662</sup> Ch. 2:173.

<sup>663</sup> Muḥammad al-Mukhtār al-Salāmī, "Zarā'at khalāyā al-Jihāz al-'aṣabī wa khaṣṣatan al-Mukh," in *Al-Ru'yah al-Islāmiyyah li-zarā'at Ba'd al-A'dā' al-Bashariyyah*, 6 (1994), 115.

<sup>664</sup> Wabbah al-Zuhāily, *Naẓariyyat al-Darurat al-shar'iyyah*. 4<sup>th</sup> ed, (Beirut: Al-Risalah Publication, 1985), 66-68.

<sup>665</sup> Ch.2: 173, Ch.5:3, Ch.6 :145, Ch. 16:115, Ch.6 :119.

<sup>666</sup> Muḥammad Ibn 'Isā Abu 'Isā al-Tirmidhī, *Sunan al-Tirmidhī*. 2<sup>nd</sup> ed. vol. 3, 71.

<sup>667</sup> Ibid.,71-3.

<sup>668</sup> Ibid.

<sup>669</sup> Ibid.

medical doctor has deemed that a person who is considered a potential donor will definitively die, at that moment it is allowed to procure or take that person's organs and transplant them into a needy recipient. This is because a living person is better than a dead person and, consequently, the living are accorded a higher priority than the dead. The organ transplantation in this case then becomes a charity for the donor and a good benefit for the recipient. If organ transplantation is viewed in society in such a way (and operationally it is done accordingly), then it serves the public interest. One of the most important Islamic rules is that necessity allows for the use of prohibited things; in this context, organ transplantation is justified because it will save the lives of many needy people who will otherwise die.<sup>670</sup>

There are many Islamic rules which justify organ transplantation, for instance: 1) for removing difficulties and afflictions from the people; 2) necessities allow for the use of prohibited things; 3) every affliction can be measured in its severity and impact; and 4) difficulties and burdens bring about their own solution and have their resolution built into them. All these rules show that Islam is not a static religion, but instead one which always allows people to remove their burdens and afflictions. Moreover, Islam safeguards the welfare of Muslims and serves the public interest. Sickness in Islam is considered an affliction and a burden and therefore to be gotten rid of. The Qur'an gives ample examples in this regard in the following verses: 2:286; 7:157; 22:78; 4:28—in particular, these verses show that Islam is not a static religion, but that rather it is the people who are themselves static in their interpretations and conduct. Moreover, the Prophet (pbuh) (as narrated by Imām Aḥmad) said, “Allāh has sent me with an easy religion”; as well as, “The religion of Islam is an easy religion”, and “Make religion easy, do not make it difficult, encourage people, and do not discourage people.”<sup>671</sup>

### Section 3.37 Dire Necessity

Muslim scholars have already answered the dilemma of organ transplantation from brain-dead persons under the “dire necessity” rule in Islam, which says that clear necessity permits the taking or doing of otherwise prohibited things or actions. One of the clear necessities in this case is to save someone's life who is still alive but who is dying for lack of organs due to his/her original organs having failed and become useless. There is a clear obligation to save the life of a living donor.<sup>672</sup> The prohibited action in this case is to injure the

<sup>670</sup> Wahbah al-Zuhayli, *Nazariyyat al-Darurat al-shar'iyyah* (Beirut: Al-Risalah Publication, 4<sup>th</sup> ed, 1985), 81.

<sup>671</sup> Muslim Ibn Ḥajjaj, *Ṣaḥīḥ Muslim*. 2<sup>nd</sup> ed. vol. 1 (Istanbul: Dār Sahnūn, 1992), 74.

<sup>672</sup> Ḥassan Ḥaṭḥūt, “Nihāyat al-Ḥayāh al-Insāniyyah,” in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2., 379.

brain-dead person's body in an effort to retrieve his organs to transplant into another.

However, al-Salāmī says that the question is: Is treatment for sickness or disease equal to eating under dire necessity? Ibn Taymiyyah says regarding this matter that, to take forbidden things as medication is not equal to eating un-slaughtered meat due to hunger in order to stay alive. To eat is an obligation and anyone who is under dire necessity can eat un-slaughtered meat to avert death, but we do not know if a person will get well or if the particular medication is necessary.<sup>673</sup> However, it seems that these Muslim scholars did not have enough trust in the medical professionals of their time.

It is my opinion that saving one's life by taking unlawful food or unlawful things such as medicine is analogous to organ transplantation. My evidence for this is the 'Ulamā' Council (of Saudi Arabia) Declaration No 99 (dated 6/11/1402 H.) and also the declaration of the Saudi Government No.4 (29221), which has permitted organ donation.<sup>674</sup>

Also, it is my belief that since the question of organ transplantation is basically a matter of *ijtihād*, no scholar can claim in this era that he has a clear-cut answer. Therefore, organ transplantation requires more research and more cooperation between Muslim institutions, including medical professionals and Islamic scholars (jurists, muḥaddithūn, mufasssīrūn, philosophers, theologians, and ethicists) as well as the co-operation of all the world.

### Section 3.38 Prolonging Life through Organ Transplantation

Organ transplantation must be seen as an important procedure that medical doctors have discovered to keep and maintain life within human organs, after the spirit, as well as direct consciousness, have left the body. This procedure is used so that organs may be retrieved from a person who no longer requires it and be transplanted into another person who needs them. Consequently, in their decision-making some of the 'ulamā' have said that a living person is better than the dead person as an Islamic rule; and therefore, have made it permissible to retrieve the organs of brain-dead persons.<sup>675</sup>

Contemporary societies may not permanently face this dilemma of using the brain-dead person's organs at all, since one day we may not need human organ transplantation and will instead be able to replace all human organs with synthetic or plastic ones. Moreover, we may

<sup>673</sup> Muḥammad al-Mukhtār al-Salāmī, "Nihāyat al-Ḥayāh al-Insāniyyah," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2., 454-55.

<sup>674</sup> Ibid., 459.

<sup>675</sup> Muḥammad Na'im Yāsīn, "Nihāyat al-Ḥayāh al-Insāniyyah fī Daw' al-Nuṣuṣ al-Shar'īyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn," in *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 2., 425.

make greater use of animal organs in order to protect the rights of brain-dead patients and other vulnerable people so that their organs will not be unlawfully taken while they are still alive.

Yāsīn says that if we accept the opinion that a brain-dead person cannot be considered really dead except when the heartbeat stops in addition to brain-death, this means it is impossible to perform and conduct critical organ transplantation, such as the heart and other single organs. Indeed, he maintains that to effectively salvage such organs, they must be removed while people are still alive.<sup>676</sup> Therefore, given the complexity of the matter Yāsīn criticizes any *muffī* who would give one *fatwā* saying it is permissible to transplant the heart and at the same time gives another *fatwā* saying that a brain-dead person is alive while his/her heart is still beating even though his/her brain is dead.<sup>677</sup> In particular, Yāsīn asks if these two *fatwā* are not contradictory to established medical opinion regarding brain-death and the signs of death.<sup>678</sup>

### Section 3.39 Brain-Dead Persons and Organ Retrieval

I have discussed at length what medical doctors have written about the situation of brain-dead persons. The consensus of the medical experts is that human life ends when brain death occurs. Their position is that it is permissible to benefit or take the organs from a brain-dead person in-order to transplant them into another person even though the brain dead person's overall bodily system is still functioning (including digestion, breathing, blood circulation). Medical doctors have said that it does not matter whether the brain-dead person's bodily system is functioning by itself or functioning through synthetic equipment.

---

<sup>676</sup> Ibid., 425-6.

<sup>677</sup> Ibid., 425.

<sup>678</sup> Ibid., 425.

## Chapter Four: *Ethics and Health Policy*

### Section 4.1 Ethics and Health Policy

#### Introduction

This chapter will primarily discuss the different methods and procedures proposed by various scholars to increase the availability of organs and tissue; as well as to alleviate the current high demand for organs. Some of the authors profiled discuss methods to increase organ and tissue donation which have been adopted internationally (such as presumed-consent laws in Western Europe) and some other methods that have only been adopted in the United States. However, despite these numerous proposed initiatives (some of which are already in use), there continues to be a high and growing demand for organs.

In this context, Arthur L. Caplan and his colleagues in “Ethical and Policy Issues in the Procurement of Cadaver Organs for Transplantation” advocate harvesting organs through presumed consent, if there is no prior refusal by the donor. Moreover, they insist that hospitals must pro-actively serve to facilitate the donor or his/her family’s decision to donate before death. The reason for this is that they say if hospital staff ask the donor’s family to donate organs after death, not only is this approach negative (given the circumstances) but also ultimately useless in procuring organs since the family is too preoccupied with mourning their loved one.

Aaron Spital for his part in “Mandated Choice for Organ Donation: Time to Give It a Try” that mandated choice is the best procedure to increase organ and tissue availability. As well, Spital contends that organ donation is the exclusive right of individuals, not their families or kinship. Contrary to Spital, Ann and David Klassen, in their article “Who Are the Donors in Organ Donation? The Family’s Perspective in Mandated Choice” argue for the need of rigorous research into why people, both individuals and families, reject organ donation.

Laurie G. Futterman, in “Presumed Consent: The Solution to the Critical Organ Donor Shortage?” calls for adopting presumed consent— a method used by many European countries such as France, Italy, Austria, Spain, Belgium, the Netherlands— to increase organ availability. However, R. M Veatch and J. B. Pitt in “The myth of presumed consent: Ethical problems in new organ procurement strategies” refute Futterman’s argument and state that presumed consent is based on an erroneous assumption (that is not backed by empirical evidence), namely, that people would donate if asked.

Another method advocated by some authors like Rupert Jarvis in “Join the Club: A Modest Proposal to Increase Availability of Donor Organs” is the incentive method, where financial incentives are used to increase organ and tissue availability and alleviate demand. In this regard, a similar method based on financial incentives is the commercialization and commodification model. In his article “Life or death: The issue of payment in cadaveric organ donation” Thomas G. Peters argues for such a model calling it a “financial incentive program” to increase the availability of organs. In this regard as well, Dr. ‘Abdullah Daar and Yūsuf al-Qarāḍāwī state that the financial incentive model is an acceptable procedure since it combines both morality and money through human organ transplantation as a life-sustaining treatment. In addition, Andrew H. Barnett et al in “Improving organ donation: compensation versus markets” and J. Radcliffe-Richards et al in “The case for allowing kidney sales” all argue for a pure market-based system for cadaveric organ procurement.

While on the other hand, Arthur L. Caplan and his colleagues in “Financial compensation for cadaver organ donation: good idea or anathema?” totally reject the market based model put forth by Barnett and Radcliffe-Richards for organ procurement. Lastly, Edmund Pellegrino in his article “Families’ self-interest and the cadaver’s organs: what price consent?” strongly refutes Thomas G. Peters and what he calls “death benefits incentives”.

Other scholars, whose works were extensively used in this chapter, include: Nancy G. Kutner and her article “Issues in the application of high cost medical technology: The case of organ transplantation”; Barbara A. Koenig and Linda F. Hogle’s article “Organ transplantation (re) examined?”; Donald Joralemon’s article “Organ wars: The battle for body parts”; Nancy Scheper-Hughes’s article “Theft of life: the globalization of organ stealing rumours”; Norman Daniels’s article “Comment: Ability to Pay and Access to Transplantation”; as well as J.H. Bryant and Z. Bankowski’s “The experience of CIOMS and WHO in addressing the problems of health policy, ethics and human values”; Husayn ‘Abd al-Razzaq al-Gaza’iry’s “Preface: Health Policy, ethics and human values-An Islamic perspective”; and R. W. Evans’s article “Money matters: Should ability to pay ever be a consideration in gaining access to transplantation?”. Moreover, I have also used in a complementary fashion other scholarly works (some already mentioned in previous chapters) by such authors as: Eike-Henner W. Kluge; Muḥammad ‘Ali al-Bār; Muḥammad al-Mukhtār al-Salāmi; Fazlur Rahmān; Tawfīq al-Wā‘i; ‘Isām al-Dīn al-Shirbīni; Bakr Ibn ‘Abd Allāh Abū Zayd; and al-‘Izz Ibn ‘Abd al-Salām.



## Section 4.2 Push Factors for Recipients: Self-Preservation

The chief push factor for recipients is the existential need to preserve one's life in the face of death. In Muslim and non-Muslim countries alike, there are patients and families in dire need of life-saving organs. Without these organs, these people face the prospect of certain death. For this reason, there is a very high demand for life-saving organs, but unfortunately there is also a severe critical shortage and long waiting lists for the few available organs.<sup>679</sup> Consequently, the availability of life- saving organs and the urgency for transplantation has become one of the most severe international health crises facing humanity today. It is a crisis that carries enormous implications, on the levels of both national and global health policymaking, as well as on the religious and ethical levels.<sup>680</sup>

Many national governments confounded by this crisis have come to rely upon an archaic and stringent policy of allocation based on the principle of "first come, first served". The reason for this is that the shortage of organs shows no end in sight and calls for direct decision-making about who will have priority over whom. This policy, which employs the use of national waiting lists has done little to appease the insatiable international demand for organs. Inevitably, the demand for self-preservation pushes those who are wealthy and desperate to use the financial means at their disposal to seek extra-judicial avenues in order to procure organs for themselves. Though this action is illegal, the fact remains that wealthy patients are not willing to risk the perilous vagaries of waiting for "their turn", which could take years. Therefore, wealthy patients have sought to circumvent the public system through private clinics and hospitals and, of course, through direct contact with private donors to hasten their access to life-saving organs.<sup>681</sup> Given the sheer number of those willing to sell their organs for profit (out of economic hardship and other donor "push/pull" factors) and those awaiting organs for transplant this would seem a most appropriate recourse of action.<sup>682</sup> However, this is not a question only of self-preservation; it has important moral and ethical consequences for both the potential recipient and donor. This case presents dilemmas which cannot be easily ignored by any religious person or secular authority, in particular by Muslims.<sup>683</sup>

---

679 'Iṣām al-Dīn al-Shirbīnī, "Munāqashat al-Abḥāth al-Muta'alliqah bi-Zarā'ati wa-Bay' al-A'ḍā", in *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Munārasat al-Ṭibbiyyah*, 377.

680 Ibid., 377.

681 'Iṣām al-Dīn al-Shirbīnī, "Munāqashat al-Abḥāth al-Muta'alliqah bi-Zarā'at wa-Bay' al-A'ḍā", 377; Mukhtār al-Mahdī, "A'ḍā' al-Insān Bayna al-Hibati wa-al-Bay' wa-al-Akhdh bilā wa-ṣiyyah", 300-1.

682 'Iṣām al-Dīn al-Shirbīnī, "Munāqashat al-Abḥāth al-Muta'alliqah bi-Zarā'at wa-Bay' al-A'ḍā", 377.

683 Ibid. 377.

### Section 4.3 Organ Commercialization and Human Dignity

The purchase and sale of human organs and blood are generally prohibited in Islam, the overriding reasons being to protect the existence of the human race and human dignity from slavery in the form of commercialization. Human beings in Islam are seen to have value, dignity and sanctity; and therefore, it is necessary to protect this sanctity and dignity from commercialization. On this basis, human body parts cannot be bought or sold under commercial terms. However, under necessity people who are in need of organs can obtain them through the process of donation and gift (which falls under charity) from those who are willing to give their organs, seeking a reward from God in good faith.<sup>684</sup> In my opinion, the selling and buying of human organs under dire necessity to save lives does not infringe upon human value, dignity and sanctity; this scenario is quite different from commercialization which can lead to a new kind of human slavery and turn human beings into commodities, to be sold and bought.

### Section 4.4 Ethics of Organ Transplantation

The interdisciplinary field of bioethics has its origins in formal analyses, primarily philosophical and legal in nature. The appropriate use of end-of-life medical technologies dominated in its early period and drew from de-contextualized, analytic-philosophical models of autonomy, beneficence, and justice. Similarly, Dr. Husayn ‘Abd al-Razzaq al-Gazā’iry—who was the former Minister of Health for the Kingdom of Saudi Arabia, the first President of the Supreme Council of the Arab Board for Medical Specializations, and recent WHO regional director for the Eastern Mediterranean—in his article “Preface: Health Policy, Ethics and Human Values-An Islamic Perspective” defines the abovementioned ethical terms in the following manner:

1. Human dignity: a human being should be treated and respected as a person, which is to say as an individual who has rights to claim and duties to perform. Moreover, patients have the right to know all the detail relating to their illnesses, to receive the proper treatment, to have their medical secrets safeguarded, and to obtain adequate care;
2. Beneficence: beneficence involves an additional value, namely the conviction that one should at all costs fulfil one's duty towards one's brothers and sisters in humanity and care for them, particularly those who are weak or helpless, in the same way that one would care for oneself;

---

<sup>684</sup> Bakr Ibn ‘Abd Allāh Abu Zayd, *Fiqh al-Nawāzil*, 61.

3. Justice: justice means equity in meeting needs and in delivering care. In the area of health, justice is reflected in maintaining (as much as possible), equality in the distribution of health resources and the provision of preventive and curative opportunities, without discrimination with regard to sex, race, belief, political affiliation, social or intellectual level, age, or other considerations.<sup>685</sup>

Today, there is no denying that sophisticated medical technologies save lives; however, these advances have also generated complex economic, social and ethical problems.<sup>686</sup> This is because organ transplantation is not only a high-cost technology, but it also involves a scarce resource which is donated in life or death by other human beings. There is a huge potential risk to compromise quality of life as well as the patient's survival.<sup>687</sup>

Apart from the enormously high cost of organ transplantation, there is also its potential to create public-policy chaos since the current high demand for transplant procedures is coupled with the supply-side constraint of organ availability. The basic problem is that there are just too many people in need of organs and not enough organs to go around.<sup>688</sup>

Organ-transplant technology also depends on more than the skills of medical personnel or those with a huge stake in the transplant industry (i.e. health care providers or policymakers); it also depends on an adequate supply of viable human organs.<sup>689</sup>

Many scholars see deep-seated ethical questions surrounding cadaver and live-organ donation. For example, they ask when a potential donor is defined as dead what protections are taken to protect him in such a powerless state? As well, who safeguards the rights of disabled people from exploitation? There are also various issues concerning consent and physicians' ethical responsibilities towards their patients. J.H. Bryant and Z. Bankowski in their article "The experience of CIOMS and WHO in addressing the problems of health policy, ethics and human values" mention that Edmund Pellegrino made an enormous contribution in this context when he defined the major ethical terms included in their title, namely that:

---

<sup>685</sup> H. A. Gaza' iry, "Preface: Health Policy, Ethics and human values-An Islamic perspective" *The Islamic Organization for Medical Sciences (IOMS) and The Council for International Organizations of Medical Sciences (CIOMS)*, (1988), 1-2. <http://www.islamsat.com/ethics/cioms/index.html>; Barbara A. Koenig and Linda F. Hogle, "Organ transplantation(re) examined?" *Medical Anthropology Quarterly, New Series*, no. 3. vol. 9 ( 1995), 395.

<sup>686</sup> Nancy G. Kutner, "Issues in the application of high cost medical technology: The case of organ transplantation," in *Journal of Health and Social Behaviour*, vol. 28, no. 1(1987), 23.

<sup>687</sup> Ibid., 23-27.

<sup>688</sup> Barbara A. Koenig and Linda F. Hogle, "Organ transplantation (re) examined?" in *Medical Anthropology Quarterly, New Series*, vol. 9, no.3( 1995), 396.

<sup>689</sup> Nancy G. Kutner, "Issues in the application of high cost medical technology: The case of organ transplantation," in *Journal of Health and Social Behaviour*, vol. 28, no. 1(1987), 23.

1. *Health policy*: is a nation or a community's strategy for controlling and optimizing the social uses of its medical knowledge;
2. *Human values*: are the guides and justifications people use for choosing the goals, priorities and means that make up that strategy;
3. *Ethics*: acts as a bridge between health policy and values. Ethics examines the moral validity of the choices that must be made and seeks to resolve conflicts between values, which inevitably occur in making those choices.

Moreover, Pellegrino further elaborated three general purposes that motivate health policies, namely:

1. To attempt to control the social and economic impact of the unrestrained use of advanced medical technology in treating individual patients;
2. To achieve a more equitable distribution of the benefits of medical knowledge;
3. To use medical knowledge in an anticipatory way for the collective good of present and future generations.

Lastly, Byrant and Bankowski in their article also discuss Robert Veatch—who like Pellegrino focused his attention on the interactions between health policy and values. Veatch pointedly argues that not only does policymaking “logically” require a system of values (which for the large part are determined by culture), but that such value systems play at least four different roles:

- First, value systems provide a framework for choosing among policy alternatives. It requires taking different feasible options and deciding which among them is the most valued pursuit, according to the ethical and other values of the group;
- Second, value systems provide the framework for choosing who the policymakers will be. To choose the decision-maker is to choose the value system upon which decisions will be made;
- Third, value systems are critical even in providing the medical and other facts upon which health-policy decisions must be based. The cultural system of beliefs is critical for deciding which facts will be taken into account and how they will be used for purposes of policymaking;

- Fourth, value systems are critical in determining what the possibilities are for intercultural cooperation in health.<sup>690</sup>

### Section 4.5 Dangers of Organ Retrieval (Medical Team)

In my view death is the end of a person's life on earth, but not of his/her organs. Organs which have been removed from a dead person and transplanted into another person now belong to the receiver and are not related to the donor—who is already dead. Even though this person is dead, his/her organs may live on for many years in another person's body.

Al- Shirbīni—along with other medical and religious scholars— has said that organ transplantation procedures are permissible if they take place under the following conditions:

- 1) They are beneficial for the receiver; and
- 2) The organ retrieval does not pose a danger to the donor. However, there is no medical doctor, Muslim or non-Muslim, who can give a 100% guarantee when it comes to transplanting an organ from one patient into another. There are severe risks entailed in organ transplantation procedures, both for donors and receivers.<sup>691</sup> <sup>L42</sup>

The medical doctor must be a professional who has the enormous responsibility of treating and preserving the lives of his patients the best way he can. Nevertheless, according to Islam, no one can save or take a life without the permission of Allāh, since Allāh says in the Qur'ān that, “and no person can ever die except by Allāh's leave and at an appointed time.”<sup>692</sup>

It is my educated belief, as well, that in Islam the saving of a soul from death may well require all kinds of treatment needed to sustain life. Organ transplantation in effect is life-sustaining treatment. Most of the *fatāwā* of modern Muslim scholars allow a living person to donate one of his/her organs in his/her lifetime. Saving a soul as stipulated in this verse can also be done through economic means and all charitable actions such as donating money (i.e., to the

<sup>690</sup> J.H. Bryant and Z. Bankowski, “The experience of CIOMS and WHO in addressing the problems of health policy, ethics and human values”, *Islamic Organization for Medical Sciences*, (1988), 2-4. <http://www.islamset.com/ethics/cioms/papers.html>; Nancy G. Kutner, “Issues in the application of high cost medical technology: The case of organ transplantation” *Journal of Health and Social Behaviour*, vol. 28, no. 1(1987), 28.

<sup>691</sup> ‘Iṣām al-Dīn al-Shirbīnī, “al-Mawt wa- al-Ḥayāt bayna al-Aṭibbā wa- al-Fuqahā,” in *Al-Ḥayāt al-Insāniyyah : Bidāyatuhā wa- Nihayatuha fī al-Maḥmūd al-Islāmī*, 2., 358-9.

<sup>L42</sup> See Appendix

<sup>692</sup> Ch. 3:145.

sick or poor to save their lives). However, there are certain questions when it comes to donating one's organs (for example, through a will) after death so as to benefit those who are still living.

Al-Qaraḍāwī for one has encouraged Muslims to give consent to donating their organs. Pointing out that once a person is buried he/she will decompose after a few days as the earth consumes the body and worms eat the flesh. Therefore, he says if someone can possibly benefit from donated organs, the donor will receive rewards from his Creator, since Allāh says in chapter 5:32 of the Qur'an, "Whoever saved one life is as if he saved all human beings".<sup>693</sup>

Connected to this is the question of what ethical concerns would arise if a person's guardians decide to donate his/her organs after death seeking to get religious rewards or even financial ones so as to take care of person's children. Moreover, some European countries have already legislated presumed consent when it comes to organ donation; consequently, this has allowed the removal of organs from a dead person if that person did not explicitly state an objection in writing.<sup>694</sup> Among the European countries that have presumed consent laws when it comes to organ donation are France, Italy, Belgium, Holland, Spain and Portugal.<sup>695</sup> At the same time, some other countries, have gone in the other direction. The United States, for instance, has since 1986 forbidden the taking of organs from a person who has not given permission by signing a donation card.<sup>696</sup> Here too, the debate over presumed consent continues, although it is used in medical institutions. Moreover, some other countries have required the permission of the person's close family members before any organ donation is made.<sup>697</sup>

#### Section 4.6 How to increase organ availability

It is my strong conviction that there are many ways in which to increase organ availability and reduce the cases of organ shortages. Consequently, the whole problem of organ shortage could be solved in a number of ways, for example:

---

<sup>693</sup> Yūsuf al-Qaraḍāwī, *Fatawā Mu'aṣirah*, 532.

<sup>694</sup> Arthur L. Caplan, "Ethical and policy issues in the procurement of cadaver organs for transplantation," 142-146; Arthur L. Caplan, C. T. Van Buren and N.L. Tilney. "Financial compensation for cadaver organ donation: Good idea or anathema?" , 219-223; 'Iṣām al-dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayāt bayna al-Aṭibbā wa- al-Fuqahā," 359.

<sup>695</sup> Arthur L. Caplan, "Ethical and policy issues in the procurement of cadaver organs for transplantation," 142-146; Arthur L. Caplan, C. T. Van Buren and N.L. Tilney. "Financial compensation for cadaver organ donation: Good idea or anathema?" , 219-223; 'Iṣām al-Dīn al-Shirbīnī, "Al-Mawt wa- al-Ḥayah bayna al-Aṭibbā wa- al-Fuqahā," 359.

<sup>696</sup> Arthur L. Caplan, "Ethical and policy issues in the procurement of cadaver organs for transplantation," 139.

<sup>697</sup> Ibid., 139.

1] **Through education and public awareness:** By conveying the need for organs through the media, religious lectures and programs that highlight the benefits of altruism, donations, charity and rewards in the hereafter. Such an effort could work to increase organ donation positively. Even though encouraging organ donation via altruism is based on the respect for individual rights, it may not be the sole policy relied on in increasing organ availability. For example, al-Qaraḍāwī maintains that if a person who is suffering can possibly benefit from donated organs, then the donor will get rewards from his Creator, since Allāh says in the Qurʾān, “Whoever saved one life is as if he saved all human beings.”<sup>698</sup>

2] **Greater efficiency:** Increased levels of efficiency of health professionals and administrative systems and their collaboration among themselves, as well as educating the public on the merits of donating organs for life-sustaining purposes before death.

3] **Health professionals:** Health professionals can play a major role to mediate the decision-making process for organ donation by the donor. Yet, they have to be careful because if families of dead persons have been approached at the time of death and asked to donate the organs of their deceased loved ones, their response will usually be negative.<sup>699</sup>

4] **Mandated choice:** Having a policy of “mandated choice” entails asking competent mature healthy adults to make decisions about whether or not they want to donate their organs after death. Aaron Spital, a chief proponent of mandated choice, believes that it is the best procedure to decrease the shortage of organs and get consent from each person, not just from their families. Since organ donors will record their own wishes, doctors will deal directly with the individuals concerned as opposed to families—which is preferable. However, Ann and David Klasser disagree with Aaron Spital on mandated choice. In their opinion mandated choice has high moral, societal and financial costs and instead they suggest other ways of studying why people would first reject the option of organ donation.<sup>700</sup>

5] **Presumed consent:** Having a system of “presumed consent” in which individuals are assumed to be potential donors right after death unless they have clearly refused to be organ donors. Some European countries, such as France, Austria, Spain, Italy and Belgium, have used

<sup>698</sup> Ch.5:32; Yūsuf al-Qaraḍāwī, *Fatāwā Muʾasirah*, 532; Eike-Henner W. Kluge, “Organ donation and retrieval: Whose body is it anyway?”, 388-89.

<sup>699</sup> Arthur L. Caplan and Daniel H. Coelho. “Introduction: Part Two Policy,” 140.

<sup>700</sup> *Ibid.*, 140.

presumed consent for many years.<sup>701</sup> Laurie G. Futterman believes that presumed consent is the most effective way to realize autonomy and achieve a fairer and more protective system for organ procurement.<sup>702</sup> In contrast to Futterman, Veatch and Pitt believe that presumed consent is based on an erroneous assumption which expects that people will donate their organs.<sup>703</sup>

6] **Incentive method:** One procedure that has been proposed to increase organ availability is use of incentives. For instance, Rupert Jarvis advocates a policy where admission to future transplant lists will be conditional on registration as a potential organ donor.<sup>704</sup>

#### **Section 4.7 Western Opinions on Paid Incentives**

Thomas G. Peters proposes an idea, which is supported by ‘Abdullah Daar and Yūsuf Al-Qaraḍāwī, that a "death benefit" of \$1000 be paid to the estate of a donor or his family in order to avoid human body commodification.<sup>705</sup> Peter says the \$1000 death benefit would encourage the donor and his or her family, as well as increase the moral obligations of donors and their family members.<sup>706</sup> Ideas such as this of mixing donation with incentive and rewarded gifting are gaining support in the circles of medical professionals. Still, some others, such as Pellegrino, call this mixing idea a cover-up for human body commercialization.<sup>707</sup>

#### **Section 4.8 Financial Aid for Buying organs**

Al-Qaraḍāwī says it is impermissible to donate money or financial aid to someone in order to buy organs, because the buying of human organs is not permitted in Islam. He says this is like allowing a millionaire who is able to buy a complete person to do so; obviously we cannot accept this as permissible.<sup>708</sup>

#### **Section 4.9 My Critique of Al-Qaraḍāwī and Others**

In my opinion, there is no credible evidence proving that a person cannot buy an organ or cannot collect money to buy an organ for life sustaining treatment. All human lives have

---

<sup>701</sup> Ibid., 140.

<sup>702</sup> Laurie G. Futterman, "Presumed Consent: The Solution to the Critical Organ Donor Shortage?", 161-172.

<sup>703</sup> R. M. Veatch, and J. B. Pitt. "The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies," 173-182.

<sup>704</sup> Arthur L. Caplan and Daniel H. Coelho. "Introduction: Part Two Policy," 141.

<sup>705</sup> Thomas G. Peters, "Life or Death: The Issue of Payment in Cadaveric Organ Donation," 196-204; J.R. Chapman and M. Deierhoi, and C. Wight, *Organ and Tissue Donation for Transplantation*, 29-33; Yūsuf al-Qaraḍāwī, *Fatāwā Muʿāṣirah*, 530-33.

<sup>706</sup> Thomas G. Peters, "Life or Death: The Issue of Payment in Cadaveric Organ Donation," 196-204.

<sup>707</sup> Arthur L. Caplan and Daniel H. Coelho. "Introduction: Part Three Commodification," 194.

<sup>708</sup> Yūsuf al-Qaraḍāwī, *Fatāwā Muʿāṣirah*, 540.



sanctity and there is no difference between knowledgeable or ignorant people: a human being is a human being. Furthermore, al-Qaraḍāwī approves the purchase of organs from organ banks which prepare and sell organs for those who need them, similar to medications and drug treatments.<sup>709</sup> So, al-Qaraḍāwī, by recognizing and allowing for those who need organs to buy from organ banks, contradicts his previous prohibition of buying human organs. He also overlooks the high demand for human organs and why medical institutions established these banks in the first place. People are dying as a result of not having these organs, and if Muslim scholars say that one must only find a free organ, many more people will surely die.

Moreover, if al-Qaraḍāwī permits the buying and selling of organs from institutions, specifically from organ banks— which have been established by commercial concerns that engage in collecting organs as a means of making money— then why does he then reject the idea that the person who owns an organ can personally obtain money for its sale, yet makes it permissible for companies to sell organs and benefit from the sales?<sup>710</sup> It would seem appropriate that the person who owns the organ must get the benefit of the organ and in fact this may even be cheaper than buying from a commercial company.

Why moreover, should banks get these organs free and use them to generate income and profit from their sale? Already, human organs are directly exposed to the procedure of buying and selling, as organs have become commercialized in various ways. What will happen to human organs in the near future is an open question. Today, we see a tumultuous situation where medical technology is developing and advancing in rapidly changing human societies. What is certain is that the need for human organs will greatly increase in the future. If Muslim governments legalize the collection of all organs from people who have died in accidents, would that legalization be acceptable? Al-Qaraḍāwī and his colleagues say such a legalization is beneficial and necessary because there is such a high demand for these organs and any relevant legislation is important.<sup>711</sup>

#### **Section 4.10 Sustaining Life as Part of Human Dignity in Islam**

Allah says: “We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation.”<sup>712</sup> L43

---

<sup>709</sup> Ibid., 534.

<sup>710</sup> Ibid., 534.

<sup>711</sup> Ibid., 537.

<sup>712</sup> Ch.17 : 70.

Muḥammad ‘Ali al-Bār argues that the exceptional status of human dignity comes from the fact that man is the vicegerent of Allāh on earth, as stated in the Qur’ān.<sup>713</sup> As evidence, he cites the specific Qur’ānic verses, “Behold thy Lord said to angels: I will create a vicegerent on earth” and “He fashioned man in due proportion and breathed into him something of His spirit.”<sup>714</sup> He also says the progeny of Adam was honoured by Allāh since in the Qur’ān it says, “We honoured the progeny of Adam, provided them with transport on land and sea, given them for substance things good and pure, and conferred on them special favours above a great part of our creation.”<sup>715</sup>

Likewise, Allāh says in the Qur’ān: “On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if anyone saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our apostles with clear signs, yet, even after that, many of them continued to commit excesses in the land.”<sup>716</sup> L44

#### Section 4.11 Organ Retrieval and Procurement

Muḥammad al-Salāmī says that, according to medical experts, once “dead”, donated organs do not recover and are useless for transplant purposes. Thus, he says they must be removed while the donor is alive and this is the reason for the debate in both religious (ethical) and medical (practical) circles regarding organ transplantation.<sup>717</sup> But al-Salāmī contradicts himself here since he rejects and does not recognize brain-death as a complete death; instead he says that the brain-dead person is alive and permits the taking of organs while the organs are still alive.<sup>718</sup>

Moreover, al-Salāmī divides donated organs into four categories:

- 1.Primary organs (essential for life): such as the heart(single);
2. Secondary organs (essential for life): such as the lungs, kidneys and eyes (pairs);

---

<sup>L43</sup> See Appendix

<sup>713</sup> Ch.2:30.

<sup>714</sup> Ch.2:30, Ch.15:29-31.

<sup>715</sup> Muḥammad ‘Ali al-Bār, *Al-Mawqif al-fiqhī wa al-Akhlaqī min Qaḍiyyat Zar ‘ al-A ‘da’*, 161; Fazlur Raḥmān, *Health and Medicine in the Islamic Tradition*, 106-9.

<sup>716</sup> Ch. 5:32.

<sup>L44</sup> See Appendix

<sup>717</sup> Muḥammad al-Mukhtār al-Salāmī, “Zar ‘at khalāyā al-Jihāz al-‘Aṣabī wa- khāṣṣatan al-Mukh,” 119.

<sup>718</sup> Muḥammad al-Mukhtār al-Salāmī, “Nihāyat al-Ḥayat al-Insāniyyah,” 451; Muḥammad al-Mukhtār al-Salāmī, “Munaqashat al-Abḥath al-Muta ‘alliqah bi- Zar ‘at wa- Bay ‘ al-A ‘da’,” 389.

3. Secondary organs (not crucial for life): such as hands and legs;
4. Various parts of the body: such as skin and other tissues.<sup>719</sup>

Although al-Wāḥidī rejects brain death as a complete death, nonetheless, he accepts organ donation and transplantation.<sup>720</sup> This is because Sunni Muslim scholars have given permission in the form of a religious decree or *fatwa* allowing for organ donation, retrieval, procurement and transplantation of animal organs into human beings and for human transplantation of organs from one person into another person under specific conditions.<sup>721</sup> For example, if the organ donor is a living person that person must be (1) in full possession of all his rational or intellectual faculties, be mature, alive, and capable enough to know his best interest; (2) that person must not harm his own life by donating his vital organs and the procedure must not pose a harm to the person directly or indirectly or to the lives of dependents i.e. wife, children, parents and other immediate family members; (3) there must be a “dire necessity” for organ donation, where the person has no hope of surviving without receiving those organs to save his/her life; (4) there is no other substitute for the human organs such as synthetic organs, plastic organs or animal organs that can do the job as well as human organs.<sup>722</sup> Retrieval and procurement of organs from dead persons (including brain-dead persons), so as to transplant their organs into living persons who are facing death, is allowed since it is a “dire necessity” according to the above-mentioned religious decree. The procedure seems to be approved in the Qur’an:

On that account: We ordained for the Children of Israel that if anyone slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our apostles with clear signs, yet, even after that, many of them continued to commit excesses in the land.<sup>723</sup>

Organ retrieval and procurement can therefore be seen as part of helping the needy person facing imminent death or prolonged illness ending in death. I believe that the greater

<sup>719</sup> Muḥammad al-Mukhtār al-Salāmī, “Zarā‘at khalāyā al-Jihāz al- ‘Aṣabī wa- khāṣṣatan al-Mukh,” 106.

<sup>720</sup> Tawfīq al-Wāḥidī, “Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar‘iyyah,” 481.

<sup>721</sup> Ibid., 481.

<sup>722</sup> Tawfīq al-Wāḥidī, “Ḥaqīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar‘iyyah,” 481.

<sup>723</sup> Ch.5:32.

right of the living person overrides that of the dead person.<sup>724</sup> This is not about disrespecting the dead; the overriding interest here is to save the life of a person who is going to die unless he/she receives those organs.

#### Section 4.12 Family Consent

When it comes to harvesting organs, there is widespread belief that in addition to permission from the donor, consent must also be obtained from the people who are dependent on the donor. For example, if a man wants to donate an organ his wife must give permission and vice versa. The immediate family members must also give permission to their father, mother, brother, son and daughter, because if the donor suffers in the future due to complications stemming from his actions, the dependent members of his family will also suffer. Therefore, they have the right to oppose his organ donation. Neglecting to obtain this permission is an infringement of the rights of the dependents.<sup>725</sup> Such an opinion is held by al- Qaraḍāwī, al- Ṭanṭāwī, Jād al-Ḥaqq, al-Salāmī, and ‘Abd al-Basīṭ.

Others, like Al-Wāḥidī, reject the notion of family consent, insisting that the potential donor is the only one who must give his/her consent for organ donation in his lifetime.<sup>726</sup> Al-Wāḥidī says the only reason for asking permission from the dead person’s family and his/her close kin to remove the organs in order to transplant into another person is to make the donor’s family happy and satisfied so as to avoid bad consequences (*fitnah*).<sup>727</sup> He not only believes that family members do not have a right to give or reject the taking of the dead person’s organs; but also that there is no problem in keeping the donor and his organs alive in order to transplant them. Moreover, he supports keeping these organs on ice so as to transfer them from one country to another- so long as they are protected from being damaged.<sup>728</sup>

Though the principles of Islam do not stand in the way of being an organ donor or receiver and Muslims can and do carry donor cards, there are however, arguments among Muslim scholars about whether the next-of-kin of a dead person can donate the deceased person’s organs if the person’s permission is lacking. There is also no unanimous decision that donated organs must be given freely without reward, but only that the commercialization of organs is prohibited.

<sup>724</sup> Tawfiq al-Wāḥidī, “Ḥaḳīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar’iyyah,” 481.

<sup>725</sup> Yūsuf al- Qaraḍāwī, *Fatawā Mu ‘aṣirah*, 533.

<sup>726</sup> Tawfiq al-Wāḥidī, “Ḥaḳīqat al-Mawt wa- al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar’iyyah,” 481.

<sup>727</sup> Ibid., 481.

<sup>728</sup> Tawfiq al-Wāḥidī, “Ḥaḳīqat al-Mawt wa al-Ḥayāh fī al-Qur’ān wa- al-Aḥkām al-Shar’iyyah,” 481.

As an example of Western opinion, Nancy Kutner says public apprehension over organ donation influences public policy to the extent that even though the Uniform Anatomical Gift Act does not require doctors to get family approval for the removal of organs, surgeons usually seek family consent even when a signed donor card is available.<sup>729</sup>

#### Section 4.13 Moderate Opinions on How To Increase Organ Availability

There are some common-ground opinions and proposals between the two extremes when it comes to getting permission for organ donation and retrieval. Such opinions include having:

- 1) Presumed consent;
- 2) Routine removal legislation;
- 3) Donor family compensation plans or rewarded gifting.<sup>730</sup>

We have seen that a number of Western countries have legislated presumed consent laws.<sup>731</sup> Moreover, all these countries permit healthcare professionals (doctors, nurses, hospital administrators) to procure organs from patients, including brain-dead patients, if there is no prior objection from the deceased.<sup>732</sup>

Routine removal laws would do the same as presumed consent laws by taking organs if there is no prior objection from the person, but these laws come into effect only after family members have been given the right of informed refusal.<sup>733</sup>

Rewarded gifting, in the form of loan cash payments, such as are given to living kidney donors, is another option. However, the word may also be used for other proposed financial compensation, which might be given to next of kin who agree to donate their relatives' organs. These are known as pre-established "death benefits"—in the form of payments of funeral expenses or donations to a charity of the family's choice.<sup>734</sup> A criticism levelled at this type of payment is that it violates the ethics of altruism and charity, and will lead to something called "incentive claims"—which will encourage organ sales at market price.<sup>735</sup>

The unavailability of organs for those who need them and the issue of organ

---

<sup>729</sup> Nancy G. Kutner, "Issues in the Application of High Cost Medical Technology: The Case of Organ Transplantation," in *Journal of Health and Social Behaviour*, vol. 28, no. 1(1987), 27.

<sup>730</sup> Thomas G. Peters, "Life or Death: The Issue of Payment in Cadaveric Organ Donation," 200; Laurie G. Futterman "Presumed Consent: The Solution to the Critical Organ Donor Shortage," 161-172.

<sup>731</sup> R. M. Veatch and J. B. Pitt, "The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies," 175.

<sup>732</sup> R. M. Veatch and J. B. Pitt, "The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies," 174-175; Laurie G. Futterman, "Presumed Consent: The Solution to the Critical Organ Donor Shortage," 165-166.

<sup>733</sup> R. M. Veatch and J. B. Pitt, "The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies," 179.

<sup>734</sup> Edmund D. Pellegrino, "Families Self-Interest and the Cadaver's Organs: What Price Consent?", 205; Thomas G. Peters, "Life or death: The Issue of Payment in Cadaveric Organ Donation," 196-204.

<sup>735</sup> Thomas G. Peters, "Life or Death: The Issue of Payment in Cadaveric Organ Donation," 198-199.

procurement are major dilemmas of the present era. Many critics argue that, while “donor cards” are an excellent educational medium and certainly help facilitate the activities of transplant coordination, they are not an effective means of “substantially” increasing the supply of organs for transplantation. Consequently, some have called for a policy of “presumed consent” under which organs can be legally removed from brain-dead individuals unless they carry a “refusal card” or unless family members object.<sup>736</sup> However, the advocates of presumed consent would still require that the consent of the family be obtained in cases concerning brain-dead persons.<sup>737</sup>

Many experts credit presumed consent with increasing organ availability.<sup>738</sup> For example, Kutner mentions that, as of 1985, thirteen countries in the world had presumed-consent laws and their ability to supply cadaver organs needed for transplants was significantly greater than that of the United States.<sup>739</sup>

Yet, opinion polls in the U.S. indicate that more than 50 percent of Americans support a policy termed “required [professional] request” or “routine inquiry” requiring hospital personnel to ask next-of-kin about organ donation when the treating physician determines that brain-death has occurred and that medical interventions should cease.<sup>740</sup> The supporters of routine inquiry believe that grieving families can derive significant psychological reward by exercising the organ donation option and therefore, the required request policy can serve dual functions.<sup>741</sup> However, physicians and nurses may fear upsetting family members, since they know that organ retrieval will involve aggressive procedures that seem inherently disrespectful to the deceased patient.<sup>742</sup> Nonetheless, states that have enacted “required request” laws have seen an average increase of 100 percent in organ and tissue donations.<sup>743</sup>

#### Section 4.14 Presumed Consent

Scheper-Hughes says that while a presumed-consent-based system of organ donation operate quite well in countries where civil society is strong and where democracy is consolidated (such as in Belgium and Austria), it does not work as well in unequal societies:

---

<sup>736</sup> Nancy G. Kutner, “Issues in the Application of High Cost Medical Technology: The Case of Organ Transplantation,” 27-8.

<sup>737</sup> Ibid., 27.

<sup>738</sup> Ibid.

<sup>739</sup> Ibid.

<sup>740</sup> Ibid. 27-8.

<sup>741</sup> Ibid., 28.

<sup>742</sup> Ibid.

<sup>743</sup> Ibid., 32.

...In large, complex, and conflict-oriented nations like Brazil, the United States and South Africa, where sharp social, ethnic, and class-based inequities divide the nation into almost predictable 'classes' of likely donors and likely organ recipients, and where the risks and the benefits of medical technology are not randomly distributed, presumed consent can only generate a kind of existential terror and ontological insecurity in the already fragile sense of 'ownership' over one's own body.<sup>744</sup>

Specifically, Scheper-Hughes cites the horrendous case of how so-called "presumed consent" is used in South Africa to harvest organs from the victims of homicides and car accidents, which carries the potential of human rights violations.<sup>745</sup> She says in some parts of South Africa, the corneas, heart valves, livers and skin grafts are harvested from the victims of violent deaths, without the knowledge or consent of family members. The body parts are distributed to the appropriate surgical and medical units in public and university teaching hospitals, for use in transplantation.<sup>746</sup> Scheper-Hughes adds that in light of these "semi-licit mortuary practices", it is possible to understand the circulation of organ stealing and selling rumours that circulate among the less well educated members of societies marked by vast inequalities in the distribution of medical technologies and medical care.<sup>747</sup>

#### Section 4.15 Ethical Problems with Presumed Consent in America

Scheper-Hughes points out that the ethical problem of "presumed consent" for organ retrieval from cadavers is not limited to countries like Brazil and South Africa where "vast" segments of the population are illiterate or semi-literate. In fact, she says that in the United States, unknown to most Americans, James Childress found that:

The legal structure and the laws regarding organ harvesting from cadavers in the United States are marked by inconsistencies regarding rights holders, whether [these are] the individual while alive or the family after the individual's death.<sup>748</sup>

---

<sup>744</sup> Nancy Scheper-Hughes, "Theft of Life: The Globalization of Organ Stealing Rumours," in *Anthropology Today*, vol.12, no.3(1996), 9-10.

<sup>745</sup> Ibid., 9.

<sup>746</sup> Ibid.

<sup>747</sup> Ibid., 10.

<sup>748</sup> Ibid.

Moreover, Scheper-Hughes comments that in practice “the state” often assumes rights over cadavers presumed to be “abandoned” by kin. Additionally, there exists a “presumption of consent” in the U.S. to the “routine removals” of corneas, skin grafts, pituitary glands and other body parts from the dead under ordinary circumstances, without informing the next of kin based on a presumption of consent.<sup>749</sup>

In some parts of the United States, again according to Scheper-Hughes, doctors can harvest organs without the family’s consent and the failure of kin to express any disagreement is based on lay people’s ignorance of these routine hospital and morgue practices.<sup>750</sup> As an example, Scheper-Hughes cites a case in California where no one knew—except a visiting transplant surgeon from Oman, ‘Abdullah Daar—that doctors were not prohibited by state laws from “salvaging” corneas from deceased patients without requesting permission or even informing next of kin.<sup>751</sup>

#### Section 4.16 Commodification

Since the 1980s many members of transplant institutions have encouraged the idea of financial incentive programs asserting that money and morals can be combined in human organ transplantation. There are two arguments in support of this belief:

- 1] Libertarian: the individual’s autonomy protects the right of the donor to dispose of his/her body parts in any fashion.
- 2] The sale of cadaveric organs is an acceptable procedure if it guarantees more organs will be available to save more lives. Some scholars believe in the validity of both arguments. In any case, human organ commercialization will remain a controversial subject.<sup>752</sup>

A frequently asked question is: Is it possible to mix commercialization and altruism in human body parts? The mixing idea comes from within the transplantation institutions. For example, al-Qaraḍāwī and Daar call for “rewarded gifting” or donation between non-related

---

<sup>749</sup> Ibid.

<sup>750</sup> Ibid., 10.

<sup>751</sup> Ibid., 10.

<sup>752</sup> Arthur L. Caplan and Daniel H. Coelho, “Introduction: Part Three Commodification,” In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 193-195 (New York: Prometheus Books, 1998).



organ donors and recipients.<sup>753</sup> The compensation of donors could be managed by cultural, social, and religious regulations in Muslim countries, which are applicable in the whole world. Al-Qaraḍāwī has also issued a *fatwa* stating that "rewarded giving" or "donation with incentives" is acceptable.<sup>754</sup> Similarly, Daar's proposal declares the use of rewards to be an acceptable incentive which serves as a good faith for all.<sup>755</sup>

In "rewarded gifting", the idea is to offer a \$1000 "death benefit" incentive to the families of the dead person. Thomas Peters has proposed that such a financial incentive in the form of death benefits for families would increase donation.<sup>756</sup> On the other hand, Edmund Pellegrino stresses that Peters' rejection of donation and altruistic motivation could have a wide-reaching detrimental effect on the future supply of donated organs.<sup>757</sup>

Pellegrino believes that the death-benefit incentive would be inherently suspicious and an ethically questionable method. He believes that education and an altruism program will solve the demand for organs.<sup>758</sup> Andrew Barrett and his colleagues do agree with Pellegrino's rejection of the death benefit incentive program to increase organ availability. However, this is because they believe that the incentive is not sufficient and advocate a market-based system of cadaveric organ procurement as the only solution to solve the organ shortage. Consequently, Barnett et al. say the market-based system is the only practical and ethical way to increase organ availability.<sup>759</sup>

For their part, Caplan et al condemn the use of an incentive— be it death benefits, compensation or part of a market based system— for cadaveric organs as an unacceptable method which endangers the autonomy of individuals and leads to commercialization and commodification.<sup>760</sup> They also say that such a model threatens the fundamental rights of poor people as well as the basic values of human life, respect and self-esteem. Moreover, they say a market based approach to organ procurement faces strong opposition from many religious groups who condemn commercialization and commodification.<sup>761</sup> Lastly, Caplan et al say the use of financial incentives would also further reduce organ availability by causing the collapse of

---

<sup>753</sup> Donald Joralemon, "Organ Wars: The battle for body parts," in *Medical Anthropology Quarterly, New Series*, vol. 9, no.3 (1995), 336-345.

<sup>754</sup> Yūsuf al-Qaraḍāwī, *Fatāwā Mu'asīrah*, 534-535.

<sup>755</sup> Donald Joralemon, "Organ wars: The battle for body parts," 345.

<sup>756</sup> Thomas G. Peters, "Life or Death: The Issue of Payment in Cadaveric Organ Donation," 196-204.

<sup>757</sup> Edmund D. Pellegrino, "Families Self-Interest and the Cadaver's Organs: What Price Consent?", 205-207.

<sup>758</sup> Donald Joralemon, "Organ Wars: The battle for body parts," 345-47.

<sup>759</sup> Ibid. 346-7.

<sup>760</sup> Arthur L. Caplan and Daniel H.Coelho, "Introduction: Part Three Commodification," 194.

<sup>761</sup> Ibid.194.

organ donation.<sup>762</sup>

The controversies about human organ commercialization and commodification will continue to dominate the bioethics literature. Also, the debate around the controversy, as well as the role of economics and paying death- benefit incentives will have an effect on organ availability positively or negatively.

Money will play an important role in access to organ transplants. Roger W. Evans sees money as critical given the competing health and social needs.<sup>763</sup> However, Norman Daniels believes that making scarce health care services available to only those who can afford to pay is a morally and ethically unacceptable method under any circumstances.<sup>764</sup> Daniels and Evans both maintain that there will be an ongoing battle centred around economics, values and ethical issues related to organ transplantation.<sup>765</sup>

Those in America who advocate for organ markets despite the Transplantation Act tend to see its potential in increasing the availability of organs for transplant, as Kutner mentions:

Theoretically, a market system of organ procurement could operate simultaneously with an altruistic system of organ donation, but it is difficult to imagine that individuals or families would not want to receive compensation for organs if others were benefitting financially. An alternative would be to give tax credits to individuals who donate or to families whose relatives are post-mortem donors or to offer a savings in health care costs for healthy adults who make promoter commitments to cadaver organ donations.<sup>766</sup>

However, Kutner adds that even these policies could raise legal, administrative, ethical and social questions that would be difficult to resolve and that the “market model” does not seem to offer a “workable” solution to the problem of organ shortage, particularly in the United States.<sup>767</sup> Moreover, Kutner calls for the need by medical professionals for clear ethical norms and procedures to be followed when organs are retrieved, since the medical staff may need emotional support.<sup>768</sup>

---

<sup>762</sup> Ibid.194.

<sup>763</sup> R. W. Evans, “Money Matters: Should Ability to Pay Ever Be a Consideration in Gaining Access to Transplantation?”, 231-241.

<sup>764</sup> Norman Daniels, “Comment: Ability to Pay and Access to Transplantation,” 242-246.

<sup>765</sup> Arthur L. Caplan and Daniel H.Coelho, “Introduction: Part Three Commodification,”195.

<sup>766</sup> Nancy G. Kutner, “Issues in the Application of High Cost Medical Technology: The case of organ transplantation,” 29.

<sup>767</sup> Ibid., 29.

<sup>768</sup> Ibid., 28.

## Section 4.17 Organ Transplantation and the Social Contract

Scheper-Hughes also maintains that organ transplantation takes place within “specific” historical, social, medical and political contexts and that transplantation depends on a “social contract” and social trust.<sup>769</sup> Accordingly, national and international laws are needed which protect the rights of potential organ donors, living and dead.<sup>770</sup> Moreover, Scheper- Hughes says that organ donation requires a transparent process of informed consent; however, this situation is not prevalent in many countries where transplantation is primarily from poor bodies into rich ones.<sup>771</sup>

## Section 4.18 Improving the Success Rate of Transplantation

Donald Joralemon argues that health professionals face certain problems associated with organ transplantation especially those of lowering the barriers between community and medical values and increasing organ availability.<sup>772</sup> In my opinion the difficulty lies in how to educate people about the importance of organ transplantation and thereby convince them to make their organs available for transplantation. Doctors also must find ways to protect individual rights in regard to organ transplantation. It is crucial to discuss these problems relating to biomedicine, bioethics, ethics, transplantation and organ donation.

The success of organ transplantation is also greatly dependent on the development of specific drugs designed to reduce organ rejection.<sup>773</sup> One of these drugs, Cyclosporine (first produced in the 1980s), allows physicians to reduce the body’s rejection of foreign tissue, which can have life-threatening side effects.<sup>774</sup> Because early results of organ transplants were impressive, particularly of vital organs (such as the heart and liver), successful heart and liver transplant surgeries increased yearly.<sup>775</sup> Needless to say, research is ongoing, and the success rate of transplants continues to improve each year.<sup>776</sup>

---

<sup>769</sup> Nancy Scheper-Hughes, “Theft of Life: The Globalization of Organ Stealing Rumours,” in *Anthropology Today*, vol.12, no.3(1996), 10.

<sup>770</sup> Ibid., 10.

<sup>771</sup> Ibid., 10.

<sup>772</sup> Donald Joralemon, “Organ Wars: The battle for body parts,” 336-345.

<sup>773</sup> Ibid., 335-356.

<sup>774</sup> Ibid., 335-356.

<sup>775</sup> Nancy Scheper-Hughes, “Theft of Life: The Globalization of Organ Stealing Rumours,” 10.

<sup>776</sup> Ibid.,10.

## Section 4.19 The Black Market in Organs

Another reason for the continuous cultural rejection of organ transplantation is the perceived black market in organs. Various authors have discussed international cultural hesitation over the purpose of organ procurement.<sup>777</sup> Organ procurements could potentially violate human rights, especially those of vulnerable people.<sup>778</sup> That is to say, wealthy people could travel to other countries to obtain cheaper organs. The second issue is specific cultural rejection of organ transplantation. This is largely due to perceptions that human bodies are abused and exploited, especially those of brain-dead persons. Joralemon cites Willard Gaylin who in his article "Harvesting the Dead" noted that many medical students and researchers (as well as pharmaceutical companies) practice on brain-dead persons by testing manufactured drugs for toxicity by experimenting on brain-dead people.<sup>779</sup> Some of these experiments even involve "therapeutic collection of regenerative fluids and tissue (i.e., blood, marrow, semen, ova, etc.) and for the removal of organs as needed."<sup>780</sup>

In 1984, America prohibited the sale of organs in the National Organ Transplantation Act (as Public Law 98-507).<sup>781</sup> Since 1984, 20 countries have similarly banned and criminalized the sale of human organs.<sup>782</sup> These examples clearly show the ideological battle over the human body and organ transplantation. There are still however contradictory ideologies in Western societies regarding the subject, with one side insisting that harvesting human organs for life-saving use is a valid action, while the other opinion maintains the opposite.

## Section 4.20 Social Equity

Many potential kidney transplant candidates are not able to undergo the procedure because of a shortage of usable organs. This is due to two influential factors: patients' socio-economic status and race.<sup>783</sup> The guidelines of the American Medical Association state that human organs should be allocated purely on a medical basis, but social equity issues are still a

---

<sup>777</sup> Donald Joralemon, "Organ Wars: The battle for body parts," 339.

<sup>778</sup> Ibid. 339.

<sup>779</sup> Ibid.

<sup>780</sup> Ibid.

<sup>781</sup> Ibid.

<sup>782</sup> Ibid.

<sup>783</sup> Nancy G. Kutner, "Issues in the Application of High Cost Medical Technology: The Case of Organ Transplantation," 29.

factor in the allocation of organs.<sup>784</sup> The basic prerequisites for transplantation are supposed to be:

- 1) The patient's need for the procedure;
- 2) Their ability to "do well" with the particular available organ.<sup>785</sup>

However, the latter consideration creates difficulty since patients with a history of prior mental, emotional, or family problems are less likely to receive transplants. The justification for this is the claim that stable personal and family lives are essential to transplant success, and that organs should not be wasted in high-risk rejection situations. There have been legal and ethical criticisms against these stringent and discriminatory selection criteria. Kutner, for example, cites one such critique:

To what extent should patient-selection decisions be based on general evaluations of emotional stability, as a factor in survivability, or upon specific criteria (such as the presence of a stable home life, or absence of past psychological treatment) that may well exclude some of the handicapped? <sup>786</sup>

#### Section 4.21 Economic Status

Economic inequalities also affect access to differential financial resources to obtain organ transplants. For example, many have observed that, although the Task Force on Organ Transplantation in the U.S. strongly advocates that transplant centres not give favoured access, there have still been allegations that certain medical institutions, on obtaining organs for rich recipients, receive large financial contributions. Moreover, it has also been noted that a patient's financial status can affect transplant success, because financial resources influence a patient's ability to travel to and spend time at distant medical facilities that specialize in the treatment of certain types of patients and diseases.<sup>787</sup>

---

<sup>784</sup> Ibid., 29.

<sup>785</sup> Ibid.

<sup>786</sup> Ibid., 30.

<sup>787</sup> Ibid.

## Section 4.22 Race and Nationality

Race becomes a factor in the U.S. due to the fact that blacks and other people of colour are often over-represented among the less-well-off. In addition, there is the question whether non-immigrant aliens in the United States should have access to organs.<sup>788</sup> Those who are against non-immigrant aliens having access to transplants, argue that scarce organs should be reserved for U.S. citizens, especially because the donors are Americans and federal tax dollars are used in organ procurement.<sup>789</sup> As Kutner says, those in favour argue that persons from other countries are willing to spend large sums to receive transplants and thereby benefit the U.S. economy; additionally, they contend that furnishing a specialized medical service to patients from countries that lack these services is a humanitarian service and beneficial to the image of the U.S., abroad.<sup>790</sup>

## Section 4.23 Margaret Lock on Equity Issues

The work of Western authors, like Margaret Lock, on organ procurement and health policies all over the world, and specifically how it relates to issues such as the black market in organs and cultural rejection and doubt about organ transplantation from brain-dead persons, show that it is largely caused by discrimination on the basis of economics, politics, race, culture and nationality. Nor do all societies accept organ transplantation as a medical treatment, unless all the equity and social injustice issues are first resolved. For instance, Lock—a prominent anthropologist and bioethicist—who has compared the global perspectives on death and the related politics of human body parts, specifically in Japan and North America, consistently advocates in *Twice Dead: Organ Transplants and the Reinvention of Death* the injecting of equity and ethics into processes of organ procurement and transplantation. In my view these equity-related issues in organ transplantation can only be resolved through political, cultural and social justice for all. The resolution of all these issues, therefore, as Lock explains, requires the application of ethics, morals and justice all over the world without any distinctions being made on the bases of class, race or gender. Moreover, given the prevalence of commercialization and commodification in the procurement of organs there is an urgent need to remedy these societal injustices, especially in relation to vulnerable populations.

---

<sup>788</sup> Ibid., 30.

<sup>789</sup> Ibid.

<sup>790</sup> Ibid.

#### Section 4.24 Commercialization

Muslims in Canada and throughout the world need assurance that there will be no attempt to sell human organs or to develop a specific market to sell them as we often see or hear happening in other less developed countries where human body parts are sold to medical students on a for-profit basis without any regulation or precautions. Muslim societies, hospitals and governments in particular should keep in mind the famous Ḥādīth of the Prophet (pbuh), that “the breaking of the dead person’s bone is equal to breaking the bones of the living”—which goes to show that the dead person’s body must be respected as the living.<sup>791</sup>

#### Section 4.25 Muslim Views on Organ Donation Legislation

The determination of death—leaving aside the guidance of Qur’ānic verses or Prophetic tradition—ultimately depends on human opinion on the part of medical experts and Islamic scholars. The process of death itself can vary from a short period to a very long time. The decision often depends on the stoppage of breathing, the heartbeat and brain stem death. Brain-death has conditions and particular signs that have been agreed upon by professional medical doctors as a result of many years of study; therefore, it is best left to specialists to decide when to remove all artificial life support from a brain-dead person and remove organs as a part of treatment for life-sustaining purposes.<sup>792</sup>

#### Section 4.26 Islamic Teachings on Medical Treatment

Allāh is seen as the “Ultimate Healer,” as Prophet Ibrahim (pbuh) said when arguing with his people about the omnipotence of Allāh “Allāh created me and it is He who guides me, who gives me food and drink, and when I am ill, He cures me.”<sup>793</sup> Allah also “insinuates” the treatment for illness by ascribing for instance, a healing potential to the honey produced by bees: “...there issues from within their bodies a drink of varying colours, wherein is healing for me...”<sup>794</sup> We know moreover that our bodies produce antibodies to protect us against disease and other harmful infections. These above-mentioned Qur’ānic verses confirm the body’s natural auto-defence in discovering cures for illnesses. But Muslims should also seek treatment because, as the Prophet (pbuh), is quoted to have said, on the authority of ‘Usamah Ibn Shurayk,

<sup>791</sup> Tawfīq al-Wā‘ī, “Ḥaqīqat al-Mawt wa- al-Ḥayāt fī al-Qur’ān wa- al-Aḥkām al-Shar‘iyyah,” 482.

<sup>792</sup> Mukhtar al-Mahdi, “Niḥayat al-Ḥayāt al-Insāniyyah,” 342; ‘Iṣām al-Dīn al-Shirbīnī, “Al-Mawt wa- al-Ḥayāt bayna al-Aṭibbā wa- al-Fuqahā,” 360.

<sup>793</sup> Ch.26:78-81.

<sup>794</sup> Ch.26:78-81.

when a Bedouin asked him whether he should seek treatment, “ Yes, servants of God seek treatment...”<sup>795</sup>

Regarding the Muslim patient, it should be noted that every human being is bound to get sick at some point. However, unlike non-believers a Muslim person should not panic when afflicted with any sickness or crisis because of his faith in the mercy and help of God. In Islam the Muslim person when sick is encouraged to seek the best treatment in accordance with the advice of the Prophet (pbuh) and to accept that there is a cure to every disease. The Muslim patient should also endeavour to always stay positive and assist the doctors who are attempting to find a cure to his ailment.

#### Section 4.27 Human Sanctity

It is prohibited by Islam to harm, mistreat, dishonour or violate the dead body, whether it is that of a non-Muslim or a Muslim cadaver, without a good reason.<sup>796</sup> The dissection of a dead person's body is not generally allowed in Islam, without necessity (*ḍarūrah*).<sup>797</sup> The dead person has sanctity, whether Muslim or non-Muslim. Some of the important reasons, which allow dissection of the human body, are: the foetus of a dead pregnant woman, or valuable items (gold or money), which someone swallowed. Al-Zuhayfī concludes that:

According to the rulings, any kind of dissection or surgical operation that has been done on a dead person, in answer to necessity, is permissible. For instance, dissection for the recognition and differentiation between innocents and criminals, in order to reach the truth of the real wrongdoers, or dissection for gaining knowledge, learning medicine, and similar cases is permissible. According to the Islamic principles, it is also permissible in order to establish justice (‘*adh*’) and to avoid injustice (*ẓulm*) from happening to innocent people and to ensure that the guilty do not escape from punishment. Yet, although such dissections are permissible in Islam, they must be performed under necessity, within boundaries and without violating the rights of the dead.<sup>798</sup>

---

<sup>795</sup> Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Mājāh, *Sunan Ibn Mājāh*, 1137-38; Muḥammad Ibn ‘Isā Abū ‘Isā Al-Tirmidhī, *Sunan al-Tirmidhī*, 383; Sulaymān Ibn al-Ash‘ath Abū Dawūd al-Sijistānī, *Sunan Abī-Dawūd*, 331.

<sup>796</sup> Muḥammad ‘Alī al-Bār, *Al-Mawqif al-fiqhī wa- al-Akhlaqī min Qaḍiyyat Zar ‘ al-A ‘da’*, 162.

<sup>797</sup> Ibid. 162.

<sup>798</sup> Bakr Ibn ‘Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*, 23; Fazlur Raḥmān, *Health and Medicine in the Islamic Tradition*, 106-9; Wahbah Zuhayfī, *Naẓariyyat al-Ḍarurat al-shr‘iyyah*, 81.



It is obligatory for the medical doctor performing the procedure to replace as much as possible of the dead body's organs to their proper position and correctly mend the body. That means that dead body's parts must be collected and the incision closed by sewing it up and shrouding the body.<sup>799</sup> In the Qur'an, Allāh says:

Who made all things good, which He created and He began the creation of human from clay, then He made his seed from a draught of despised fluid. Then He fashioned him and breathed into him of His spirit, and He appointed for you hearing and sight and hearts. Yet small thanks do you give for it? <sup>800</sup>

Allāh says, "We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation."<sup>801</sup>

Human life is sacred, as human beings are the most honoured creatures on earth; moreover, human beings are dignified in death and life.<sup>802</sup>

#### Section 4.28 My Comments

Saving one person's life is equal to saving the lives of all humanity. As Margaret Lock persuasively argues: organ donation is a benevolent act to assist people urgently in need; therefore, human organs should by all means be donated. However, at the same time it should not be prohibited to buy organs, if the needy person cannot find any other means to save his/her life. Moreover, any person who financially supports the needy will be rewarded by God. What is prohibited in Islam is to sell human organs for the purpose of commercialization and commodification, in other words, for profit. The reasons for these prohibitions are many and include: 1) it will lead to human slavery; 2) materialization; 3) poor people will become the victims; 4) the wealthy will become sole beneficiaries; and 5) the dignity of mankind and the sanctity of human life will be lost.

Seeking medical treatment is recommended, since the Prophet of Islam (pbuh), encouraged Muslims to obtain cures for sickness, although it remains the individual person's

<sup>799</sup> Wahbah al-Zuhayfi, *Nazariyyat al-Darurat al-shr'iyyah*, 80-1; Bakr Ibn 'Abd Allāh Abū Zayd, *Fiqh al-Nawāzil*, 23.

<sup>800</sup> Ch. 33:7-9.

<sup>801</sup> Ch. 17:70.

<sup>802</sup> Wahbah al-Zuhayfi, *Nazariyyat al-Darurat al-shr'iyyah*, 80; Fazlur Raḥmān, *Health and Medicine in the Islamic Tradition*, 106-9.

responsibility to decide whether or not to search for treatment, including organ transplantation.<sup>803</sup> However, there are boundaries to the use of human organs, such as sustaining the life of another person, without violating the deceased. Some conditions have been previously mentioned. The Prophet of Islam, peace be upon him, said, “Breaking the bones of the dead is like breaking the bones of the living.”<sup>804</sup> It is quite clear that the organ transplant process should be used for internal organs, not the external. Moreover, it is obvious that doctors, who perform organ procurement, must do their best to keep the organs useful and beneficial for recipients.

#### Section 4.29 Seeking Treatment

Al-‘Izz Ibn ‘Abd al-Salām said: “Medicine similar to Shari‘ah is for human benefit, as well as being in the public interest and useful for human treatment and protection from diseases and sickness.”<sup>805</sup> Within the principles of rules in the Islamic religion, seeking treatment is permissible and is subject to, “the knowledge of necessity.” Therefore, seeking treatment (be it organ transplantation or medication) is allowed and permitted, in order to protect human existence and continuity.

As Bakr Abu Zayd records in his book *Fiqh Al-Nawazil*, treatment should be sought:

1. To maintain present health;
2. To restore lost health, as much as possible;
3. To reduce sickness, as much as possible;
4. To carry out less risky treatment, in order to achieve greater benefit, and prevent greater danger.<sup>806</sup>

#### Section 4.30 The Position of Islam in Seeking Treatment

The Prophet of Islam (pbuh) was quite explicit in saying that people should “search for treatment.”<sup>807</sup> This Prophetic Ḥadīth is a general command, and includes every kind of treatment. He provided many examples of this belief in his own life, as is recorded in these *Aḥadīth*, among others:

<sup>803</sup> Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Majāh, *Sunan Ibn Majāh*, 1137; Muḥammad Ibn ‘Isā Abū ‘Isā al-Tirmidhī, *Sunan al-Tirmidhī*, 383.

<sup>804</sup> Sulaymān Ibn al-Ash‘ath Abū Dāwūd al-Sijistānī, *Sunan Abī-Dāwūd*, 544; Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Majāh, *Sunan Ibn Majāh*, 516.

<sup>805</sup> Al-‘Izz Ibn ‘Abd al-Salām al-Sulami, *Qawā‘id al-Aḥkām fī Maṣāliḥ al-Anām*, 4.

<sup>806</sup> Bakr Ibn ‘Abd Allāh Abū Zayd, *Fiqh al-Nawazil*, 21.

<sup>807</sup> Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Majāh, *Sunan Ibn Majāh*, 1137; Muḥammad Ibn ‘Isā Abū ‘Isā al-Tirmidhī, *Sunan al-Tirmidhī*, 383.

1. Ibn ‘Abbās said, “The Prophet of Islam has done blood letting on his head...”<sup>808</sup>
2. Jābir Ibn ‘Abdillahi visited someone when he was sick and said to him, “I am not leaving here until you have blood letting, because I heard the Prophet saying, ‘In it is a cure.’”<sup>809</sup>
3. Anas bin Mālīk narrated that the Prophet, said, “The best thing you can do to treat yourself is blood letting and al-Qiṣṭul baḥrī [al-Qiṣṭul baḥrī is an Indian tree used to treat sickness in the 7<sup>th</sup> century and a term transmitted through the above Ḥadīth of the Prophet].”<sup>810</sup>

Ibn Ḥajar notes, in relation to this practice that bloodletting allowed sickness to leave the body.<sup>811</sup> It was widely used in the time of the Prophet (pbuh), and is still practiced in many Muslim countries.

4. Sahl Ibn Sa’d Al- Sā’idī, may Allāh bless him, told the story of the Prophet’s injury in the battle of Uhūd: “Fāṭimah, daughter of the Prophet, had come to wash blood from the Prophet’s face, when she saw that the blood was more than water, she went to bring stones, warmed them on the fire, and she put them on the injuries to stop blood, and it stopped immediately.”<sup>812</sup> The Prophet (pbuh), allowed Fāṭimah to do this treatment to stop the bleeding; therefore, Islam permits the use of any procedure for stopping bleeding, or similar procedures;
5. Jābir Ibn ‘Abdullah, may Allāh bless him and his father (both Companions of the Prophet (pbuh)), narrated the following from the Prophet (pbuh), who said, “Every sickness has a cure, if the cure is suitable for the sickness, the person has been treated by the permission of God.”<sup>813</sup>
6. Abū Hurayrah, may Allāh bless him, narrated the following from the Prophet (pbuh), who said, “Allāh did not create sickness unless he created its cure.”<sup>814</sup> This and the

<sup>808</sup> Muslim Ibn Ḥajjāj, *Ṣaḥīḥ Muslim*, 22; Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 15.

<sup>809</sup> Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 15; Abū Zakariyā Yahyā Ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim li- al-Nawawī*, vol.14, 191.

<sup>810</sup> Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 14.

<sup>811</sup> Aḥmad Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol.10, 148.

<sup>812</sup> Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 19.

<sup>813</sup> Muslim Ibn Ḥajjāj, *Ṣaḥīḥ Muslim*, 1729; Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*, 1138.

<sup>814</sup> Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*, 1137; Muḥammad Ibn ‘Isa Abū ‘Isa al-Tirmidhī, *Sunan al-Tirmidhī*, 383; Muḥammad Ibn Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 11-12.

foregoing *Aḥādīth* show that Allāh did not create sickness without creating a cure for it. Therefore, human beings have the right to seek cures. Organ transplantation is a part of seeking treatment; just as a person is allowed to take medication, he/she is permitted to search for organs for transplantation.

7. Usāmah Ibn Shurayk, may Allāh bless him, said, “I came to the Prophet and his companion, as a bird on their head. I greeted them all, then sat down, then many nomad people came to the Prophet and asked him, ‘O Prophet, is it allowed for us to seek treatment?’ The Prophet answered, ‘Treat yourself, Allah has not created sickness unless he has created the cure for that sickness, except age’.”<sup>815</sup> The abovementioned Ḥādīth proves that the Prophet (pbuh) permitted treatment for sickness until the Day of Judgment.

### Section 4.31 Conclusion

The beginning of human life starts as a result of the initial merging of sperm and ovum to form the zygote. The fertilized ovum—the zygote—which carries the genetic information of both parents consequently develops to produce a full human being. In this respect, some Sunni Muslim scholars consider the foetus a full human being with a soul when it reaches 120 days (or even 40 days) in the mother’s womb. Moreover, these scholars confer sanctity upon the foetus at this stage and prohibit any abortion of the pregnancy.

In the case of brain-dead persons, it is possible today through the use of sophisticated medical equipment to accurately recognize and diagnose brain death. For this reason, contemporary medical doctors are more precise and knowledgeable than Muslim jurists when it comes to diagnosing human death. As such, medical doctors have deemed a person dead when his/her brain stem has died. However, medical doctors have developed (and frequently use) certain procedural methods of diagnosis to differentiate between a coma and genuine brain-stem death, which is a death without any uncertainty. Today, as a result of modern medical diagnostic equipment and the advance of science and technology, the majority of Sunni Muslim jurists, philosophers, thinkers and theologians have come to agree with medical doctors that if a person’s brain stem is dead, he/she is dead. Therefore, it is my view that it is appropriate to apply the Islamic shari‘ah rules pertaining to the dead in relation to brain stem-dead persons.

---

<sup>815</sup> Sulaymān Ibn al-Ash‘ath Abū Dawūd, *Sunan Abī Dawūd*, 331; Muḥammad Ibn Yazīd Abū ‘Abd Allāh Ibn Mājah, *Sunan Ibn Mājah*, 1137; Muḥammad Ibn ‘Isa Abū ‘Isa al-Tirmidhī, *Sunan al-Tirmidhī*, 383.

Furthermore, it is my strong conviction as well that if a person's brain stem is dead, the use of any life-support equipment should be terminated. The self-evident reason for this is that such life-support equipment ultimately will not be able to revive the person back to his/her previous life. In addition, the continuation of such life-support equipment will unnecessarily consume huge economic resources and create severe strain on hospital staff without producing any tangible results for the individual, his/her family and the wider community. Instead of relying upon artificial life-support to indefinitely maintain a non-existent or vegetative life in the brain-dead person, a better course of action (which is permissible in Islam) would be to harvest and transplant the organs of the brain-dead patient into the living needy persons.

From my readings and research into brain-death I have come to understand that organ transplantation is a permissible action in Islam for the sick. On this matter, there is an overwhelming consensus among the Sunni Muslim Fiqh Academies and religious institutions throughout the Muslim world. However, when it comes to the availability and procurement of organs for transplantation, Sunni Muslim scholars stipulate that organs must be obtained through processes of donation, either from the dead person's will or from the permission of the deceased person's family members. It is permissible to use the organs of the unknown dead person (i.e., a stranger or someone without any identifiable family members) if the local authorities (who become that person's caretaker) so decide. It is acceptable in most Muslim countries that the living person can donate his/her organs within certain conditions, such as the prospective donor not inflicting harm on him/herself in the process.

If the sick person cannot find the needed organ without resorting to payment, it is then permissible in Islam for that person to buy the needed organ for life-sustaining purposes only under dire necessity. Yet, when it comes to the commercialization and commodification of human organs, the majority of Muslim scholars have deemed it completely prohibited in Islam and hence the buying and selling of organs for profit is outlawed in most Muslim countries. In fact, quite a few prominent Sunni Muslim scholars have completely and unconditionally rejected the notion of buying and selling organs even under dire necessity.

It is my contention that the buying and selling of human organs under dire necessity and for life-sustaining purposes is allowed and permissible; while the trade in human organs for profit is wholly prohibited in Islam. And while the conflicting arguments of Sunni scholars and others over what constitutes "a dire necessity" and "a life-sustaining purpose" will go on for some time, there is no denying that the buying and selling of human organs can increase organ availability for life-sustaining purposes. However, what is of paramount importance to

polymakers and needs further academic study is how to devise a means whereby the buying and selling of human organs is maintained under the strict parameters of life-sustaining treatment, but at the same time vulnerable communities do not become exploited within a rights vacuum where economic incentive and poverty coupled with an existing organ shortage crisis set the policy, resulting in the creation of a potentially institutionalized and globalized process of slavery between wealthy recipients and poor donors.

The case of brain transplantation is a complicated and controversial subject, one which also happens to be poorly understood by most people. The advancement of medical science and technology force Muslim scholars to seriously contemplate what such a process would mean to our present religious understanding of brain death, as it relates to person-hood and ownership. Since brain transplantation is still undergoing continuous change and experimentation within the field of medical science there is no relevance to deem it permissible or not in Islam; however, it nevertheless urgently requires more research and study by Muslim jurists, medical doctors and bioethicists before it becomes a reality in society. So far as I know medical scientists have not achieved a successful person-to-person brain transplantation procedure; however, this does not mean they will not do so in the near future. If person-to-person brain transplantation does become a reality in our time, the pivotal question then will become: Which person has survived the operation? Will it be person A—the donor whose brain has been transplanted or person B—the one whose body becomes the recipient for person's A brain?

Organ transplantation procedures are permissible where the source of organs and tissues are from the same person; from one person to another if the donor has voluntarily decided to give an organ and has not endangered his/her life in the process; from another person (i.e., this could be an adult or an embryo); from a dead person; and from an animal. It is not allowed whatsoever for any person to donate his heart, liver, or any life-dependent organ to another person. Moreover, it is permissible to take organs from a dead person (i.e., the person who has bequeathed and given permission to use his/her organs after death while he/she was alive, or the person whose family has given permission, or the unknown person who the local government has given permission to take his/her organs) and transplant them into a living person.

Finally, when it comes to ways of increasing organ availability broadly in Muslim countries there are no quick-fix solutions as there is no one "ethically clean" alternative in Islam next to donation. However, there are certain "practical" options which have been proposed by various scholars to increase organ availability.

These disparate and multi-faceted options include the following: 1) obtaining organs through processes of education and public awareness campaigns; 2) achieving greater co-operation between health professionals and hospital administrations to mediate the decision-making process for organ donation by prospective donors and their families; 3) utilizing a policy of mandated choice—which entails asking competent, healthy adults to make a decision about whether or not they wish to donate their organs after death; 4) institutionalizing a policy of presumed consent, that is assuming all persons in society are organ donors unless they have specifically and clearly refused to be organ donors; 5) using incentives or death benefits paid to the estate of a donor or his/her family in order to avoid human body commodification and ease the burden placed on the individual and his/her family; 6) establishing a government-run financial assistance program for needy individuals to buy organs from prospective organ donors and their families; 7) enacting routine removal laws which contain aspects of presumed consent procedure, but in addition, give some consideration to the decision of the organ donor's family, either positive or negative; and 8) rewarded gifting in the form of a loan cash payment to the living kidney donor as a financial compensation for their organ.

My specific recommendation to the Canadian government on how to set in place a policy to promote the buying and selling of human organs under dire necessity and for life-sustaining purposes without undermining the basic value of respect for human rights and dignity would be for :1) the government to adopt presumed consent laws like some European countries, unless the person clearly states refusal to donate organs; 2) for the government to shoulder the burial expenses for the person who donates his/her organs for life-sustaining purposes; and 3) to pass and enforce laws that prevent the commercialization and theft of human organs. Lastly, in the case of human suffering Islam holds that the individual can undergo suffering to purify his/her soul and not necessarily on account of their sins, but rather to grow stronger in their belief. For example, many prophets and messengers (including Jesus Christ and Prophet Muḥammad) have suffered without sin but their suffering alleviated their spiritual positions.

The issue of organ availability is a contemporary problem facing humanity as a whole. Therefore, all researchers in every branch of science, from Muslim and non-Muslim traditions alike, must work together with other colleagues such as philosophers, theologians, ethicists, jurists and human-rights advocacy groups to solve this pressing dilemma. The answer will lie in how best to compromise and harmonize the dictates of Islam (and broadly religion) with the constant advance of medical science and technology from one era to the next.

## Bibliography

‘Abd al-Basīṭ, Shaykh Badr al-Mutawallī. “Nihāyat al-Ḥayāh al-Insāniyyah fī Naẓar al-Islām .” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 445-450. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

‘Abd Allāh, ‘Abd Allāh Muḥammad. “Al-Ḥayāh: Bidāyatuhā.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 154-169. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

----- . “Nihāyat al-Ḥayāh.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 395-402. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

Abū Dawūd Sulaymān Ibn al-Ash‘ath al-Sijistānī. *Sunan Abī Dawūd*. 2<sup>nd</sup> ed. 5 vols. Istanbul: Dār Sahnūn, 1992.

Abū al-Futūḥ, Muḥammad Yaḥyā Aḥmad. “Bay‘ al- A‘ḍā’ al-Bashariyyah fī Mīzān al-Mashru‘iyyah .” In *Al-Ru’yah al-Islāmiyyah li-Ba‘ḍ al-Mumārāsāt al-Ṭibbiyyah*, 364-73. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 3. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995.

Abū Zayd, Bakr Ibn ‘Abd Allāh. *Fiqh al-Nawāzil*. 1<sup>st</sup> ed. 2 vols. Beirut: Muassasat al- Risalah, 1996.

Al-‘Ammārī, ‘Abd al-Qādir Muḥammad. “Bidāyat al-Ḥayāh.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 170-181. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.



-----, "Nihāyat al-Ḥayāh." In *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 485-487. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

Al-Ashqar, Muḥammad Sulaymān. "Bidāyat al-Ḥayāh." In *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 123-129. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Nihāyat al-Ḥayāh." In *Al-Ḥayāh al-Insāniyyah :Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 429-443. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Zarā 'at wa-Bay' al-A 'dā' ." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 396-398. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Al-Ashqar, 'Umar Sulaymān . "Bidāyat al-Ḥayāh wa- Nihāyatuhā." In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 130-153. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Munāqashāt al-Abḥāth al-Muta'alliqah Bi Zarā'at wa- Bay' al- A 'dā' ." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Al-'Awādī, A. Raḥmān. "Health Policy, Ethics and Human Values-An Islamic perspective: Reflections on the Cairo Seminar." In *The Islamic Organization for Medical Sciences (IOMS) and The Council for International Organizations of Medical Sciences (CIOMS)* (1988). <http://www.islamset.com/ethics/cioms/index.html> (accessed April 7, 2008).

Al-Bār, Muhammad ‘Ali. *Al-Mawqif al-Fiqhī wa- al-Akhlaqī min Qaḍiyyat Zar‘ al-A‘dā’*. Beirut: Dār al-Shamiyyah, 1994.

-----, “Nisbat Najāh ‘Amaliyyat Naql al-A ‘dā’ : Istibdāl al-A‘dā’ al-Bashariyyah bi- Ḥayawāniyyah.” In *Al-Jazeera*, February 21, 1998. <http://www.aljazeera.net> (accessed July 6, 2005).

Arnaldez, R. “Al-Ḥayāt” In *The Encyclopaedia of Islam*. London: Luzac & Co., vol.3, 1971.

Barnett, Andrew H. and Roger D. Blair and David Kaserman. “Improving Organ Donation: Compensation versus Markets.” In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 208-218. New York: Prometheus Books, 1998.

Bā Salāmah, ‘Abd Allāh. “Al-Ḥayāh al-Insāniyyah Dākhl al-Raḥim.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 77-83. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

-----, “Munāqashāt al-Abḥāth al-Muta ‘alliqah bi Zarā ‘at wa- Bay‘ al- A‘dā’.” In *Al-Ru’yah al-Islāmiyyah li- Ba‘ḍ al-Mumārāsāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995.

Beauchamp, Tom and James Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2001.

Black, Deborah L. “Psychology: Soul and Intellect” In *The Cambridge Companion to Arabic Philosophy*, edited by Peter Adamson and Richard C. Taylor, 308-326. Cambridge: University Press, 2005.

Bronsther, Oscar and John K. Fung, Andreas Izakis, David Van Thiel and Thomas E. Starzl. “Prioritization and Organ Distribution for Liver Transplantation.” In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 250-259. New York: Prometheus Books, 1998.

Bryant, J.H. and Z. Bankowski, "The Experience of CIOMS and WHO in Addressing the Problems of Health Policy, Ethics and Human Values", *Islamic Organization for Medical Sciences*, (1988): 1-13. <http://www.islamset.com/ethics/cioms/papers.html> (accessed June 30, 2005).

Al-Bukhārī, Muḥammad Ibn Ismā'īl. *Ṣaḥīḥ al-Bukhārī*. 2<sup>nd</sup> ed. 8 vols. Istanbul: Dār Saḥnūn, 1992.

Caplan, Arthur L. "Ethical and Policy Issues in the Procurement of Cadaver Organs for Transplantation." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 139-146. New York: Prometheus Books, 1998.

Caplan, Arthur L. and Daniel H. Coelho. "Introduction: Part Three Commodification." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 193-195. New York: Prometheus Books, 1998.

-----, "Introduction: Part Two Policy." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 139-141. New York: Prometheus Books, 1998.

Caplan, Arthur L., C. T Van Buren and N.L. Tilney. "Financial Compensation for Cadaver Organ Donation: Good Idea or Anathema?" In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 219-223. New York: Prometheus Books, 1998.

Chapman, J.R., M. Deierhoi and C. Wight. *Organ and Tissue Donation for Transplantation*. Oxford: Oxford University Press, 1997.

Chittick, William C. *Imaginal Worlds: Ibn al-Arabi and the Problem of Religious Diversity*. Albany: State University of New York Press, 1994.

Chittick, William C. and Sachiko Murata. *The Vision of Islam*. New York: Paragon House, 1994.

Cohen, Carl. "The Case for Presumed Consent to Transplant Human Organs after Death." In *Intervention and Reflection* (2000): 773-779.

Daniels, Norman. "Comment: Ability to Pay and Access to Transplantation." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 242-246. New York: Prometheus Books, 1998.

Evans, R. W. "Money Matters: Should Ability to Pay Ever be a Consideration in Gaining Access to Transplantation?" In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 231-241. New York: Prometheus Books, 1998.

Fayḍ Allāh, Muḥammad Fawzi. "Al-Taṣarruf fī A'da' al-Insān." In *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Munārasāt al-Ṭibbiyyah*, 327-341. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Fakhry, Majīd. "The Mu'tazilite View of Man." In *Recherches d'Islamologie*, edited by G. Anawati and L. Gardet, 107-121. Louvain, 1977.

Futerman, Laurie G. "Presumed Consent: The Solution to the Critical Organ Donor Shortage?" In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 161-172. New York: Prometheus Books, 1998.

Gazā iry, Husayn 'Abd al-Razzaq. "Preface: Health Policy, Ethics and Human Values-An Islamic Perspective." In *The Islamic Organization for Medical Sciences (IOMS) and the Council for International Organizations of Medical Sciences (CIOMS)*, (1988):1-2.  
<http://www.islamset.com/ethics/cioms/index.html> (accessed June 3, 2005).

Al-Ghazālī, Muḥammad Ibn Muḥammad. *Iḥyā' 'Ulūm Al-Dīn*. 4 vols. Cairo: Maktabat al-Ṭiyariyyah al-Kubrā, 1900.

Glannon, Walter. *Biomedical Ethics*. Oxford: Oxford University Press, 2005.

Gruner, O. Cameron. *The Canon of Medicine of Avicenna*. London: Luzac & Co, 1930.

Halevi, Leor. *Muhammad's Grave: Death Rites and the Making of Islamic Society*. New York: Columbia University Press, 2007.

Harris, John. "The Survival Lottery." In *Philosophy*, vol. 50 (1975): 81-87.

Ḥaṭḥūt, Ḥassān. "Bidāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 55-61. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Munāqashāt al-Abḥāth al-Muta'alliqah bi Zarā 'at wa- Bay' al-A'ḍā'." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Nihāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 378-382. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Qudsiyyat Sirr al-Mihnah." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 21-27. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Hoffenberg, R. and M. Lock, N. Tilney, C. Casabona, A.S. Daar, R.D. Guttman, I. Kennedy, S. Nundy, J. Radcliffe-Richards, R.A. Sells. "Should Organs from Patients in Permanent Vegetative State Be Used for Transplantation?" In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 116-120. New York: Prometheus Books, 1998.

Ibn Ḥajar al- 'Asqalānī , Aḥmad. *Fatḥ al-Bar'ī Sharḥ Ṣaḥīḥ al-Bukhārī*. 13 vols. Beirut: Dar al-Ma'rifah, 1980.

Ibn Kathīr, Ismā 'īl. *Tafsīr al-Qur'an al- 'Azīm*. 5<sup>th</sup> ed. 4 vols. Beirut: Dar al-Ma'rifah, 1992.

Ibn Mājah, Muḥammad Ibn Yazīd. *Sunan Ibn Mājah*. 2<sup>nd</sup> ed. 2 vols. Istanbul: Dār Saḥnūn, 1992.

Ibn Manẓūr, Muḥammad Ibn Mukarram. *Lisān al-‘Arab*. 6 vols. Beirut: Dār Lisan al- ‘Arab, 1988.

Ibn Nujaym, Shaykh Zayn al- ‘Abidīn Ibn Ibrāhīm. *Al-Ashbāh wa- Al-Nazā’ir*. Beirut: Dār Al-Kutub al-‘Imiyyah, 1993.

Ibn Qayyim al-Jawziyyah, Muḥammad Ibn Abī Bakr. *Kitāb al-Rūḥ*. Beirut: Dār Al-Fikr, 1991.

----- . *Al-Tibb al-Nabawī*. Beirut: Mu’assasat al-Risālah, 1991.

Ibn Rushd, Muḥammad Ibn Aḥmad. *Bidāyat al-Mujtahid wa- Nihāyat al-Muqtaṣid*. 4 vols. Cairo: Dar Al-Salām, 1995.

Ibrāhīm, Ma’mūn al-Ḥāji Ali. “Al-Buwayḍat al-Mulaqqāḥa al-Zāidah ‘an al-Ḥajjah madhātuf ‘alu fīhā?” In *Al-Ru’yah al-Islāmiyyah li-Ba’d al-Mumārāsāt al-Ṭibbiyyah*, 450-455. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu’āṣirah ,3.2nd ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995.

Ibrāhīm, Aḥmad Shawqī. “Matā Bada’at Ḥayāh al-Insān.” In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa -Nihāyatuhā fī al-Mafhūm al-Islāmī*, 74-76. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu’āṣirah no.2. Kuwait:Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

----- . “Nihāyat al-Ḥayāh al-Bashariyyah.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa -Nihāyatuhā fī al-Mafhūm al-Islāmī*, 363-377. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu’āṣirah no.2. Kuwait:Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

Islamic Organization for Medical Sciences. "The Sanctity of Human Life." *Islamic Organization for Medical Sciences*, 2<sup>nd</sup> ed. (1995).

Islamic Organization for Medical Sciences. "The Sanctity of Life Doctrine and Ethical Consistency". *Islamic Organization for Medical Sciences*, 2<sup>nd</sup> ed. (1995).

Jarvis, Rupert. "Join the Club: A Modest Proposal to Increase Availability of Donor Organs." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 183-192. New York: Prometheus Books, 1998.

Joralemon, Donald. "Organ Wars: The battle for body parts." In *Medical Anthropology Quarterly, New Series*, 9, no.3 (1995): 335-356.

Kass, Leon R. and Bonnie Steinbock. "Ethical Issues in Modern Medicine: Fifth edition." In *Journal of Medical Ethics* 21 (1998): 345-349.

Kass, Leon. "Organs for Sale? Propriety, Property, and the Price of Progress." *Public Interest*, reprinted in *Intervention and Reflection*, (2000): 65-86.

Klassen, Ann C. and David K. Klassen. "Who are the donors in Organ Donation? The Family's Perspective in Mandated Choice." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 154-160. New York: Prometheus Books, 1998.

Kluge, Eike-Henner W. "Organ Donation and Retrieval: Whose Body Is It Anyway?" *Intervention and Reflection*, (2000):387-389.

Koenig, Barbara A. and Linda F. Hogle. "Organ Transplantation (re) Examined?" *Medical Anthropology Quarterly, New Series*, vol. 9, no.3 (1995): 393-397.

Kutner, Nancy G. "Issues in the Application of High Cost Medical Technology: The Case of Organ Transplantation." In *Journal of Health and Social Behaviour*, vol. 28, no. 1 (1987): 23-36.

Kuhse, Helga. *The Sanctity of Life Doctrine in Medicine: A Critique*. Oxford: Oxford University Press, 1987.

Lavoie, Jennifer. "Ownership of Human Tissue: Life after Moore v. Regents of the University of California." *In Virginia Law Review*, vol. 75, no.7 (1989): 1363-1396.

Lock, Margaret. *Twice Dead: Organ Transplants and the Reinvention of Death*. Berkeley: University of California Press, 2002.

Al-Mahdī, Mukhtār. "A'ḍā' al-Insān Bayna al-Hibat wa -al-Bay' wa-al-Akhdh bilā Wasiyyah." In *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 295-304. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Bidāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 62-73. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Nihāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 333-346. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Zarā 'at Khalāyā al-Mukh :Majālatuhu wa- Āfāquhu al-Mustaqbaliyyah." In *Al-Ru'yah Islāmiyyah li- Zarā 'at Ba'd al-A 'ḍā' al-Bashariyyah*, 53-73. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣirah 6. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1994.

Morris, P.J. and R.A. Sells. "Paying for Organs from Living Donors." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 229-230. New York: Prometheus Books, 1998.

Muslim Ibn al-Ḥajjaj. *Ṣaḥīḥ Muslim*. 2<sup>nd</sup> ed. 3 vols. Istanbul: Dār Ṣaḥnūn, 1992.

Nādir, Al Bayr Naṣry. *Ibn Sīnā wa- al-Nafs al- Bashariyyah*. 1<sup>st</sup> ed. Beirut: 'Uwaydat, 1960.



Al-Nawawī, Yaḥyā Ibn Sharaf. *Sharḥ Ṣaḥīḥ Muslim li-al-Nawawī*. 18 vols. Beirut: Dār al-Fikr, 1981.

----- . *Majmū‘ Sharḥ Al-Muhadḥab*. 12 vols. Cairo: Al-Tibā‘ah al-Muniriyyah, 1925.

----- . *Rawḍāt al-Ṭālibīn*. 8 vols. Cairo: Al-Maktab al-Islāmī, 1960.

Al-Nasā’ī, Aḥmad Ibn Shu‘ayb. *Sunan al-Nasā’ī*, 2<sup>nd</sup> ed. 8 vols. Istanbul: Dār Ṣaḥnūn, 1992.

Al-Qaḍī, Aḥmad. “Al-Qalb wa-‘Alāqatuḥu bi- al-Ḥayāh.” In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 383-392. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

Al- Qaraḍāwī, Yūsuf. *Fatawā Mu‘aṣirah*. Al-Manṣūra, Egypt: Al-Wafā, 1993.

Ohnuki-Tierney, Emiko. “Brain Death and Organ Transplantation: Cultural Bases of Medical Technology.” In *Cultural Anthropology*, 35, no. 3 (1994): 233-254.

Ordoghdow, Muṣṭafā Ṣabī. “Bidāyat al-Ḥayāt al-Insāniyyah.” In *Al-Ḥayāh al-Insāniyyah: Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 189-194. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

----- . “Bidāyat al-Ḥayāt al-Insāniyyah.” In *Al-Ḥayāt al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafḥūm al-Islāmī*, 493-496. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

Al-Qurṭubī al-Anṣārī, Abū ‘Abd Allāh Ibn Muḥammad. *al-Jāmi‘ li-Aḥkām al-Qur’ān*. 20 vols. Cairo: Dār al-Kātib al-‘Arabī, 1967.

Pellegrino, Edmund D. "Families' Self-interest and the Cadaver's Organs: What Price Consent?" In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 205-207. New York: Prometheus Books, 1998.

Peters, Thomas G. "Life or Death: The Issue of Payment in Cadaveric Organ Donation." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 196-204. New York: Prometheus Books, 1998.

Rachels, James. *Created from Animals: The Moral Implications of Darwinism*. Oxford: Oxford University Press, 1991.

Radcliffe-Richards, J., A.S. Daar, R. D. Guttman, R. Hoffenberg, I. Kennedy, M. Lock, R.A. Sells, and N. Tilney. "The Case for Allowing Kidney Sales." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 224-228. New York: Prometheus Books, 1998.

Rahmān, Fazlur. *Avicenna's Psychology*. London: Geoffrey Cumberlege, 1952.

----- . *Health and Medicine in the Islamic Tradition*. Chicago: Kazi Publications Inc., 1998.

Al-Rāzī, Fakhr al-Dīn. *Al-Tafsīr al-Kabīr*. 3<sup>rd</sup> ed. 32 vols. Beirut: Dar Ihya' al-Turaṭh al-'Arabi, 1989.

Rispler-Chaim, Vardit. *Islamic Medical Ethics in the Twentieth Century*. Leiden: Brill Academic Publishers, 1993.

Ryan, Kenneth J. "Ethics and the Transplant Surgeon." *Bulletin ACS*, 80 (1995): 12.

Sachedina, 'Abdulaziz. "Brain Death in Islamic Jurisprudence". (April 7, 2005):1-7.  
<http://www.people.virginia.edu/~aas/article/article6.htm> (accessed June 6, 2005).

-----, "Right to Die? Muslim Views about End of Life Decisions". (June 7, 2005):1-7.  
<http://www.people.virginia.edu/~aas/article/article3.htm> (accessed June 4, 2005).

Al-Salāmi, Muḥammad al-Mukhtār. "Al-Ṭabīb Bayna al-I'ān wa- al-Kitmān." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 75-85. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Bidāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 111-122. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Munāqashāt al-Abḥāth al-Muta'alliqah bi Zarāt wa- Bay' al-A'dā." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Nihāyat al-Ḥayāh al-Insāniyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 451-460 . Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Zarā 'at Khalāyā al-Jihāz al-'Aṣabī wa- khāṣṣatan al-Mukh." In *Al- Ru'yah al-Islāmiyyah li- Zarā 'at Ba'd al-'Aḍā' al-Bashariyyah*, 105-123. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 6. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1994.

Savage-Smith, Emilie. *Islamic Culture and the Medical Arts*. Bethesda: National Library of Medicine, 1994.

Sharaf al-Dīn, Aḥmad. *Al-Aḥkām Al-Shar'iyyah lil- A'māl Al-Ṭibbiyyah*. Kuwait: Maṭābi' Times, 1983.

Sharaf, Shaykh Ṣalīḥ Mūsā. "Ba'd Ḥayāh al-Insān fī Dawī al-Qur'an al-Karīm wa- al-Sunnah al-Nabawiyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-*

*Islāmī*, 182-188. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

-----, “Nihāyat Ḥayāh al-Insān.” In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 488-491. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

Scheper-Hughes, Nancy. “Theft of Life: The Globalization of Organ Stealing Rumours.” In *Anthropology Today*, 12. no.3 (1996): 3-11.

Al-Shirbīnī, ‘Iṣām al-Dīn. “Al-Mawt wa- al-Ḥayāh Bayna al-Aṭibbā wa- al-Fuqahā.” In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa-Nihāyatuhā fī al-Mafhūm al-Islāmī*, 347-362. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1985.

-----, “Munāqashāt al-Abḥāth al-Muta‘alliqah bi Zarā‘at wa- Bay‘ al- A ‘dā’.” In *Al-Ru‘yah al-Islāmiyyah li- Ba ‘d al-Mumārāsāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu ‘aṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-‘Ulūm al-Ṭibbiyyah, 1995.

Al-Shinqīṭī, Muḥammad Ibn Muḥammad al-Mukhtār. *Aḥkām al-Jirāḥah al-Ṭibbiyyah*. 2<sup>nd</sup> ed. Jeddah: Makatabat al-Ṣaḥābah, 1994.

Sinclair, John. *Collins Cobuild English Dictionary for Advanced Learners*. Toronto: HarperCollins Canada, 2001.

Singer, Peter. *Rethinking Life and Death: The Collapse of Our Traditional Ethics*. Oxford, Oxford University Press, 1995.

Singer, Peter and Helga Kuhse. *Unsanctifying Human Life: Essays on Ethics*. Oxford: Blackwell Publishers, 2002.

Spital, Aaron. "Mandated Choice for Organ Donation: Time to Give it a Try." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 147-153. New York: Prometheus Books, 1998.

Al-Sulamī, al 'Izz Ibn 'Abd al-Salām. *Qawā'id al-Aḥkām Fī Maṣāliḥ al-Anām*. Cairo: Maṭba'at al-Istiḳāmah bi al-Qāhirah, 1960.

Al-Suyūṭī, Jalāl al-Dīn 'Abd al-Raḥmān. *Al-Ashbāh wa- al-Nazā'ir*. Cairo: Dār Ihya' Al-Kutub al-Arabiyyah, 1964.

Al-Ṭabarī, Muḥammad Ibn Jarīr. *Jāmi' al-Bayān fī Tafsīr al-Qur'an*. 1<sup>st</sup> ed. 30 vols. Bōlāq, Cairo: al-Maṭba'a al- Amīriyyah, 1986.

Al-Ṭanṭāwī, Muḥammad Sayyid. "Ḥuḳm Bay' A'ḍā' al-Insān li- 'Uḍwin min A'ḍā' ihī aw al-Tabarru ' Bihi." In *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārasāt al-Ṭibbiyyah*, 305-315 . Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Mas'ūliyyat al-Aṭibbā Kamā Yarāḥā al-Fuqahā." In *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārasāt al-Ṭibbiyyah*, 317-325. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

-----, "Munāqashāt al-Abḥāth al-Muta'alliqah bi- Zarā'at wa- Bay' al- A'ḍā'." In *Al-Ru'yah al-Islāmiyyah li- Ba'd al-Mumārasāt al-Ṭibbiyyah*, 377-413. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu 'aṣīrah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Al- Tawḥīdī, Abū Ḥayyān. *Thalāth Rasā'il li- Abī Ḥayyān al-Tawḥīdī*. In *Risālat al-ḥayāt* , edited by Dr. Ibrāhīm Al-Kaylānī. Damascus: Institut Francais de Damas, 1951.

Al-Tirmidhī, Muḥammad Ibn 'Isā. *Sunan al-Tirmidhī*. 2<sup>nd</sup> ed. 5 vols. Istanbul: Dār Saḥnūn, 1992.

Veatch, R. M and J. B. Pitt. "The Myth of Presumed Consent: Ethical Problems in New Organ Procurement Strategies." In *Ethics of Organ Transplants: The Current Debate*, edited by Arthur L. Caplan and Daniel H. Coelho, 173-182. New York: Prometheus Books, 1998.

Al-Wā'ī, Tawfīq. "Ḥaqqīqat al-Mawt wa- al-Ḥayāh fī al-Qur'an wa- al-Aḥkām al-Shar' 'iyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 445-450. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

Wisnovsky, Robert. *Avicenna's Metaphysics in Context*. Ithaca: Cornell University Press, 2003.

World Assembly of Muslim Youth. "Life After death: How do Muslims view death", World Assembly of Muslim Youth, <http://www.islam-guide.com/life-after-death-by-wamy.htm> (accessed June 16, 2006).

Al-Ya'qūbī, Shaykh Ibrāhīm. *Shifā' al-Tabāḥīr wa- al-Adwā' fī Ḥukm al-Tashrīḥ wa- Naql al-A'dā'*. Damascus: Khalid Ibn al-Walid Printing, (1986).

Yāsīn, Muḥammad Na'im. "Bidāyat al-Ḥayāh al-Insāniyyah fī Ḍaw al-Nuṣuṣ al-Shar' 'iyyah wa- Ijtihādāt al-'Ulamā' al-Muslimīn." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 87-108. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Nihāyat al-Ḥayāh al-Insāniyyah fī Ḍaw Ijtihādāt al-'Ulamā' al-Muslimīn wa- al-Mu'ayyāt al-Ṭibbiyyah." In *Al-Ḥayāh al-Insāniyyah : Bidāyatuhā wa- Nihāyatuhā fī al-Mafhūm al-Islāmī*, 403-428. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah 2. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1985.

-----, "Bay' al-A'dā' al-Ādamiyyah." In *Al-Ru'yah al-Islāmiyyah li-Ba'd al-Mumārāsāt al-Ṭibbiyyah*, 342-363. Al-Islām wa- al-Mushkilāt al-Ṭibbiyyah al-Mu'āṣirah 3. 2<sup>nd</sup> ed. Kuwait: Al-Munazzamah al-Islāmiyyah lil-'Ulūm al-Ṭibbiyyah, 1995.

Al-Zamakhsharī al-khawārizmī, Maḥmūd Ibn ‘Umar. *Tafsīr al-Kashshaf ‘an Ḥaqāiq al-Tanzīl*. 4 vols. Beirut: Dār al-Ma’rifah, 1990.

Zuḥayli, Wahbah. *Nazariyyat al-Ḍarūrāt al-Shar’iyyah*. 4<sup>th</sup> ed. Beirut: Al-Risalah Publication, 1985.

Zurqā, Muṣṭafā. *Fatāwā*. Damascus: Dār al-Qalam, 2001.

## Appendix of Lemmata

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَخِيذُوا بِذُرِّيَّةٍ

بَيْنَ يَدَيْكُمْ (١٦٥)

L1

Wa anfiqū fi sabīli Allhi walā tulqū bi-aydikum ilā al-tahlukati wa aḥsinū inna Allāha yuḥibbu al-muḥsinīna

في ضوء ما وصلنا إليه الآن لو عدنا مرة ثالثة للسؤال من هو الإنسان ؟ فإن  
الاجابة تكون : الإنسان هو منج حي يحمل نفسا إنسانية ، هذا المنج الحي يقوم على  
خدمته أجهزة كثيرة ، بعضها لتغذيته وبعضها لتصريف فضلاته والبعض الآخر  
لحركته والتنقل به حيث يشاء ، ومن خلال المنج تقوم النفس الإنسانية بالتحكم  
والسيطرة على جميع أعضاء الجسم وأفعاله .

L2

"Man huwa al- insān? Fa inna al-ijābata takūnu; al insānu huwa mukhun ḥayyun, yaḥmilu nafsān insāniyyah, hādḥā al-mukhu al ḥayyu taqūmu 'alā khidmatihī ajhizatun kathīratun ba'duhā li taṣrīfi faḍalātihī, wa al-ba'du al-ākhar li ḥarakatihī, wa al-tanaqquli bihi ḥaythu yashā'u wa min khilālī al-mukh taqūmu al- nafs al- insāniyyah bi al- taḥakkumi wa al- saytarati 'alā jam'' al- a'da' al- jism wa af 'ālihi." (Mukṭār al- Mahdī,345).

### فمن هو الإنسان ؟

قال الدكتور الكسيس كاريل المتوفي سنة ١٩٤٤م (١) « إن علوم التشريح  
والفسيولوجيا والكيمياء والنفس والاجتماع وغيرها من العلوم لم تعطنا نتائج قطعية  
في ميادينها عن ماهية الإنسان . وإن الإنسان الذي يعرفه العلماء ليس إلا إنسانا  
بعيدا جدا عن الإنسان الحقيقي، فالإنسان كائن مجهول لنفسه وسيظل مجهولنا به إلى  
الابد » .

L3

"Inna 'ulūma al- tashrīḥ wa al- fisyologia, wa al- kimyā, wa al- nafs, wa al- ijtīmā, wa ḡayriḥā min al- 'ulūm lam tu'tinā natā'ija qat'iyyah fi mayādiniḥā 'an maḥiyyat al- insān. Wa anna al insāna alladhī ya ' rifuhu al- 'ulama' laysa illā insānan ba'idan 'an al insān al-ḥaqīqi, fa al- insānu kā'inun majhūlun li nafsihī wasa yazallu jahlunā bihi ilā al- abad." (Ibrāhīm,363).

وقال الإمام أبو حامد الغزالي المتوفي سنة ٥٠٥ هـ . عن النفس  
البشرية (٢) : « إن النفس هي الأصل الجامع للصفات المذمومة في الإنسان »  
وروى البيهقي عن ابن عباس رضي الله عنهما أن رسول الله ﷺ قال : « أعدى

L4

transliteration: waḡāla al-imamu abū ḥamid al-ghzālī 'an al-nafs al-bashariyyah " inna al-nafs al-bashariyyah hiya al-aṣlu al-Jāmi 'u li al-sifāt al-madhmūmah fi al-insān

يَتَأْتِيهَا النَّفْسُ الْمُطْمَئِنَّةُ (٣٧)

L5

Yā ayyat uhā al-nafsu al-muṭma-innatu

(To the righteous soul will be said:) "O (thou) soul, in (complete) rest and satisfaction!

أَنْ جِئْتَ إِلَى رَبِّكَ رَاضِيَةً مُرْتَضِيَةً (٣٨)

Irj 'ī ilā rabbiki rāḍiyyatan marḍiyyatan



"Come back thou to thy Lord,- well pleased (thyself), and well-pleasing unto Him!

وَمَنْ أَظْلَمُ مِمَّنِ افْتَرَىٰ عَلَى اللَّهِ كَذِبًا أَوْ قَالَ أُوحِيَ إِلَيَّ وَلَمْ يُوحَ  
إِلَيْهِ شَيْءٌ وَمَنْ قَالَ سَأْدُرُبُ مِثْلَ مَا أَنْزَلَ اللَّهُ وَلَوْ تَرَىٰ إِذِ  
الظَّالِمُونَ فِي غَمَرَاتِ الْمَوْتِ وَالْمَلَائِكَةُ بَاسِطُو أَيْدِيهِمْ آخِزِينَ  
أَفْسُسُكُمْ الْيَوْمَ تُجْزَوْنَ عَذَابَ الْهُونِ بِمَا كُنْتُمْ تَقُولُونَ عَلَى اللَّهِ غَيْرَ  
الْحَقِّ وَكُنْتُمْ عَنْ آيَاتِهِ تَسْتَكْبِرُونَ ﴿١٢٤﴾

*Waman azlamu mimman iftarā 'alā Allāhi kadhīban aw qāla ūhiya ilayya walam yūḥa ilayhi shay-on waman qāla sa onzilu mithla mā anzala  
Allāhu walaw tarā idh al-ẓālimūna fi ghamarāti almawti wa almalā-ikatu basīṭu aydīhim akhrijū anfusakum al-yawma tujzawna 'a dhāba al-  
hūni bimā kuntum taqūlūna 'ala Allāhi ghayra al-ḥaqqi wakuntum 'an āyātihi tastakbirūna*

Who can be more wicked than one who inventeth a lie against God, or saith, "I have received inspiration," when he hath received none, or (again) who saith, "I can reveal the like of what God hath revealed"? If thou couldst but see how the wicked (do fare) in the flood of confusion at death! - the angels stretch forth their hands, (saying), "Yield up your souls: this day shall ye receive your reward,- a penalty of shame, for that ye used to tell lies against God, and scornfully to reject of His signs!"

"The human soul is certainly inclined to evil" (Ch.12:53):

﴿ وَمَا أُنْزِلُ إِلَّا بِالْحَقِّ وَأَنَا الْوَاقِعُ ۚ إِنِّي لَمِنَ الْغَافِلِينَ ﴾  
﴿ وَمَا أُنْزِلُ إِلَّا بِالْحَقِّ وَأَنَا الْوَاقِعُ ۚ إِنِّي لَمِنَ الْغَافِلِينَ ﴾

*Wamā ubarri-u nafsī inna al-nafsa la ammāratun bi al-sū-i illā mā raḥima rabbī inna rabbī ghafūrun raḥīmūn*

"Nor do I absolve my own self (of blame): the (human) soul is certainly prone to evil, unless my Lord do bestow His Mercy: but surely my Lord is Oft-forgiving, Most Merciful."

"But as for him who feared standing before his Lord and restrained himself from impure and evil desires and lusts," (79:40):

*Wa ammā man khāfa maqāma rabbihi wanaḥā al-nafsa 'an al-hawā*

And for such as had entertained the fear of standing before their Lord's (tribunal) and had restrained (their) soul from lower desires.

﴿ وَأَمَّا مَنْ خَافَ مَقَامَ رَبِّهِ وَنَهَى النَّفْسَ عَنِ الْهَوَىٰ ۖ ﴾

L6

﴿ وَمَا كَانَ لِنَفْسٍ أَنْ تَمُوتَ إِلَّا بِإِذْنِ اللَّهِ يَكْتُمُ أُولَٰئِكَ مَا فِي بُحُونِهِمْ ۚ وَمَنْ يُرِدْ ثَوَابَ  
الدُّنْيَا نُؤْتِهِ مِنْهَا وَمَنْ يُرِدْ ثَوَابَ الْآخِرَةِ نُؤْتِهِ مِنْهَا ۚ وَسَتَجْزَى  
السَّاعِي ۖ ﴾ ﴿١٢٥﴾

*Wamā kāna linafsin an tamūta illā bi-idhni Allāhi kitāban mu-ajjalan waman yurid thawāba al-dunyā nu'tihi minhā waman yurid thawāba al-  
ākhirati nu'tihi minhā wasa najzi al-shakirīna*

Nor can a soul die except by Allāh's leave, the term being fixed as by writing. If any do desire a reward in this life, We shall give it to him; and if any do desire a reward in the Hereafter, We shall give it to him. And swiftly shall We reward those that (serve us with) gratitude and moreover Allāh says "Every soul shall have a taste of death in the end to Us

﴿ كُلُّ نَفْسٍ ذَٰئِقَةُ الْمَوْتِ ثُمَّ إِلَيْنَا تُرْجَعُونَ ﴾ ﴿١٢٦﴾

Kullu nafsīn dhā-iqatu al-mawti thumma ilaynā turja ‘ūna

“ Every soul shall have a taste of death in the end to Us shall ye be brought back.”(Ch. 29, v. 57). That means the body of that soul must tastes death. The one who tastes something is a live person not a dead person.

L7

سَزَلْ بِوَالرُّوْحِ الْأَمِينِ ﴿١٧٢﴾

Nazala bihi al-rūḥu al-amīnu

With it came down the spirit of Faith and Truth-

عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنذِرِينَ ﴿١٧٣﴾

‘Alā qalbika litakūna min al-mundhiḥīna

To thy heart and mind, that thou mayest admonish

In some places it means the angel Gabriel (such as in Ch. 19 verse 17).

L8

فَأَتَّخَذَتْ مِنْ دُونِهِمْ حِجَابًا فَأَرْسَلْنَا إِلَيْهَا رُوحَنَا فَتَمَثَّلَ لَهَا بَشَرًا سَوِيًّا ﴿١٧٤﴾

Fa attakhadhat min dūnihim ḥijāban fa arsalnā ilayhā rūḥanā fatamatthala lahā basharan sawiyyan

She placed a screen (to screen herself) from them; then We sent her our angel, and he appeared before her as a man in all respects.

• بَلِّغْ الرُّسُلَ فَحَلَّيْنَا بَعْضَهُمْ عَلَى بَعْضٍ وَتَعْلَمُونَ أَنَّهُمْ مِنْ حَكَمِ اللَّهِ وَرَفَعَ بَعْضَهُمْ دَرَجَاتٍ ۚ وَآتَيْنَا عِيسَى ابْنَ مَرْيَمَ الْبَيِّنَاتِ وَأَيَّدْنَاهُ بِرُوحِ الْقُدُسِ ۖ وَلَوْ شَاءَ اللَّهُ مَا أَفْتَقَلْنَا الْيَدِينَ مِنْ تَعْدِهِمْ وَمِنْ عَدُوِّ مَا جَاءَتْهُمْ الْبَيِّنَاتُ وَلَكِنْ أَخْلَقُوا فَوَيْلٌ لِلَّذِينَ آمَنُوا مِنْ عَذَابٍ أَلِيمٍ ۚ وَلَوْ شَاءَ اللَّهُ مَا أَفْتَقَلُوا وَلَكِنْ أَلَّيْنَا يَتَعَلَّلَ مَا يَرِيدُ ﴿١٧٥﴾

Tilka al-rusulu faḍḍalnā ba ‘dahum ‘alā ba ‘dīn minhum man kallama Allāhu warafa ‘a ba ‘dahum darajātin wa ātaynā ‘isā ibna maryama albayyinātī wa ayyadnāhu birūhi al-quḍusi walaw shā Allāhu mā iqtatala alladhīna min ba ‘ dihim min ba ‘ di mā jāt-humu al-bayyinātu walākin ikhtalafū faminhum man āmana waminhum man kafara walaw shā Allāhu mā iqtatalū walākinna Allāha yaf ‘alu mā yuridu

Those apostles We endowed with gifts, some above others: To one of them Allāh spoke; others He raised to degrees (of honour); to Jesus the son of Mary We gave clear (Signs), and strengthened him with the holy spirit. If Allāh had so willed, succeeding generations would not have fought among each other, after clear (Signs) had come to them, but they (chose) to wrangle, some believing and others rejecting. If Allāh had so willed, they would not have fought each other; but Allāh Fulfilleth His plan.

لَا تُخِذْ قَوْمًا يُمُونُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَمِلِينَ قَتَلْتَهُمْ أُولَئِكَ تَحَقَّتْ فِي قُلُوبِهِمُ الْإِيمَانُ وَأَيَّدْنَاهُمْ بِرُوحِ يَسَّةٍ وَبَيَّنَّا لَهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ أُولَئِكَ حِزْبُ اللَّهِ أَلَا إِنَّ حِزْبَ اللَّهِ هُمُ الْمُفْلِحُونَ ﴿١٧٦﴾

Lā tajidu qawman yu'minūna bi Allāhi wa al-yawmi al-ākhirī yuwāddūna man ḥadda Allāha warasūlahu walaw kānū ābā'ahum aw abnā'ahum aw ikhwānahum aw 'ashīratahum ulā-ika kataba fī qulūbihim al-imāna wa ayyadahum birūḥin minhu wa yudkhihuhum jannātin tajrī min taḥtiḥā al-anḥāru khālīdīna fihā raḍīya Allāhu 'anhum wa radū 'anhu ulā-ika ḥizbu Allāhi alā inna ḥizba Allāhi hum al-muflīḥūna

Thou wilt not find any people who believe in Allāh and the Last Day, loving those who resist Allāh and His Messenger, even though they were their fathers or their sons, or their brothers, or their kindred. For such He has written Faith in their hearts, and strengthened them with a spirit from Himself. And He will admit them to Gardens beneath which Rivers flow, to dwell therein (for ever). Allāh will be well pleased with them, and they with Him. They are the Party of Allāh. Truly it is the Party of Allāh that will achieve Felicity.

يَوْمَ يَكُونُ الرُّوحُ وَالْمَلَائِكَةُ صَفًّا لَا يَتَكَلَّمُونَ إِلَّا مَنْ أَذِنَ لَهُ الرُّوحُ  
وَقَالَ صَوَابًا ﴿٧٨﴾

Yawma yaqūmu al-rūḥu wa al-malā-ikatu ṣaffan lā yatakallamūna illā man adhina lahu al-raḥmānu waqāla ṣawaban

The Day that the Spirit and the angels will stand forth in ranks, none shall speak except any who is permitted by Allāh Most Gracious, and He will say what is right.

L9

وَالَّتِي أَحْصَيْتَ فَرْجَهَا فَتَقَعَتْ فِيهَا مِنْ رُوحِنَا وَجَعَلْنَاهَا وَأَبْنَاهَا  
إِلْعَازًا لِلْعَالَمِينَ ﴿٧٩﴾

Wa allatī aḥṣanat farjahā fanafakhnā fihā min rūḥinā waja 'alnāhā wa ibnāhā āyatan lil 'ālamīna

And (remember) her who guarded her chastity: We breathed into her of Our spirit, and We made her and her son a sign for all peoples.

فَإِذَا سَوَّيْنَاهُ وَخَفَضْتَ فِيهِ مِنْ رُوحِي فَقَعُوا لَهُ سَاجِدِينَ ﴿٨٠﴾

Fa-idhā sawwaytuhu wanafakhtu fihī min rūḥī faqa'ū lahū sājidīna

"When I have fashioned him (in due proportion) and breathed into him of My spirit, fall ye down in obeisance unto him. Allāh commanded angels to prostrate to Adam after he completed the creation of Adam's body and breathed his spirit into him, as Allāh says, " when I fashioned him and breathed into him my spirit, prostrate for him"(Al-Razī, vol. 11: 44).

L10

الروح جسم نوراني علوي خفيف حي لذاته متحرك ينفذ في الاعضاء  
ويسري فيها<sup>(٣)</sup> ، والروح خلق من أمر الله ﴿ويسألونك عن الروح قل الروح من أمر ربي﴾<sup>(٤)</sup> ، فلا يستطيع البشر التعرف على ماهيتها وكنيتها وحقيقتها ، لأنها  
ليست من جنس العالم المشهود ، ولذلك لا يستطيعون إدخالها معامل التحليل ،  
ولا يستطيعون وضعها تحت المجهر ، ولكنهم يرون آثارها عندما تكون في الجسد ،  
ويحسون آثار مفارقتها للجسد .

Transliteration: "Al-rūḥ jismun, nūrāniyyun, 'ulwiyyun, khafīfun, ḥayyun li dhātihī, Mutaharrikun, yanfudhu, fi al-a'ḍā, wa yasrī fihā. wa al-rūḥu khalqun min amri Allahi "wa yas' al-unaka 'an al-rūḥi, qul al-rūḥu min amri Rabbi" Fala yastatī'u al-basharu al-ta 'arrufā 'alā mahiyyatahi, laysat min jinsi al- 'ālam al-mash hūd. walidhālīka, la yastatī'ūna idkhālāhā ma 'āmila al-tahīl, walā yastatī'ūna wad'ahā taḥta al-mijhar walā kinnahum yarawna ātharāhā 'inda mā takūnu fi al-jasad, wa yuḥissūna āthāra mufāra-qatihā li al-jasad" ("Umar al-Ashqar, 139-140).

وَنَفْسٍ وَمَا سَوَّاهَا ﴿٧﴾

L11

Wanafsin wamā s awwāhā

By the Soul, and the proportion and order given to it;

فَالْهَمَّهَا فَجُورَهَا وَتَقْوَاهَا ﴿٨﴾

Faalhamahā fujūrahā wataqwāhā

And its enlightenment as to its wrong and its right;-

الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا وَهُوَ الْعَزِيزُ  
الْعَلِيمُ ﴿٩﴾

L12

Alladhī khalaqa al-mawta wa al-ḥayāta liyabluwakum ayyukum aḥsanu 'amalan wahuwa al-'azīzu al-ghafūru

إِنَّ فِي ذَلِكَ لَذِكْرٍ لِمَنْ كَانَ لَهُ قَلْبٌ أَوْ أَلْقَى السَّمْعَ وَهُوَ  
شَهِيدٌ ﴿١٠﴾

L13

Inna fi dhālika ladhikrā liman kāna lahu qalbun aw alqā al-sam'a wahuwa shahīdun

Verily in this is a Message for any that has a heart and understanding or who gives ear and earnestly witnesses (the truth

L14

أَفَلَمْ يَسِيرُوا فِي الْأَرْضِ فَتَنظُرُوا لَهُمْ قُلُوبٌ يَعْقِلُونَ  
بِهَا أَوْ عَادَاجٌ يَسْمَعُونَ بِهَا فَإِنَّهَا لَا تَعْقِلُ إِلَّا أَتَمَادًا  
وَلَكِنْ تَعْقِلُ الْقُلُوبُ الَّذِينَ فِي السُّدُورِ ﴿١١﴾

Afalam yasīrū fi al-arḍi fataḥūna lahum qulūbun ya 'a qilūna bihā aw ādhānun yasma 'aūna bihā fa-innahā lā ta 'amā al-abṣāru walākin  
ta 'a mā al-qulūbu allafī fi al-ṣudūri

L15

وَمَنْ كَانَ فِي هَذِهِ أَعْمَنَ فَهُوَ فِي الْآخِرَةِ أَعْمَنَ وَأَضَلَّ سَبِيلًا ﴿١٢﴾

Waman kāna fi hādhīhī a 'mā fahuwa fi al-ākhirati a 'mā wa aḍallu sabīlan

- أن الروح مخلوق من المخلوقات ، ينشئها الخالق في الجسد الذي يريد خلقه إنساناً ، يشير إلى هذا قول ابن قيم الجوزية ( يرسل الله سبحانه الملك إلى الجسد ، فينفخ فيه نفخة تحدث له الروح بواسطة تلك النفخة فتكون النفخة هي سبب حصول الروح وحدثها له ، كما كان الوطاء والإنزال سبب تكوين جسمه ، والغذاء سبب نموه ، فمادة الروح من نفخة الملك ومادة الجسم من صب الماء في الرحم ، فهذه مادة سماوية ، وهذه مادة أرضية . . . فالملك

L16

p.46 Transliteration: *inna al-rūha makhluqun min al-makhluqat, yunshi'uhā al-khāliq fi al-Jasad alladhī yurīdu Khalqahu insānan yushīru ilā hādha qawlu Ibn Qayyim al-Jawziyyah "yursilu Allāhu subhānahu al-malaka ilā al-jasad Fayanfukhu Fihī Nafkhatan taḥduthu lahu al-rūhu bi wāsiṭati tilka al-nafkhah Fataḳūna al-Nafkhatu hiya sababu ḥuṣūl al-rūh, wa ḥudūthihā lahu... lamādatu al-rūh min Nafkhati al-Malak, wa mādatu al-Jismi min sabb al-mā Fi al-raḥim Fahādhihi māddatun samā wiyyah, wa hādhihi māddatun arḍiyyatun*

Transliteration: *Ittafaqt al-madhāhibu 'alā anna al-ḥarakata fi al-Jasad min 'alāmāt al-ḥayāh, ghayra anna ba'ḍihim i'tabara al-ḥarakata al-tawīlah, wa ba'ḍuhum i'tabara muṭlaq al-ḥarakah fi al-Jasad*

Transliteration: *i'tabara al-'ulamāu muṭlaq al-ḥarakah... wa ḥal lunāka mathalan ḥarakatun tadullu al-ḥayāti akthara min ḥarakati al-qalbi, wa nabḍi al-dammi Fi al-'urūq, wa al-tanaftusī, wa ḥarakat al-ṣadri, wa a'māla bāḡi al-a'dā min kaba'din wa kulyatin, wa amma wa ghayri dhalika*

اتفقت المذاهب على أن الحركة في الجسد من علامات الحياة ، غير أن بعضهم اعتبر الحركة الطويلة - أي التي تستمر دقيقة أو أكثر - وبعضهم اعتبر مطلق الحركة في الجسد . ومن هذا يتبين أمران :

وَمَنْ أَظْلَمُ مِمَّنِ افْتَرَى عَلَى اللَّهِ كَذِبًا أَوْ قَالَ أُوحِيَ إِلَيَّ وَلَمْ يُوحَ إِلَيْهِ شَيْءٌ وَمَنْ قَالَ سَأُنْزِلَ مِثْلَ مَا أَنْزَلَ اللَّهُ وَلَوْ تَرَى إِذِ الظَّالِمُونَ فِي غَمَرَاتِ الْمَوْتِ وَالْمَلَائِكَةُ بَاسِطُوا أَيْدِيهِمْ أَخْرِجُوا أَنْفُسَكُمُ الْيَوْمَ تُجْزَوْنَ عَذَابَ الْهُونِ بِمَا كُنْتُمْ تَقُولُونَ عَلَى اللَّهِ غَيْرَ الْحَقِّ وَكُنْتُمْ عَنْ آيَاتِهِ تَسْتَكْبِرُونَ ﴿٤٦﴾

L17

*Waman azlamu minnan iftarā 'alā Allāhi kadhīban aw qāla ūḥiya ilayya walam yūḥa ilayhi shay-on waman qāla sa onzilu mithla mā anzala Allāhu walaw tarā idh al-zālimūna fi ghamarāti almawti wa almalā-ikatu basiṭū aydihim akhrijū anfusakum al-yawma tujzawna 'a dhāba al-hūni bimā kuntum taqūlūna 'ala Allāhi ghayra al-ḥaqqi wakuntum 'an āyātihi tastakbirūna*

Who can be more wicked than one who inventeth a lie against God, or saith, "I have received inspiration," when he hath received none, or (again) who saith, "I can reveal the like of what God hath revealed"? If thou couldst but see how the wicked (do farc) in the flood of confusion at death! - the angels stretch forth their hands, (saying), "Yield up your souls: this day shall ye receive your reward,- a penalty of shame, for that ye used to tell lies against God, and scornfully to reject of His signs!"

وَلَا تَكُونُوا كَالَّذِينَ نَسُوا اللَّهَ فَأَنسَاهُمْ أَنفُسَهُمْ أُولَٰئِكَ هُمُ الْفَاسِقُونَ ﴿٢١﴾

Walā takūnū kaallathīna nasū Allāha faansāhum anfusahum ulā-ika hum al-fāsiqūna

And be ye not like those who forgot Allah. and He made them forget their own souls! Such are the rebellious transgressors!

فَإِذَا سَوَّيْتُهُ وَنَفَخْتُ فِيهِ مِن رُّوحِي فَقَعُوا لَهُ سَاجِدِينَ ﴿٢٢﴾

L18

Fa-idhā sawwaytuhu wanafakhtu fihi min rūhī faqa ‘ū lahū sājidīna

"When I have fashioned him (in due proportion) and breathed into him of My spirit, fall ye down in obeisance unto him."

وَلَقَدْ خَلَقْنَا الْإِنسَانَ مِن سُلَالَةٍ مِّن طِينٍ ﴿٢٣﴾

L19

Walaqad khalaqnā al-insāna min sulālatin min ṭīnin

Man We did create from a quintessence (of clay);

ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ ﴿٢٤﴾

Thumma ja ‘alnāhu nuṭfatan fī qarārīn makīnin

Then We placed him as (a drop of) sperm in a place of rest, firmly fixed;

ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَاقَةً فَعَزَّزْنَاهَا بِقَرَارٍ مَّكِينٍ  
الْعِظَّةَ عِظْمًا فَكَبَّوْنَا الْعِظْمَ لَحْمًا ثُمَّ أُنشَأْنَاهُ خَلْقًا آخَرَ  
فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ ﴿٢٥﴾

Thumma khalaqnā al-nuṭfata ‘alaqatan fakhalaqnā al-‘alaqata mudghatan fakhalaqnā al-mudghata ‘idhāman fakasawnā al- ‘ idhāma laḥman  
thumma ansha’nāhu khalqan ākhara fatabāraka Allāhu aḥsanu al-khāliqī na

Then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then we made out of that lump bones and clothed the bones with flesh; then we developed out of it another creature. So blessed be Allah, the best to create!

يَتَّخِذُهَا النَّاسُ إِن كُنْتُمْ فِي رَيْبٍ مِّنَ الْآيَاتِ فَاِذَا خَلَقْنٰكُمْ مِّن ثَرَابٍ ثُمَّ  
مِّن نُّطْفَةٍ ثُمَّ مِّن عَلَقَةٍ ثُمَّ مِّن مُّضْغَةٍ مُّخَلَّقَةٍ وَغَيْرِ مُخَلَّقَةٍ لِّنُبَيِّنَ لَّكُمْ  
وَدُخْرِي فِي الْاَرْحَامِ مَا نَشَاءُ اِلَّا اَجَلٍ مُّسَمًّى ثُمَّ نَحْنُ جُكُمٌ طِفْلًا  
ثُمَّ لِنَبْلُوَكُمْ اَشَدَّ حُمٍّ وَمِنْكُمْ مَّن يُتَوَقَّنْ وَمِنْكُمْ مَّن يُّرَدُّ اِلَّا اَرَدَ اِلَّا  
الْعُثْرَ لِكَيْلًا يَّعْلَمَ مَن بَعْدَ عِلْمٍ شَيْئًا وَتَرَى الْاَرْضَ هَامِدَةً فَاِذَا  
اَنْزَلْنَا عَلَيْهَا الْمَاءَ اهْتَزَّتْ وَرَبَتْ وَاَخْبَتَتْ مِّنْ كُلِّ زَوْجٍ بَهِيجٍ ﴿٥٥﴾

Yā ayyuhā al-nāsu in kuntum fi raybin mina al-ba 'thi fa-innā khalaqnākum min turābin thumma min nutfatin thumma min 'alaqatin thumma min mudghatin mukhallaqatin waghayri mukhallaqatin linubayyina lakum wanuqirru fi al-arhāmi mā nashā u ilā ajalīn musamman thumma nukhrijukum ṭiflan thumma litablughū ashuddakum waminkum man yutawaffā waminkum man yuraddu ilā ardhalī al-'umuri likaylā ya'lama min ba 'di 'ilmin shay-an watarā al-arḍa hāmidatan fa-idhā anzalnā 'alayhā al-mā' ihtazzat warabat wa anbatat min kulli zawjin baḥī jin

O mankind! if ye have a doubt about the Resurrection, (consider) that We created you out of dust, then out of sperm, then out of a leech-like clot, then out of a morsel of flesh, partly formed and partly unformed, in order that We may manifest (our power) to you; and We cause whom We will to rest in the wombs for an appointed term, then do We bring you out as babes, then (foster you) that ye may reach your age of full strength; and some of you are called to die, and some are sent back to the feeblest old age, so that they know nothing after having known (much), and (further), thou seest the earth barren and lifeless, but when We pour down rain on it, it is stirred (to life), it swells, and it puts forth every kind of beautiful growth (in pairs).

فَاِذَا سَوَّيْتُهُ وَنَفَخْتُ فِيْهِ مِنْ رُّوْحِي فَقَعُوْا لَهٗ سٰجِدِيْنَ ﴿٥٦﴾

Fa-idhā sawwaytuhu wanafakhtu fīhi min rūḥī faqa 'ū lahū sājidīna

"When I have fashioned him (in due proportion) and breathed into him of My spirit, fall ye down in obeisance unto him."

خَلَقْنٰكُمْ مِّن نَّفْسٍ وَاحِدَةٍ ثُمَّ جَعَلْ مِنْهَا زَوْجَهَا وَاَنْزَلَ لَكُمْ مِّنْ اَلَانْتَعَمِ  
تَمْبِيَّةَ اَزْوَاجٍ يَّخْلُقْكُمْ فِي بُطُوْنٍ اَمْهَبِيْكُمْ خَلْقًا مِّنْ بَعْدِ خَلْقِيْ فِي  
ظُلُمٰتٍ ثَلٰثٍ ذٰلِكَ رُبُّكُمْ لَهٗ اَلْمُلْكُ لَا اِلٰهَ اِلَّا هُوَ فَاَنصُرُوْنِ ﴿٥٧﴾

Khalaqākum min nafsin wāhidatin thumma ja 'ala minhā zawjahā wa anzala lakum min al-an 'āmi thamāniyata azwājin yakhluqukum fi buṭūni ummahātikum khalqan min ba 'di khalqin fi zulumātin thalāthin dhālikumu Allāhu rabbukum lahu almulku lā ilāha illā huwa fa annā tuṣraf ūna

He created you (all) from a single person: then created, of like nature, his mate; and he sent down for you eight head of cattle in pairs: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness. such is Allah, your Lord and Cherisher: to Him belongs (all) dominion. There is no god but He: then how are ye turned away (from your true Centre)?

اَلَمْ يَكْ نُطْفَةٍ مِّنْ مَّنِيٍّ يُّمْنٰنٍ ﴿٥٨﴾

Alam yaku nūṭfatan min manayyin yumnā

Was he not a drop of sperm emitted (in lowly form)?

ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّى ﴿٣٨﴾

Thumma kāna ‘alaqatan fakhalaqa fasawwā

Then did he become a leech-like clot; then did ((Allah)) make and fashion (him) in due proportion.

فَجَعَلَ مِنْهُ الذَّكَرَ وَالْأُنثَى ﴿٣٩﴾

Faja ‘ala minhu al-zawjayni al-dhakara wa al-unthā

And of him He made two sexes, male and female.

أَقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ ﴿٤٠﴾

Iqra/ bi-ismi rabbika alladhī khalaqa

Proclaim! (or read!) in the name of thy Lord and Cherisher, Who created-

خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ ﴿٤١﴾

Khalaqa al-insāna min ‘alaqin

Created man, out of a (mcre) clot of congealed blood:

إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُطْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ فَجَعَلْنَاهُ سَمِيعًا بَصِيرًا ﴿٤٢﴾

Innā khalaqnā al-insāna min nuṭfatin amshājīn nabtalihi faja ‘alnāhu samī ‘an baṣīran

Verily We created Man from a drop of mingled sperm, in order to try him: So We gave him (the gifts), of Hearing and Sight.

L20

إد ننننم وننننم سـ سـ سـ . . .  
البليون أخذت لها نصيبا قدره واحد على بليون من الحياة . إن كنه الحياة غير  
معروف فلا نستطيع أن نتناولها بالمفاهيم المادية الدارجة . ولنا بعد ذلك في المجال  
الغيبى مندوحة أخرى هي أن نقول إن البيضة التي قضى الله أن تعطى توأمين  
سبقت مشيئة الله فأودعتها حياتين .



L21 “Up to this point, it is possible for use to say that the beginning of human life is: When the human brain is born or created”. (Al-Mahdī, 1985: 69; Bā Salamah, 1985: 81; Ibrāhīm, 1985: 75).

إذن فبداية الحياة البشرية على وجه اليقين هو عند اكتمال الشهر الرابع من الحمل . ومعلوم أن الله عز وجل أرسل للرحم ملكا قبل ذلك ، عند تمام خلة .

قد يكون ذلك لأن المخ يكون قد بدأ في النمو . . وبداية خلق المخ هو بداية خلق أهم روافد الإدراك والعقل في الإنسان . . وقد يكون لإرسال الملك إلى النطفة

Transliteration “Wa bidāyat khalq al-mukh huwa bidāyat khalqi ahamm rawāfīd al-idrāk, wa al-‘aqli fi al-insān” (Ibrāhīm, 1985: 76)

لأن المخ هو الطريق إلى العقل والفؤاد والوعي والإدراك . . وكلها صفات للبشرية . . . فإذا انتهت يموت المخ ، انتهت الحياة البشرية . . . وتظل بالجسم الحياة الحيوانية وقتا قد يطول وقد يقصر . .

Transliteration: “Li anna al-mukh huwa al-tarīq ilā al-‘aqli, wa al-fuād wa al-wa ‘yi, wa al-idrāk” (Ibrāhīm, 1985: 76).

Transliteration: “Anna al-tawr al-akhīr min atwārī numuwwi al-janīn huwa bidāyat al-ḥayāh al-insāniyyah.....anna al-ḥayāh al-insāniyyah, tabda’ ma’a bidāyat nafkh al-rūḥ fī al-jasad ba’da 120 yawman min al-ḥaml”. (Ibid)

حيوانية ) . . لوجدنا أن الطور الأخير من أطوار نمو الجنين هو بداية الحياة الانسانية داخل الرحم حيث في هذا الطور تنفخ الروح في الكتلة البشرية ، وهي المرحلة التي ( حلت ) فيها ( الأمانة ) أو التكليف في الجسم البشري . . . ومكانها - كما ذكر سابقا - وأتفق عليه العلماء هو ( المخ ) . .

إذا فالأقرب إلى الصواب أن الحياة الإنسانية تبدأ مع بداية نفخ الروح في الجسد ، وذلك بعد ( ١٢٠ يوما ) من الحمل ، . . ولكي تبدأ الحياة الإنسانية فلا بد من وجود ( مخ ) نام سليم ، . . مكتمل ، لكي يستقبل تلك الحياة أو ( النفخة ) . .

Transliteration: “Bi anna al- ḥayāt al-insāniyyah innamā tabda’ ma’a nafkh al-rūḥ alladhī warada dhikruhu.....wa alladhī yahummunā ba’da arba’ati ashhurin ba’da takawwun al-Janīn”. (Ibid)

إن هذا النظر يلزمنا بالقول بأن الحياة الإنسانية إنما تبدأ مع نفخ الروح الذي ورد ذكره في الحديث الشريف تاليا حصول الملك الموكل بها على كتاب التكليف الرباني ، المفصل فيه قدرها ، والذي يكون بعد أربعة أشهر من بدء تكوّن الجنين . ولعل هذا النفخ يكون في الأيام العشرة التي تأتي عقب تلك الأشهر لأربعة ، كما ورد عن ابن عباس رضي الله عنها (٦) .

خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ ثُمَّ جَعَلَ مِنْهَا زَوْجَهَا وَامَرَّ أَنْ تَكُونَ مِنَ الْآخِثِينَ  
ثُمَّ يَبْدَأُ بِخَلْقِكُمْ فِي بَطْنٍ مِنْكُمْ خَلْقًا وَنَافِئًا خَلْقًا فِي  
ظُلُمَاتٍ ثَلَاثٍ ذَٰلِكُمْ اللَّهُ رَبُّكُمْ لَهُ الْمُلْكُ لَا إِلَهَ إِلَّا هُوَ فَاتَّقُوا اللَّهَ  
﴿١٢٢﴾

L22

Khalaqakum min nafsī wāḥidatin thumma ja ‘ala minhā zawjahā waanzala lakum mina al-an ‘āmi thamāniyata azwājin yakhlūqukum fī  
buṭūni ummahātikum khalqan min ba ‘di khalqin fī ḡulumātin thalāthin dhālikumu Allāhu rabbukum lahu almulku lā ilāha illā huwa  
fa annā tuṣrafūna

L23

أَلَمْ يَكُنْ نُطْفَةً مِنْ مِيْنٍ يُمْنِنُ ﴿١٢٣﴾

Alam yaku nuṭfatan min manayyin yumnā

Was he not a drop of sperm emitted (in lowly form)?

ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّى ﴿١٢٤﴾

Thumma kāna ‘Alaqtan fakhalāqa fasawwa

Then did he become a leech-like clot; then did ((Allah)) make and fashion (him) in due proportion.

فَجَعَلَ مِنْهُ الذَّكَرَ وَالْأُنثَىٰ ﴿١٢٥﴾

Faja ‘ala minhu al-zawjayni al-dhakara wa al-unthā

And of him He made two sexes, male and female.

“Read in the name of your Lord Who created. He created man from a clot.” (96:1-2):

اقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ ﴿١﴾

Iqra/ bi-ismi rabbika allathī khalāqa

Proclaim! (or read!) in the name of thy Lord and Cherisher, Who created-

خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ ﴿٢﴾

Khalāqa al-insāna min ‘alaqin

**Created man, out of a (mere) clot of congealed blood:**

**“Verily We created Man from a drop of mingled sperm, in order to try him: So We gave him (the gifts), of Hearing and Sight.” (76:2):**

يَتَأْتِيهَا النَّاسُ إِنْ حَضَرُوا فِي رَيْبٍ مِنَ الْبَيْتِ فَإِذَا خَلَعْنَكُمْ مِنْ ثَرَابٍ ثُمَّ  
مِنْ ثُلَاطَةٍ ثُمَّ مِنْ عَلَقَةٍ ثُمَّ مِنْ مُصَفَاةٍ مُخْلَقَةٍ وَغَيْرِ مُخْلَقَةٍ لَيَبَيِّنَ لَكُمْ  
وَنُفُورَ فِي الْأَرْحَامِ مَا نَشَاءُ إِلَى أَجَلٍ مُسَمًّى ثُمَّ نُخْرِجُكُمْ طِفْلاً  
ثُمَّ لِنَبْلُوْهُ أَأَشْكُمُ وَمِنْكُمْ مَّنْ يَتَّقُؤُا وَمِنْكُمْ مَّنْ يَفْرُكُ إِلَى أَزْدَلِ  
الْعُمُرِ لِنَكِيلًا يَعْلَمَ مِنْ بَعْدِ عِلْمٍ شَيْئًا وَتَرَى الْأَرْضَ هَامِئَةً فَإِذَا  
أَنزَلْنَا عَلَيْهَا الْمَاءَ اهْتَزَّتْ وَرَبَتْ وَأُثْبِتَتْ مِنْ حُلٍّ رَوْحٍ يُوسِّجُ ﴿٥﴾

Yā ayyuha al-nāsu in kuntum fī raybin mina alba' thi fa-innā khalāqnākum min turābin thumma min nuṭfatin thumma min 'Alāqatin thumma min mudghatin mukhallāqatin waghayri mukhallāqatin linubayyina lakum wanuqirru fī al-arhāmi mā nashāu ilā ajalīn musamman thumma nukhrijukum ṭiflan thumma litablughū ashuddakum waminkum man yutawaffā waminkum man yuraddu ilā ardhalī al-'umuri likaylā ya'lama inin ba 'dī 'ilmin shay-an watarā al-arḍa hāmidatan fa-idhā anzalnā 'alayhā almā' ihtazzat warabat wa anbatat min kulli zawjīn bah ṭjīn

O mankind! if ye have a doubt about the Resurrection, (consider) that We created you out of dust, then out of sperm, then out of a leech-like clot, then out of a morsel of flesh, partly formed and partly unformed, in order that We may manifest (Our Power) to you; and We cause whom We will to rest in the wombs for an appointed term, then do We bring you out as babes, then (foster you) that ye may reach your age of full strength; and some of you are called to die, and some are sent back to the feeblest old age, so that they know nothing after having known (much), and (further), thou seest the earth barren and lifeless, but when We pour down rain on it, it is stirred (to life), it swells, and it puts forth every kind of beautiful growth (in pairs). The commencement of the human soul and its relationship to science has been discussed, but what does Islam say about the inception of the human soul? Allah cemented all these Quranic verses in the stages of human creation. (23:12-14):

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ صَلْوَءٍ مِنْ طِينٍ ﴿١٧﴾

L24 **Walaqad khalaqnā al-insāna min sulālatin min t̤īnin**

Man We did create from a quintessence (of clay);

ثُمَّ جَعَلْنَاهُ نَظْفَةً فِي قَرَارٍ مَّكِينٍ ﴿١٣﴾

Thumma ja 'al nāhu nuṭfatan fī qarārin mak īnin

Then We placed him as (a drop of) sperm in a place of rest, firmly fixed.

ثُمَّ خَلَقْنَا الْمَرْءَ عَاتِقًا فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا  
الْمُشْجَةَ عِظْمًا فَخَشَنَوا أَعْطَسَ لَهَا لَحْمًا ثُمَّ أَهْبَأْتُهُ خَلْقًا آخَرَ  
فَقَبَارِكُ اللَّهَ أَحْسَنُ الْخَالِقِينَ ﴿١٩﴾

إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُطْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ فَجَعَلْنَاهُ سَمِيعًا بَصِيرًا

L25

Innā khalaqnā al-insāna min nutfatin amshājin nabtālihi faja 'alnāhu samī 'an basīran

الَّذِي أَحْسَنَ كُلَّ شَيْءٍ خَلْقَهُ وَبَدَأَ خَلْقَ الْإِنسَانِ  
مِنْ طِينٍ ﴿٢٦﴾

L26

Alladhī aḥsana kulla shay-in khalaqahu wa bada'a khalqa al-insāni min ṭinin

فَلْيَنْظُرِ الْإِنْسَانُ مِمَّ خُلِقَ ﴿٢٧﴾

L27

Falyanzuri al-insānu mimma khuliqa

Now let man but think from what he is created!

خُلِقَ مِنْ مَّاءٍ دَافِقٍ ﴿٢٨﴾

Khuliqa min mā-in dāfiqin

He is created from a drop emitted.

L28

الَّذِي يَتَّبِعُ الْأَنْفُسَ حِينَ مَوْتِهَا وَالَّتِي لَمْ تَمُتْ فِي مَنَامِهَا  
فَهَبْ لَكَ آتٍ عَلَيْهِمُ الْمَوْتُ وَهُمْ يَكْفُرُونَ ﴿٢٩﴾  
إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ ﴿٣٠﴾

Allahu yatawaffā al-anfusa ḥīna mawtiḥā wa allatī lam tamut fi manāmiḥā fayumsiku allatī qaḍā 'alayhā al-mawta wayur'silu al-ukhrā ilā ajalīn musamman inna fi dhālika la āyatin liqawmin yatafakkarūna

L29

فَالْقُرْآنَ مَثَلًا يَقُولُ فِي وَصْفِ هَلَاكِ الْعَصَا ﴿٣١﴾ إِنَّ كَانَتْ إِلَّا صَبِيحَةً وَاحِدَةً  
مِمَّ خَامِدُونَ ﴿٣٢﴾ يَس ٢٩ .

والخمود : هو سكون الجسد وخلوه من الحركة أو التنفس أو أي علامة  
لحياة الجسدية ثم يقول في آية أخرى :

L30 Transliteration: takallama al-Fuqahā u 'an Nihāyati al-hāyati Fī al-insān, wamā yajibu an yatba'ahā min A'mālin khāṣṣah bi taj'hīzihi, wa gabrihi, li anna al-mawta dā imān ya' qubuhu qabru al-mayyit mubāsha-ratan, wamā yalzimu min dhālika al-maqbū ri min taghsilīn, wa tak finin, wa ṣalatin

Transliteration " idhā tayaqqana al-hādirūna min mawt al-Mayyit wa ālāmatu dhālika inqitā' nafasihi wa infirāju shafatayhi, wa in khisāfu sidghayhi aw maylu anfīhi, wa istirkhā u aṣābihi wa rijlayhi wa imtidādu jilda wajhihi wataqalluṣi khisaytayhi ilā fawq mā tadalli al-jildah"

تكلم الفقهاء عن نهاية الحياة في الإنسان ، وما يجب أن يتبعها من أعمال  
خاصة بتجهيزه وقبره ، لأن الموت دائماً يعقبه قبر الميت مباشرة مصداقاً لقوله تعالى  
﴿ ثم أماته فاقبره ﴾ وما يلزم ذلك المقبور من تغسيل وتكفين وصلاة وغير ذلك .

فقالوا : اذا تيقن الحاضرون من موت الميت ، وعلامة ذلك ، انقطاع نفسه  
وانفراج شفتيه ، وأضاف بعضهم أوصافاً أخرى ، مثل انخساف صدغيه أو ميل  
أنفه واسترخاء أعصابه ورجليه ، وامتداد جلد وجهه ، وتقلص خصتيه الى فوق

Transliteration: Fa idhā kana humāka adna ribatin turika al-jismu ḥatta tata ghayyar Rā iḥatuhu, wa ycnta fī ma'ahu ayyu shakkin Fī al-Mawt, wa hādha mā huwa 'alayhi ijma' al-Fuqahā

ثم يتبعون تلك الأوصاف بشروط أخرى ، فيقول النووي في روضة  
ج ٢ ص ٩٨ ، : فان شك في موته بأن يكون به عله ، واحتمل أن  
سكته ، أو ظهرت عليه أمارات فزع أو غيره . كأن يكون هناك احتمال  
خلافه - آخر حتى اليقين بتغير الرائحة أو غيره .

Transliteration: amārāt al-mawt wa 'alāmātihi: lil mawti 'alāmātun zāhiratun ya'lamuhā 'āmmat al-Nāsi famin hādhihi al- 'alāmāt inqitā' u nafas al-mayyit, wa iḥdādu baṣarihi wa infirāju shafatayhi, falā yantabiḡāni wa suqūti qadamayhi falā yantaṣibāni"

#### أمارات الموت وعلاماته :

للموت علامات ظاهرة يعلمها عامة الناس فمن هذه العلامات انقطاع  
نفس الميت ، واحداد بصره ، وانفراج شفتيه فلا ينطبقان وسقوط قدميه فلا  
يتصبان (١) كما ذكروا علامات تدل على قرب حدوث الموت فمن وصل إلى  
درجة الاحتضار من هذه العلامات .

Transliteration: "Al-mawtu fi al-ṭibb al-ḥadīth: 'arrafa al-aṭibbāu al-mawta bi annahu tawaqqufu ḥayāt al-insāni, aw al-ḥayawāni fi wuqūf al-ajhizah al-thalātha (Al-qalb, blood circulation, and breathing or brain death completely)

wahya: jihāz al-tanaffūs, wa al-dawrah al-damawīyyah, wa al-jihāz al-'aṣabi"

الموت في الطب الحديث :-  
عرف الأطباء الموت بأنه توقف حياة الإنسان أو الحيوان في وقوف  
الأجهزة الثلاثة وهي جهاز التنفس ، والدورة الدموية ، والجهاز العصبي .

الحواس من سمع وبصر وشم وذوق ولمس ، إنه مكان الاستقبال الوحيد من العالم  
الخارجي ، كما أنه يحتوي على مخازن الذاكرة من قراءات وسمع وبصر . الخ  
والخبرات السابقة ومكان التفكير والابتكار ، وبه تم إرساء الطباع والعادات والمثل  
المكتسبة ، والمميزة لكل إنسان ومكان تواجد الغرائز الموروثة أيضا ، كما أنه مصدر  
الأفعال المترتبة على ما يستقبله من معلومات . وقد عرفنا ذلك كله لأن تلف أجزاء  
محددة من المخ ينتج عنه فقد قدرات معينة اختصت بها هذه الأجزاء ولكل هذه  
القدرات استخلفنا الله في الأرض وعلى استخدامها سنحاسب في النهاية وإذا ما  
فقدنا إنسان فقد الأهلية وسقط عنه الحساب .

فعند توقف القلب عن العمل نهائيا لأي سبب من الأسباب ، وهو ما يحدث  
في الغالبية العظمى من حالات الموت فإن ذلك يتبعه فورا فقدان الوعي وتوقف  
التنفس وهماوظيفتان من وظائف المخ الذي لا يتحمل توقف دورته الدموية إلا  
لثوان معدودة ولو أن خلاياه تظل حية ليضع دقائق إلا أنها تتوقف في أثنائها عن  
العمل .

كما أسلفنا فإنه في أغلب الأحيان تنتهي الحياة الإنسانية بتوقف القلب الذي يعقبه فوراً توقف التنفس وفقدان الوعي ثم تموت الأعضاء بدءاً بالمش في الدقائق الأولى . . الخ ولكن هناك حالات أخرى يموت فيها المش أولاً . وأرجو ألا يستنتج البعض أن هناك أنواعاً مختلفة من الموت ولكن هناك بالفعل أسباب مختلفة له فمريض الكبد أو مريض القلب أو مريض الرئة أو مريض الكلى قد ينتهي به الأمر إلى الموت لأن عضواً هاماً حيواً قد تلف في جسمه ويؤدي ذلك إلى اختلال الوظائف الحيوية بهذا الجسم مما يؤدي في أغلب الأحيان إلى هبوط في الدورة الدموية وتوقف القلب عن العمل وبالتالي موت المش ، ولكن هذا لا يمنع أبداً أن تلف المش المباشر يؤدي أيضاً إلى وفاة الإنسان حتى لو كانت بقية الأعضاء الأخرى بما في ذلك القلب سليمة وذلك مثل ما يحدث في بعض إصابات الرأس الشديدة في حوادث الطرق أو السقوط من أماكن مرتفعة وكذلك في بعض الأمراض مثل نزيف المش أو

ثُمَّ إِنَّكُمْ بَعْدَ ذَلِكَ لَمَيِّتُونَ ﴿١٠﴾

L31

Thumma innakum ba'da dhālika lamayyitūna

After that, at length ye will die

ثُمَّ إِنَّكُمْ يَوْمَ الْقِيَامَةِ تُبْعَثُونَ ﴿١١﴾

Thumma innakum yawma al-qiyyāmati tub 'athūna

Again, on the Day of Judgment, will ye be raised up?

L32

أَعِدَّا مِثْنًا وَكُنَّا تُرَابًا وَعِظْمًا أَعِزَّا لَمَبْعُوثُونَ ﴿١٢﴾

A-idhā mitnā wakunnā turāban wa'izāman a-innā lamab 'ūthūna

"What! When we die, and become dust and bones, shall we (then) be raised up (again).

L33

أَعِدَّا مِثْنًا وَكُنَّا تُرَابًا وَعِظْمًا أَعِدَّا لَمَدِيُون ﴿٤٧﴾

A-idhā mitnā wakunnā turāban wa 'izāman a-innā lamadinūna

"When we die and become dust and bones, shall we indeed receive rewards and punishments?"

L34

وَكَاثُوا يَقُولُونَ أَيْدَا مِثْنًا وَكُنَّا تُرَابًا وَعِظْمًا أَعِدَّا لَمَبْعُوثُونَ ﴿٤٨﴾

Wakānū yaqūlūna a-idhā mitnā wakunnā turāban wa 'izāman a-innā lamab 'ūthūna

L35

وَضَرَبَ لَنَا مَثَلًا وَنَسِيَ خَلْقَهُ قَالَ مَنْ يُحْيِي الْعِظْمَ وَهِيَ رَمِيمٌ ﴿٤٩﴾

Waḍaraba lanā mathalan wanasiya khalqahu qāla man yuhyī al-'izāma wahiya ramī mun

And he makes comparisons for Us, and forgets his own (origin and) Creation: He says, "Who can give life to (dry) bones and decomposed ones (at that)?"

قُلْ يُحْيِيهَا الَّذِي أَنشَأَهَا أَوَّلَ مَرَّةٍ وَهُوَ بِكُلِّ خَلْقٍ عَلِيمٌ ﴿٥٠﴾

Qul yuhyī hā alladhī ansha'ahā awwala marratin wahuwa bikulli khalqin 'alī mun

Say, "He will give them life Who created them for the first time! for He is Well-versed in every kind of creation!-

L36

قُلْ يَتَوَفَّنَكُم مَّلَكُ الْمَوْتِ الَّذِي وُكِّلَ بِكُمْ ثُمَّ إِلَىٰ رَبِّكُمْ  
تُرْجَعُونَ ﴿٥١﴾

Qul yatawaffākum malaku al-mawti alladhī wukkila bikum thumma ilā rabbikum turja'ūna



Say: "The Angel of Death, put in charge of you, will (duly) take your souls: then shall ye be brought back to your Lord."

L37 And God says, "Why do you not intervene when the soul of dying person reaches the throat while you are present and looking on? (56:83-84):

فَلَوْلَا إِذَا بَلَغَتِ الْحُلُقُومَ ﴿٨٣﴾

Falawlā idhā balaghati al-ḥulqūma

Then why do ye not (intervene) when (the soul of the dying man) reaches the throat,-

وَأَنْتُمْ حِينِيذٍ تَنْظُرُونَ ﴿٨٤﴾

Waantum hī na-idhin tanzurūna

كَأَلَّا إِذَا بَلَغَتِ التَّرَاقِي ﴿٨٥﴾

Kallā idhā balaghati al-tarāqiya

Yea, when (the soul) reaches to the collar-bone (in its exit),

وَقِيلَ مَنْ رَاقٍ ﴿٨٦﴾

Waqīla man rāqin

And there will be a cry, "Who is a magician (to restore him)?"

وَطَّنْ لَهُ الْفِرَاقُ ﴿٨٧﴾

Wa ḡanna annahu al-firāqu

And he will conclude that it was (the Time) of Parting;

وَأَلْتَفَّتِ السَّاقُ بِالسَّاقِ ﴿٢٩﴾

Wa al-taffati al-sāqu bi al-sāqi

And one leg will be joined with another:

إِلَىٰ رَبِّكَ يَوْمَئِذٍ الْمَسَاقُ ﴿٣٠﴾

Ilā rabbika yawma-idhin al-masāqu

L38

وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أَحْيَاءٌ عِنْدَ  
رَبِّهِمْ يُرْزَقُونَ ﴿٣١﴾

Walā taḡsabanna alladhīna qutilū fi sabīli Allāhi amwātun bal aḡyā un ‘inda rabbiḡim yur’zaqūna

“Think not of those who are slain in Allah’s way as dead. Nay, they live, finding their sustenance in the presence of their Lord.”

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ  
يُحِبُّ الْمُحْسِنِينَ ﴿٣٢﴾

L39

Wa anfiqū fi sabīli Allāhi walā tulqū bi-aydikum ilā al-taḡlukati wa aḡsinū inna Allāḡa yuḡibbu almuḡsinīna

And spend of your substance in the cause of God, and make not your own hands contribute to (your) destruction; but do good; for God loveth those who do good

L40

وما أتى به بعض العلماء من جواز الانتفاع ببعض أعضاء الميت لإنقاذ حياة حي فإن ذلك لا يكون إلا بعد التحقق من وفاة المأخوذ منه عضو لا يعيش إلا به . كالقلب والكبد، ويحفظ بالوسائل العلمية الحديثة ليتنفع به . . ولا أعتقد أن عالمي الشريعة يستطيع أن يفتي بجواز نزع قلب شخص لا تزال به حياة - مهما كانت هذه الحياة ضئيلة - لينقل إلى شخص آخر .

Transliteration: "Wālā a 'taqīd anna 'ālīman Fī al-Sharī'ah yastaṭī 'u an yuṭfiya bi Jawāzi Naz'i qalbi shakhṣin lā tazālu bihi ḥayātun - mahmā kānat hādhihi al-ḥayātu ḍa'īlatun - liyungala ilā shakhṣin ākhar."

L41

لقد نقلت هذا النص بطولة لبيان أن المجتهدين قد اختلفوا متى تعتبر الحياة منتهية فينتفى تبعاً لذلك ترتب أحكام الحياة . لقد رأينا أنهم لم يعتبروا الحياة تثبت إلا بالصوت والصوت حركة مرتبطة بالدماغ ، فإذا كان الدماغ هامدا لا يعطي أوامره ولا يضبط الإرجاع عن المؤثرات فإنه لا حياة . ولذلك قدروا أن العطاس والبول والرضاء لا يعد من الحيات . . . . .

Transliteration: "inna al-mujtahidīna qad ikhtalafū mā tu'tabar al-ḥayātu muntahiyah fayantafī taba'an li dhalika taratub aḥkām al-ḥayāh laqad ra aynā annahum lam ya'tabirū al-ḥayāta tathbut illā bi al-sawt, wa al-sawtu ḥarakatun murtabātun bi al-dimāgh

Fa idhā kāna al-dimāghu Ḥā'midan, la yu 'tī awāmīrahū, walā yaḍbut al-irjā 'u 'an al-mu'athirāt Fa innahu lā ḥayātā" (Al-Salāmi, 1994 : 452 ).

L42

أخذ أعضاء من الموق لزراعتها في الأحياء .

ونقول ابتداء إنه لا يوجد طبيب صحيح العقل فضلا عن طبيب مسلم يفكر في الإجهاز على مريض محتضر لنقل عضو من أعضائه إلى مريض آخر يوشك أن يموت، فللطبيب التزامه المهني بالمحافظة على الحياة الإنسانية ابتداء من لحظة الحمل حتى تحقق الموت، والمسلم يعرف قوله تعالى ﴿ وما كان لنفس أن تموت إلا بإذن

Transliteration: akhdhu a'dā min al-mawtā lizarā 'atiha fī al-aḥyā innahu lā yujad Ṭabībun ṣaḥīḥu al- 'aqli faḍlan 'an ṭabībīn muslimīn yufakkiru fī al-ijhāzi 'ala marīḍin muḥtadarīn li naqli 'Uḍwin min a 'dāhi ilā marīḍin ākhar yūshiku an yamūta fa lil ṭabībī iltizāmuhu al-mihani bi al-muḥāfazati 'alā al-ḥayāti al-insāniyyati ibtidā an min laḥzati al-ḥamli ḥattā taḥaqquq al-mawti wa al-muslim ya'rifu qawla Allāh "wamā kāna linafsin antamūta illā bi idhni Allāh.

♦ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَخَلَقْنَاهُمْ فِي الْخَيْرِ وَالْبَحْرِ وَرَزَقْنَاهُمْ  
مِنْ الطَّيِّبَاتِ وَقَطَّعْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْصِيلًا ﴿٧٦﴾

L43

Walaqad karramnā banī ādama waḥamalnāhum fī albarri wa albahri warazaqnāhum min al-ṭayyibāti wafaḍḍalnāhum 'alā kathīn mimman khalaqnā tafḍīlan

L44

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَءِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ  
فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ  
جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي  
الْأَرْضِ لَمُسْرِقُونَ ﴿٢٢﴾

Min ajli dhālika katabnā ‘ala banī isrā-īla annahu man qatala nafsān bighayri nafsīn aw fasādin fī al-arḍi faka annamā qatala al-nāsa jamī  
‘an waman ahyāhā faka annamā ahyā al-nāsa jamī ‘an