

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

ORGAN TRANSPLANTATION

CLASSICAL HANAFITE PERSPECTIVES

Mohammad Omar Hussaini



W A Y All Rights Reserved.

Material is not to be reproduced or published in any manner without express permission of author

INTRODUCTION

The issue of organ transplant is by no means one that is immediately peculiar to the 21st century and the medical advances it has heralded. Reference to successful organ transplants can be found in Ancient Greek and Indian literature. The first successful allograft can be dated as far back as 1668 when Job van Meeneren used a portion of a dog's skull for human cranial repair. However, the widespread and conventional use of transplantation as a medical procedure did indeed only come about in recent history. This was due, in large part, to the discovery of surgical vessel to vessel anastomosis at the turn of the 20th century and the revolutionary role of immunosuppressive medicines in preventing organ rejection in the 1960's (Riaz). Serious religious and ethical discourse concerning organ transplantation coincides with this proliferation of organ transplantation as a medical procedure in the latter half of the 20th century.

CATHOLIC VIEWS

The earliest Christian dialogue on the issue of organ transplant was necessarily theoretical in nature. Initially, Catholic theologians generally considered organ transplantation as immoral. However, Gerald Kelly, in light of the Christian imperative to love one's fellow man, broke new ground by arguing for the permissibility of organ transplantation. His "liberal" views slowly drew support from others Christian thinkers. Transplantation required that the human body's integrity be disrupted, that the body in a way be mutilated. However, those who sided with Kelly's stance forwarded that there exists a difference between anatomical and functional integrity, the latter being what truly defines the integrity of the human body. It would seem then that since integrity of the human body was not being disrupted, organ transplant could be deemed permissible. The Catholic Church embraces this view, and today organ donation is actually looked upon as a commendable act, one that embodies Love and Communion. Accordingly, the Church considers all organs of the human body as acceptable for donation (Riaz).

The main argument in favor of organ transplant centers on the Christian command to love one's neighbor. Since saving another's life is the epitomal manifestation of loving and caring for one's fellow man, organ transplant should be allowed (Riaz). Despite similar instructions exhorting toward Love, this approach to establishing permissibility, from an Islamic standpoint, may be problematic for various reasons.

First, Hanafite legal theory states that when there are two conflicting bodies of textual evidence, preference is given to prohibitory evidence. One the one hand, there is a sizeable body of literature to support the notion that one must love and care for his fellow man:



1. 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 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. (Quran 5:23)
2. O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things). (49:13). Ibn Katheer remarks that this verse establishes the equality of humankind.
3. None of ye shall believe till he loves for his brother what he loves for himself (Bukhari 6).

Texts similar to these highlight the need to care for one's fellow man and aid him or her in times of need. However, on the other hand, there is also considerable textual basis (to follow) that would indicate that it is not lawful to donate one's organs. When these two bodies of conflicting text are present, the prohibitory texts will be given precedence over the "permissive" ones.

Second, one is not Islamically obligated to undertake proscribed acts in order to extend a benefit to a third party. If one can extend good to others without incurring sin, he or she should by all means do so. However, when sin must be incurred, one will not be faulted for withholding benefit to the third party. Take for example the situation in which an individual is asked to fornicate to save the life of his kidnapped friend. Hanafites would argue it is impermissible for the individual to fornicate on the basis of the principle: there is no obedience to the creation when such obedience entails disobedience to the Creator. The coerced individual, should he decide not to fornicate, will be regarded as doing the moral thing. Similar reasoning can be applied to disallow organ transplant despite textual exhortations to help one's brother. In the case of organ transplant, the potential donor will not be regarded as the "cause of death" of the potential recipient. The cause is the organ failure and the potential donor is absolved of any liability.

Christian scholars have also argued that transplantation should be allowed on the basis of Jesus (A)'s teaching to rid one's body of those limbs that cause one "to stumble" (Matthew 5: 30, Matthew 18:8-9, Mark 9:43). However, the use of this text as proof of permissibility seems premature. The cited text, at best, permits the removal of body parts for the benefit of the owner only. Therefore, this proof could well be rejected on basis of what is termed *Qiyas ma'al Faariq* (iniquitous analogy). Cutting or removing a human body part for third party benefit is not established by this text unless one argues that the



text fundamentally establishes a general license to cut human body parts. It can be deduced then that such usage does not entail desecration or mutilation because if it did, then the license would not have been granted. Once it is established that a case of non-mutilatory, non-desecratory usage exists, then the possibility also exists for this license to potentially be extended for third party benefit as well.

On the basis of Islamic Usool (legal theory) terminology, this text can be analyzed in various ways.

First, it can be said that there is an Aam (general) prohibition from using, desecrating, and mutilating parts of the human body. Then, there is a particular case that is excepted from this general principle based on the above text creating an Aam Khussa anhul Ba'd (excepted generality) condition. The Hanafite stance is that if the 'Illah (primary effective cause) that led to the initial exception in the Aam Khussa anhul Ba'd case is found in another case (the third party benefit case for the purposes of our discussion), then the exception granted to the initial case can be extended to the new case. This extension can occur so long as there is no contravening textual evidence to preclude such extension in the new case. The Illah here for the initial case seems to be harm to self. If there is harm to self, then it is permissible for one to cut or remove that limb or organ that is harming them. This Illah however is not found in the case of third party benefit unless one argues that observing another man's suffering is a harm to self. But this latter assertion speaks against the immediate literal context of the Biblical verses which seem to refer to functional or physical harm, not one that is psychological in nature.

Alternatively, this text could be framed as a Mutlaq (unconditioned) injunction. This would mean that the text, in an unrestricted manner, allows the cutting and removal of one's own body part to prevent harm to self. But the problem of extending this injunction to effect third party benefit remains. The initial and literal context of this text is that of self benefit and applies only to the owner of the body part. However, this context can be sidestepped if the context were considered to be a Qayd e Ittifaqi (peripheral or nonessential condition). Alternatively, the restricted context could be expanded by the Quranic exegetic principle: Al-Ibratu Li Uloomil Alfaaz which states that interpretation of texts is not circumscribed to the context in which those texts are related. Rather they can be interpreted and legally applied beyond their original context and circumstance. Yet, to extend the legal scope of this text (from self benefit to third party benefit also) by the aforementioned lines of reasoning requires an evidential pretext or impetus. To leave the literal and clear meaning/context of a text in Hanafite legal theory, one must produce a Qareenah (a suggestion in the text itself) or Qareenah equivalent. Arguably, the directive to love thy neighbor provides us such an equivalent.

However, many texts also exist that argue for the impermissibility of cutting or removing human body secondary to this cutting being a violation of human sanctity. The existence of such texts constitutes a counter Qareenah and compels us to limit the exemption to the initial and literal context of self benefit



only. Disallowing a broader interpretation of the given Biblical verses that would include third party benefit is further bolstered by the principle: Adh-dhurooratu Taqtadiru Bidh-Dhuroorah which states that exemptions made on the basis of necessity are particularly and specifically limited to the terms and condition of the initial exemption; no analogy or extended legal applications of the case are permissible.

It should be here noted that Bible and Torah texts are accepted by Muslim scholars as ancillary supportive evidence in those cases where these texts coincide with the tenets and principles of Islam. If there is a difference, these sources will be forsaken on the basis that adulteration or departure from the original revealed text has occurred. In the case, that there is no clear Islamic standpoint on the matter (for example the number of baths in the palace of Solomon (A), then verdict is withheld and silence is exercised on the issue (Saabooni 12).

Catholics that argue against the permissibility of transplantation do soon multiple grounds. First, they argue that the harvesting of an organ requires mutilation which is a violation of the sanctity of the human body. Second, they advance that the entire body is required to be intact for resurrection. This latter idea has been opposed citing: 1. a difference between the physical and spiritual body (only the latter being necessary for resurrection) and 2. textual evidence that states that the earthly body will not enter Heaven (Riaz). If the earthly body cannot enter Heaven, then there should be no need of the earthly body for Resurrection either. If it is not needed for Resurrection, then organ can be donated and transplanted without protest.

It can be, of course, argued that the earthly body *as we know it* will not enter Heaven. This would imply that there are two types of bodies: 1. the original earthly body and 2. an altered earthly body that is made to undergo change before entry into Heaven. The Islamic beliefs that men and women will be returned to youthful bodies in Heaven and that the bodies of sinner will be expanded to increase exposure to the punishment of the Hell fire speak to this possibility. If this were the case, then the argument that an earthly body is needed for resurrection could still be made.

In the Islamic conception, the human is comprised fundamentally of a metaphysical soul and physical body. The existence of Nasamah (soul carrier), Ruh Mithaali (Etheral soul), Ruh Jasadi (Material soul), as well as the difference between the Nafs and Ruh (if any) are beyond the scope of the present discussion. It would seem that in Islam, the presence of an intact human body is not requisite for resurrection. It is an established belief of Muslims that punishment in the grave exists. Now, if the body has decayed, punishment will be associated only with the soul in the dimension of Barzakh. The presence of an intact human body here is not requisite for the execution of workings of the afterlife. Additionally, there is the narration of a man from the Children of the Israel who requested his son to cremate him so that he will not be made to stand account for his sins:



“When I die, burn me...scatter my ashes in the wind...then Allah commanded to his ashes. ‘Be,’ and behold! He became a man standing! Allah said, ‘O My slave! What made you do what you did?’ He replied, ‘For fear of You.’ Nothing saved him then but Allah’s Mercy (So Allah forgave him).” (Bukhari Vol. 9, Book 93, Hadith 599)

Despite this man’s body being comminuted, he nonetheless was gathered and questioned by Allah (SWT) about why he had himself cremated. Again, it would seem that an “intact” body is not required for resurrection. Such an argument assumes that the regathering of the body that is alluded to in this narration is occurring on the Day of Judgment. However, even if this assumption is not made, it can still be said that if Allah is able to re-assemble a body turned to ashes and scattered in the wind, then it is not difficult to say that He can re-establish a solid organ with its original body (as such an organ is more “intact” than the dust particles of a cremated body). The phenomenon of postmortem decomposition of human bodies also argues against the need for an intact body for resurrection. Generally speaking, bodies decompose after death but these same bodies will be resurrected whole. However, it can be said that under normal circumstances the decomposition of the human body is occurring of an initially intact body and this initial intactness is what is required for resurrection. In organ transplant the body that will eventually decompose is not initially intact. However, to make this point of differentiation requires some textual basis.

To summarize, the majority of Christendom today sees organ transplant as permissible, even commendable, based on the central role of Love in the Christian religion. Arguments against organ transplantation were historically based on the violation of the sanctity of the human body. However, it was later argued that since organ donation does not disturb the functional integrity of the human body, it is permissible to donate one’s organs (Riaz).

JUDAIC VIEWS

In the Jewish tradition, it is a categorical imperative, a positive obligation, to save people’s lives. This principle is known as *pikkuah nefesh*, and it takes precedence over all other Law except idolatry, murder, and illicit sexual relations. Jewish scholars interpret Leviticus 18:5 to assert that canonical Jewish law was established for the sake of life and so Jewish law must subserve this objective (Riaz). The initial Jewish response to transplantation in the 1950’s was one of opposition due to the Talmudic prohibition to derive benefit from the deceased. Furthermore, low success rates brought into question whether or not organ transplantation fell, as such, under the purview of *pikkuah nefesh*. With the advent of immunosuppressive medicines in the 1960’s, transplantations success rates increased markedly and organ transplant came to be seen as a life saving procedure by Jewish Rabbis. Today, modern Jewish scholars assert that the donated organ never dies in



as much as it becomes a viable component of the living recipient. Therefore, organ transplant does not contravene the Talmudic injunction of deriving benefit from the dead. Though some right wing orthodox Jews still see organ donation as impermissible, even this camp seems to allow receipt of a donated organ by a Jew (Riaz).

The scholarly Jewry that allows organ transplant does so with certain conditions: 1. other alternative have failed or are not available, 2. consent of the donor during his lifetime is extant while sane and mature, 3. the chance of the recipient benefiting from the procedure must be high, and 4. organs must be harvested after death (defined as brain death) has been pronounced but while respiration and circulation are ongoing (supported by external means). Today kidney, skin, cornea, and even heart (with certain conditions) transplants are allowed by most Jewish religious authorities (Riaz).

HISTORICAL OVERVIEW AND BACKGROUND

If one looks to classical Islamic texts of jurisprudence, there seems to be no categorical rulings regarding the issue of organ transplant (Ludhanvi 167). Serious Islamic discourse on the subject of organ transplant appears to have come to the fore in the 1970's. Since then, the issue of organ transplant has been deliberated upon by scholarly bodies in the Middle East, the Indian subcontinent, and more recently the UK and the United States.

Some of the major works on the subject from the Indian subcontinent include Mufti Shafi's "Insaani A'daa ki paywand Kari" and "Insaani A'daa ka ihtiraam aur Tibbe Jadeed." Both works state that organ transplant is not allowed. Mufti Shafi's work in particular was one of the first detailed articulations on the subject and to a considerable extent formed a legal framework and religious scaffold for future discourse. In the latter half of the twentieth century, Mufti Shafi, in response to multiple queries on the issue, set up an investigative research committee calling on major Islamic academic centers in the Indian subcontinent to deliberate on the issue of organ transplant. Consults were submitted to institutes in Karachi, Multan, Lahore, Peshaver, Deoband, Saharanpoor, and Dehli amongst others. Due to logistical constraints, only scholars from Darul Uloom Karachi, Darul Uloom Newtown, and Ashraful Madaris were able to physically convene. The committee thoroughly discussed the matter in the light of all four major schools of Islamic jurisprudence and their resolutions were subsequently sent to jurists at various outside institutions for analysis and secondary review including Darul Uloom Deoband and Jamia Ashrafiyyah, Lahore. After counsel, the committee ruled that organ transplant was impermissible (Ludhanvi 127-128). Once the Karachi convention passed such a resolution a strong legal precedent. Any future ruling contrary to this precedent would imply oversight or error and consequently call into question the consensus verdict of some the greatest scholarly bodies of the time.



On April 2, 1979 the Islamic Fiqh Academy held its first conference on the issue of organ transplant at Hamdard University. No consensus was reached at that meeting. A decade later the Academy reconvened to revisit the question of organ transplant on December 11, 1989 again at Hamdard University. The Academy made a bold move in resolving that organ transplant was permissible in cases of need given that requisite conditions were met (Yusufullah 66). In the United Kingdom, the Muslim Shariah Council which included representatives from all major Muslim institutes of Islamic law in Great Britain as well as three distinguished lawyers passed a similar resolution in the later half of the 1990's (Ibn Adam). In 1997, the Grand Sheikh of Al-Azhar, Sheikh Tantawi, passed a verdict indicating the permissibility of organ transplant (Jehl). Currently, the Shariah Academy of the Organization of Islamic Conference (representing all Muslim countries), the Grand Ulema Council of Saudi Arabia, the Iranian Religious Authority, and Al-Azhar Academy seemingly not only regard organ transplant as permissible but as a meritorious act (Howett 1). In 2004, Darul Qasim (USA) held a conference on organ transplantation during which presentations were made from both traditional Islamic scholarship and Muslim clinicians. The proclivity of the conference seemed to be toward the impermissibility of organ transplant; however, no formal resolutions were passed.

ORGAN TRANSPLANTATION- ISLAMIC PERSPECTIVES

It is agreed upon by Islamic scholars that it is lawful to use and transplant *synthetic and non-human* (animal, etc.) body parts into a human (Yusufullah 67). The legality of transplanting *human* organs is the object of extensive discussion and debate.

As alluded to earlier, most of the initial discussion on the issue of organ transplant indicated impermissibility. However, over time, a growing number of scholars seem to have departed from this stance. It should be noted, however, that even those scholars that support the permissibility of organ transplantation extend this verdict conditionally. They require that:

1. the transplant is performed for the purpose of saving a life or return of some necessary body function (sight, etc.)
2. a qualified authority has pronounced that return to health is likely and probable following the transplant procedure.
3. If the transplant is cadaveric, then the individual must have made a bequest to donate his organs during his life time. The deceased's inheritors must also be given to the transplant (since they are now his or her legal guardians after the individual's death).
4. If the transplant is from a living donor, informed consent is required and no undue harm to the donor is effected (Yusufullah 84-85).

Passing the verdict of permissibility by these contemporary scholars is significant because such a ruling provides a legal precedent for future jurists



during adjudication. It cannot be ignored, however, that there exists a significant scholarly stance backed by extensive textual evidence to argue for the impermissibility of organ transplant. Arguments for and against the legality of organ transplant revolve around certain foundational principles and models that undergird Islamic legal thought.

Divine Wisdom

Islamically, every Haram (unlawful) entity is considered harmful to mankind. Some entities that have been made unlawful by Allah (SWT) may yield some ephemeral benefit, but the harm incurred by the unlawful entity is greater than any conceivable benefit (Ludhanvi 171). This concept can be derived from the following verse of the Quran: "They ask thee concerning wine and gambling. Say: "In them is great sin, and some profit, for men; but the sin is greater than the profit." (Quran 2:219).

The harm that exists in prohibited entities may or may not be immediately apparent to the human intellect, be that intellect refined or rudimentary. On the basis of the Quranic verse, "Indeed, I know from Allah what you know not" (Quran 12:96) the recognition of latent harms is predicated and dependent on Divine revelation and relinquished to the realm of Prophetic wisdom (Ludhanvi 171).

Therefore, if organ transplant can textually be established as impermissible, then it will be treated as such no matter how great the apparent benefits may be of performing such a procedure. If indeed organ transplant is forbidden in the light of Quran and Hadith, it will be assumed that the total harms of performing transplant procedures will exceed any forthcoming benefits therefrom. Opponents of organ transplant, like Mufti Shafi, then are only required to produce textual proof of impermissibility; they do not need to rationalize any supposedly unfavorable benefit/harm ratio incurred by rendering organ transplant impermissible.

Is there a basis for ruling against organ transplant? Mufti Shafi, former Chief Justice of Pakistan, argues that various grounds do indeed exist.

First, the Shariah has not allowed the usage of even those parts of a human body that are of no apparent utility (like cut nails, etc.). If the usage body parts with no utility is not allowed, then the use of body parts with utility should even mores not be allowed (Ludhanvi 179).

Second, man has been given such an honorable status in the Islam that the door to even aspire to use any of his body parts has been closed. Since one has not been given the Shari' right to accept or reject this status, an individual's consent cannot serve as grounds for allowing donation of his or her organs. By allowing the usage of human organs and parts, the individual effaces the difference that exists between the universe and man. The former



should subservient and the latter served. If a part of a human will be used by another human, then that used part will become "subservient" to the user. Since this demarcation between man and the rest of the universe is an established tenet of Islam, any ruling that requires the deconstruction of this tenet will not be admissible. Therefore, organ transplant, in as much as it erases this demarcation, is not acceptable (Ludhanvi 179).

Third, Mufti Shafi argues that an individual's body is not his or her own; the body was never entirely given in man's ownership (Ludhanvi 179). It is for this very reason it is neither lawful to commit suicide nor to sell and/or gift ones parts to a third party. The assumption is that it is only lawful to sell that which one owns.

Fourth, man retains sensory perception even after death in the realm of Afterlife. This is established by the tradition in which it states that breaking the bone of a dead individual is just like breaking the bone of a living person (Mishkaat, Had no: 1714 qtd. in Ludhanvi 180). If one has no right to cause pain to a living person for his own benefit, then the same would apply in the case of a dead individual.

Fifth, just as no one would not donate an eye or other vital organ while they are alive, it is inappropriate for gift those same organs after death (Ludhanvi 180).

Sixth, such donation violates the sanctity of man. (Ludhanvi 179).

In view of these six arguments as well as others, Mufti Shafi forwards that organ transplant should be prohibited. By the principle of Divine wisdom, no justification of this ruling need be presented. Once it has been textually established that organ transplant is not allowed for the above reasons, then it will be assumed that the harms of allowing organ transplant will always outweigh any immediate or superficial benefit.

Sanctity of Human Life and the Human Body

Man is sanctified. Essential consecration of human sanctity is a theme that extends across cultural and religious boundaries. From an Islamic standpoint, this sanctity is established on the following grounds:

1. "We have shaped Mankind in the best mould." (Quran 95:4)
2. "We have honored the sons of Adam...and conferred on them special favours, above a great part of our creation." (Quran 17:70)
3. "And if any one saved a life, it would be as if he saved the life of the whole people" (Quran 5:23)
4. "And when We told the angels, "Prostrate yourselves before Adam!"-they all prostrated themselves" (Quran 2:34)
5. "O Iblis! What prevents thee from prostrating thyself to one whom I have created with my hands? (Quran 38:75 qtd. in



6. "Mu'awiya bin Abi Sufyan, who was on the pulpit and was taking a tuft of hair from one of his guards, saying, "Where are your religious learned men? I heard Allah's Apostle forbidding this (false hair) and saying, 'The children of Israel were destroyed when their women started using this.'" Narrated Abu Huraira: The Prophet said, "Allah has cursed the lady who artificially lengthens (her or someone else's) hair and the one who gets her hair lengthened..." (Bukhari Vol 7, Book 72, Hadith 816).
7. "Breaking the bone of a dead person is the same as the breaking that of a living person." (Sharh al- Siyaril Kabeer qtd. in Modern Surgery & Islam)

These primary texts have formed the textual background for classical legal rulings and principles such as the following:

1. The human being is sacred whether dead or alive." (Sharh-e-Siyare Kabeer qtd. in Modern Surgery & Islam)
2. "The human being is sacred be he Muslim or non Muslim." (Raddul Mukhtar qtd. in Modern Surgery & Islam)
3. Imam Sarkhasi states that the sanctity of man post death is the same as his sanctity in life and therefore it is not permissible to treat a sick individual with any part of a dead individual just as it is impermissible to treat with any part of a living human. (Sharh Kitaabus Siyaril Kabeer Vol I, p. 128 qtd. in Fatawa Haqqaniyyah qtd. 397)
4. Imamul Baaji also states that there is no difference in the sanctity of the human body between a living versus dead body (Muatta Imam Malik Hashisya #3, 220 Chapter on Ihtifaad, ie Grave Theft qtd. in Fatawa Haqqaniyyah 398).
5. Legal texts are replete with passages that prohibit trade in human parts citing sanctity of human life and the human body. (Al-Mabsoot, Al-Fatawa Hindiyya qtd. in Yusufullah 69-70).
6. Taking benefit from human organs is not lawful due to dignity and sanctity. (Fatawa Alamgeeriyah qtd. in Modern Surgery & Islam)
7. That the replacement of someone's tooth by a dead person's is unlawful by unanimous verdict. (Badai' us-Sanaai' qtd. in Modern Surgery & Islam)
8. The skin of a man is not permitted for trade due to the sanctity of Man. (Sharhul Hidayah qtd. in Modern Surgery & Islam)
9. "It is permissible to use a bone for treatment, this is because the bone does not become impure due to death of a person because it is lifeless, but it will be impermissible to use the bone of a human or that of a pig. It is impermissible to derive benefit from a pig because it is foul by essence, so it will be unlawful to gain any benefit under any circumstances, while a human being remains as honorific after death as he was in life. Just as treatment by means of any organ of a living person is forbidden due to sanctity, similarly will be the case of a dead person. The Prophet *sallallahu alaihe wasallam* stated, "Breaking the bone of a dead person is the same as the breaking that of a living person." (Sharh al- Siyaril Kabeer qtd. in Modern Surgery & Islam)

In the Islamic formulation, man's usage of that which exists within the universe is rationalized on the basis that he is superior to all created enteritis.



Because of this divinely endowed status, the universe is conceptualized as being in its entirety subservient to man. Even that which is proscribed, during circumstances of necessity or duress, are at his disposable. However, the same sanctity and rank that allows man access to utilize created reality to his benefit is the same distinction that requires that his own parts not be utilized. It has therefore been traditionally ruled by Islamic scholars that the *use* of human parts for sustenance, medicine, trade, or other purposes is proscribed (Ludhanvi 171). Use is seen as devaluing, and thus a violation of the divinely endowed sanctity of the human body. Additionally, the unjustifiable cutting of the human body has also been taken to be a violation of human sanctity. Such cutting has been classified under the umbrella of mutilation and mutilatory acts (discussion to follow). Since organ transplantation requires both the use of human parts (organs) and cutting the body (surgery), it would appear that organ transplantation necessarily entails violation of the sanctity of the human body in some way, shape, or form.

Defining Desecration

Those that argue in favor of allowing organ transplant raise a germane question: are modern methods of organ harvesting and transplantation tantamount to desecration? Are they really equivalent to violation of human sanctity? These scholars argue that there is no clear textual proof to define the parameters of what specifically constitutes desecration. In such cases where the Shariah (Islamic Law) has purposely left some matters unspecified, Islamic jurists default to Urf (standard social convention) to develop specifications, definitions, and parameters (Yusufullah 71). For example, the maximum duration of Nifaas (post partum bleeding) has no primary textual basis. Early jurists specified the maximum duration based on the Urf of eighth century Arab society. It is an accepted principle that if the Urf changes, so can the ruling that was originally based on that Urf. For example, scholars from Eastern regions historically regarded a person not wearing a cap as contrary to etiquette and proper decorum. Consequently, they instituted the donning of a cap as a criterion in evaluating the integrity of Hadith narrators. However, scholars from Western provinces had an entirely different culture which did not view not wearing a cap as anything base or shameless. Consequently, being bare headed was not considered a blemish to an individual's integrity as a Hadith narrator in these provinces. Maulana Khalid Yusufullah argues that when the Karachi resolution was passed, the social milieu was such that organ transplant was regarded as desecration of the body. However, in the current age, matters are quite different. In fact, to give one's organ to help one's fellow man is now seen as a moral, honorable, and generous act. With this changing of Urf, it would appear plausible to change the original ruling of impermissibility (Yusufullah 71-72). Moreover, with great advances in surgical technique and anesthesia in the modern age, it may not be unfair to say that today organ harvesting and transplanting is more artful than profane.



Dr. Zuhali sets up more detailed parameters for defaulting to Urf in cases where there is no clear text to define or detail a term or case. He states that first the jurist must research to see if there is any relevant material in the primary texts of Qur'an and Hadith. If no clear data are found, then the jurist will look to Lughah (linguistics and lexicon) to determine definitions and conceptualizations for the given term or case. If still no conclusion can be drawn, the jurist will turn to Urf for characterization (Usoolul-Fiqhul Islamiyy, Vol. 2, p. 831 qtd. in Yusullah 71). In the case of organ transplant, the terms Muthlah (mutilation) and Hatmul Hurmah (breach of sanctity) would warrant scrutiny linguistically before defaulting to Urf. This requires researching the meaning of these terms in classical Arabic. Once such a definition is procured, the jurist would then have to determine whether organ harvesting and transplant would fall under the purview of these definitions. Modern definitions of organ transplant neither define nor categorize transplant as mutilation; organ transplant is seen as a "surgical" procedure. However, this type of linguistic perspective wherein modern perceptions and definitions of a word are analyzed falls under the jurisdiction of Urf, not Lughah. Lughah requires that the classical Arabic lexical definition of term be examined.

Overall, this approach of looking at Urf to define what constitutes desecration has been criticized by scholars who view organ transplant as impermissible. These scholars maintain that in vital religious matters past scholars have looked to the Urf of the first three generations (Khairul Quroon) of Islamic History, with special emphasis on the first generation Companions of the Prophet Muhammad (S), when formulating definitions for unspecified terms. Scholars did not traditionally look to the Urf of their own time in matters that held great import such as definitions of what is compulsory and what is forbidden, matters dealing with the primary aims of the Shariah, central tenets, etc. (Burhanudeen 216-217). For example, when the Quran states that women are not to display their beauty "illa ma zahara minha (except that which is apparent/normally appears)," the understanding of the Companions of Prophet Muhammad (S) and early generation Muslims would be researched and analyzed to define "illa ma zahara minha" not today's looser standards of what constitutes necessary and normal exposure.

By contrast, in more "peripheral" matters like business law and morals/righteousness, legal scholars have taken the Urf of that particular time into consideration in formulating rulings. That is why many rulings from this category change with changing social mores (Burhanudeen 216-217). For example, when adding the condition of a warranty with the purchase of a good no longer carried with it the risk of dispute, this type of contract came to be considered as lawful, even though the classical ruling on the issue was that such a transaction was impermissible on the basis of Shart la yaqtadeehil Aqd (unwarranted condition). Scholars that see organ transplant as impermissible conceivably classify the issues related to organ transplant, like the sanctity of life, as central. If this were the case, the Urf of the first three generations would have to be analyzed to see what constitutes desecration. Modern day perceptions and definitions of mutilation and desecration (from which surgery



is exempt) would not then be considered in formulating a final verdict. Also, it has been further stated that extra care must be exercised in the matter of organ transplant because the sanctity of the human body is at stake. So even if there were a possibility to consider the Urf of the day in formulating a verdict, the safer route would be to not do so. The aforementioned dichotomization of Urf (between the that of the first three generation s and that of following generations) has been delineated by Imam Shatbi and echoed by famous Hanafite scholar Burhanuddin Murghanaani, author of the *Hidayah* (Burhanudeen 216-217).

Cutting the Human Body

One of the primary texts used to establish the sanctity of the human body is the narration that states that breaking the bone of a dead corpse is like breaking the bone of a living individual. This narration argues strongly against organ transplantation which requires inflicting incisions upon the body of the donor and recipient both. Furthermore, the narration speaks to the issue of cadaveric transplants by establishing that the sanctity of the human body extends beyond life. The same ruling that applies to living beings also applies corpses- both are sanctified (Burhanudeen 212-213). This principle is supported by the following pieces of evidence:

1. "Hurting a believer after he has died is like hurting him while he is alive." (Musannaf Ibn Abi Shaybah qtd. in Burhanudeen 212).
2. "Breaking the bone of a corpse is like breaking his bone while he is alive." (Abu Dawood Vol. 2, p. 102; Muatta Imam Malik p. 90; Mishkaat Vol. 1, p. 149 qtd. in Burhanudeen 212). Similar narrations are to be found in Musnad Ahmad and Ibn Majah. Imam Tahawi writes in commentary of the quoted Hadith that the bones of the deceased and living are equal in their sanctity. Imam Zurqani and famous Maliki scholar Allamah Baaji interpret the narration similarly. Although some criticism has been leveled against one the narrators in its chain, Sa'd ibn Saeed Al-ansaari, it is reasonable to grade this narration as Hasan at the very least. Even if one were to cede that the narration is a weak, it is still possible to present it as a proof in formulating rulings due to the fact that it enjoys Talaqqi bil Qubool. Talaqqi bil Qubool stipulates that there are some narrations that throughout the ages have been accepted and used as proof in scholarly circles (Burhanudeen 212). Though evidence available to us may seem to indicate that the narration is weak, it can be assumed that due to the stringent evaluation parameters of scholars that these had alternative or additional information available to them concerning this narration that is simply not available to us on the basis of which the narration was accepted by them.

It should be noted, however, that even if the narration is assumed to be sound, alternative interpretations of the narration are still possible. For example, it can be said that the Prophet Muhammad (S) made this statement by way of Mubalaghah (exaggerated emphasis) to stress the importance of human sanctity and that such a statement need not be taken literally. It can also be said that the Hadith is only making a comparison between a living



body and dead body to show that both are to be respected, but that respect may still be of different levels between the living person and the corpse. In fairness, the context and interpretive precedent run counter to such construals. Yet another way to interpret the Hadith however is to say that the prohibition in the narration only applies to those cases wherein necessity is not a motive. In other words, the Hadith speaks only against harming or disrespecting a corpse when done for no reason. The Hadith is not stating the ruling concerning need cases. This understanding is corroborated by the fact that surgically salvaging a live fetus from a dead mother is allowed since necessity is the prime motive (Tuhfatul Fuqaha Vol. 3, p. 343 qtd. in Yusufullah 84). If the corpse could not be manipulated in any way, then this should be technically disallowed. Also, if to protect the inviolability of one's wealth, it is allowed to cut and remove a stolen and swallowed pearl from the stomach of a dead thief, then it definitely should be allowed to transplant organs because in the case of organ transplant the inviolability of man's life is being protected not just his wealth (Yusufullah 78-79).

In response it has been stated that surgical salvage of a fetus cannot serve as a premise to allow organ transplant for multiple reasons. First, when a child is no longer in need of the placenta and uterine environment then the fetus either exits naturally or is extracted. In this sense, the extraction of a live child from a dead mother stands in place of a natural phenomenon- delivery. Because the mother is dead, there is no other way to exit the body except extraction and this extraction will be considered to be a proxy for natural vaginal delivery. Organ transplant however is not a natural phenomenon nor does it stand in place of one. Second, saving the life of a child by this procedure is almost a certainty, however, that the transplanted organ will take and/or be beneficial to recipient is uncertain (at least at the time when these arguments were made during the latter half of the 20th century). Third, to have one's body operated on in order to benefit oneself is permissible. As long as the child remains in the mother's womb, it is considered a part of the mother and the operation will be viewed as the mother benefiting her "self". Based on these reasons, it has been contended that surgical salvage of the fetus does not provide a legal precedent for allowing organ transplantation (Burhanudeen 204).

Use of the ruling concerning extraction of a pearl swallowed by a thief to provide grounds for organ transplant has also been disputed. As in the case of fetal salvage, there are certain points of differentiation made between the swallowed pearl case and organ transplant. First, by stealing and swallowing the pearl, the thief invalidates his own sanctity. Since, the sanctity of his body no longer exists, it will not be desecration to surgically remove the stolen good from his body. The same reasoning is the basis for the death sentence in murder cases and cutting a thief's hand in theft cases according to Islamic penal law. Second, in the swallowed pearl case, the right of a third party individual is involved. The case of organ transplant is different because there



is no involvement of some third party's right. The recipient has no legal right or claim to the organ of another individual (Burhanudeen 204).

If one, for the purpose of discussion were to assume that organ transplant did in fact require and incur violation of human sanctity, then before a verdict of impermissibility is passed, the question of what takes precedence, saving a life or human sanctity, would still have to be answered.

There exists evidence to indicate that normative principles, including the sanctity of human life, may be contravened for the preservation of human life and the human body. For example, it has been established by Hadith that the sanctity of the Quran exceeds that of a human. However, for medicinal purposes, it has been allowed by Abu Bakr Jassas to even write the Quran with blood or urine (for cure by way of Ruqyah (preternatural treatment) (Khulasatul Fatawa Vol. 4, p. 361 qtd in Yusufullah 84). Also, Allamah Samarqandi states that if it is likely that a fetus is alive in a mother's womb, then it is allowed to tear open her body to save the child. This allowance is based on the idea that forsaking of human sanctity is a lighter matter than creating a circumstance that will lead to the death of a living individual. (Tuhfatul Fuqaha Vol. 3, p. 343 qtd. in Yusufullah 74). This line of reasoning can further be bolstered on the basis of Ahwanul Baleeatayn (lesser of two evils). This principle states that if one is forced to choose between one of two evils, then the he or she will be required to select the lesser of the two evils. Though it is not moral to violate the sanctity of the human body, it is worse to allow a living child to die.

There is a difference of opinion about allowing a man dying of hunger (in Idhtiraar) to consume the meat of a dead human. The importance of this case lies in determining whether or not necessity can make both the use and cutting/tearing of the human body permissible (both of these actions constitute desecration and both are involved in the eating of a corpse's flesh). Hanbali and Maliki scholars say that it is not allowed. Shafite and some Hanafite scholars say it allowed because the sanctity of a living human exceeds that of a dead one (Al-Mughni Vol. 9, p. 335 qtd. in Yusufullah 75). Abul Khattaba from Hanbali scholars and Ibn Arabi from the Maliki scholars have also taken this view (Al-Mughni Vol. 9, p. 335 75 and Al Jami' ma' Ahkaamil Quran Vol 2, p. 229 qtd. in Yusufullah 75). Imam Shafi's personal stance also was that it was permissible to consume a dead individual's flesh during Idhtiraar. (Sharhul Muhazzab Vol. 9, p. 44-50 qtd in Burhanudeen 205). Hanafite scholars clarify however that Imam Shafi only allowed such consumption in the case that the individual had already invalidated the sanctity of his own life by committing crimes that carry a death sentence. Since, the individual had already made the taking of his life legally permissible, there will be no violation of sanctity if such an individual's flesh is consumed (Mubaahud Dam). Therefore, Imam Shafi's allowing the consumption of another individual's flesh is not a general ruling. Once the individual is sentenced to death legally, his life is no longer protected, and therefore, his flesh will be lawful to consume. Second, a point of differentiation has been made by stating that when a



starving or dying man consumes a corpse's flesh, there is probable and reasonable certainty (Ghaalibuz Zann) that the starving man's life will be saved. This is not the case in organ transplant where benefit to the recipient is at the level of Wahm (conceivable possibility). This is not enough of a premise to change that which is Haram into something Halal (Burhanudeen 204). Additionally, it should be taken into account that Imam Shafi does not allow the transfer or transplant of impure substances between individuals based on his ruling in "Al-Umm." In this work, he states that it not allowed to replace a broken bone except with that of an animal's whose meat is lawful. In the case that the bone is from some other source, be it human or unlawful animal, then it will be necessary for the individual to remove the implanted bone from his body (Al-Umm Vol. 1, p. 46 quoted in Burhanudeen 205-206). The individual can be legally forced to effect such a removal if he or she does not agree to do so from their own sweet accord according to Imam Shafi. Also, the recipient will be liable to repeat all the prayers he performed while the unlawful transplanted bone was in his body. Moreover, Imam Shafi mentions that if ones tooth breaks and separates from his or her body, then it will assume the ruling of carrion and cannot be reattached (Al-Umm Vol. 1, p. 46 quoted in Burhanudeen 205-206). A similar ruling is reiterated in Imam Shafi's Sharhul Muhazzab (Vol. 3, p. 133-134. qtd in Burhanudeen 206), Therefore, even if were to cede that consuming another's flesh during Idhtiraar is lawful to Imam Shafi, this ruling would still not form a basis for justifying and allowing organ transplant according to him because of his other rulings.

Though previously mentioned that some Hanafite scholars view consumption of a corpse's flesh to save one's own life as lawful, it would appear that the standard and definitive Hanafite view is one of impermissibility in this case: "The coerced cannot eat from another's body even if that other individual grants permission to do so" (Badaius Sanai' Vol. 7, p. 177 qtd in Yusufullah 76). This impermissibility is further supported by the legal principle: Ad dharar la yazaalu bidharar (harm may not be averted by another harm). This axiom expresses the idea that it is not permissible to engage in some harm in efforts to avoid another one. It has been similarly stated that "harm may not be averted by its like." (A Ashbaahun Nazaair 123-124 qtd. in Burhanudeen 198).

In response, it has been stated that this verdict of impermissibility was formulated in a time during which consumption of another man's flesh would constitute undue harm and pain to the other individual and very likely would endanger his or her life. The only parts of the human body that were generally used in that time and age without incurring undue harm were breast-milk and human hair (as wigs or hair extensions). However, in the modern era, given anesthetic advances and sophist acted surgical techniques, many parts can and are extracted from individuals without conferring harm. Given that the circumstances have changed, so too should the ruling (Yusufullah 77).



An almost identical response is extended in response to those who argue that organ transplantation is not allowed on the basis that man can not even eat his own flesh to maintain his life. If he cannot even use his own flesh, then how will the flesh of another be lawful for him? By eating himself, the man would, in 6-7th century Arabia, become his own assailant, his own murderer. The likelihood of death after cannibalistic self consumption was more probable than the likelihood of maintaining life by such self consumption. On the basis of this likelihood, previous scholars regarded this as unlawful. Since it is not the case that death secondary to transplant is more likely than successful transplant, the previous arguments for impermissibility and resultant ruling do not apply to modern organ transplant (Yusfullah 79).

It has been previously mentioned that the violation of human sanctity is not only violated by cutting or harming the human body but by even simply using it for some end, be that end medicinal or not.

One of the primary bases to support the concept the human bodies and body parts are not to be utilized (because utilization is demeaning) is the collection of narrations that express strong warning for women who use wigs or hair extensions made of human hair (the use of synthetic analogs is permissible). This prohibition is based on the narration of the Prophet (S) wherein he sent a curse upon those individuals who use such instruments. Imam Nawawi explains in his commentary of this narration that there is no differentiation between a man and woman's hair on this matter and that it can be derived that all parts of the human body carry the same ruling as hair when it comes to the permissibility regarding their usage (Muslim 216-217)

Those who argue that organ transplant is allowed in cases of need state that this curse was extended in a context wherein human parts were being used for Tazyeen (cosmetics) not for a real health need as in the case of organ transplant. However, the counter argument runs that restricting the proscription derived from the narration only to Tazyeen cases falls counter to the traditional and classical understanding of this narration. Furthermore, the context in which this statement was made by the Prophet (S) speaks against this interpretation. As narrated in Sahih Muslim, this was statement of curse was made about a woman who had recently gotten married. She was suffering from a disease that had resulted in seemingly significant hair loss. Soon before the new bride was to be sent to her husband's home, the bride's mother sent to the Prophet (S) to ask him about the ruling concerning using or attaching human hair to her daughter's hair. In response, Prophet Muhammad (S) responded: Cursed by Allah be the joiner and on the one who has other's hair joined to hers (Burhanudeen 199).

A woman's hair is considered her beauty in Islam and some state that this is basis for prohibiting women from shaving or cutting their hair. Furthermore, beautification of the wife for her husband is a desirable trait in Islam. Therefore, it is not be unreasonable to say that the daughter in the above mentioned did have a Shariah sanctioned "need," of sorts. She certainly had



an ailment and her use of the hair instrument was not for cosmetics but rather for return to normative human appearance.

Similar prohibitions, such as the prohibition against plucking facial hair, are not effective in cases wherein the intent is return to normal function. For example, for a woman suffering from hirsutism or who has overly dense eyebrows, it is allowed to fittingly pluck these excess hairs despite the standing prohibition from doing so. However, in the given case of the new bride, a curse was pronounced despite a reasonable and sanctioned motive for the use of the human body part (human hair) and despite the use of the part only being for return to normalcy. The absence of leniency in the hair extension case versus leniency in the hair plucking case further argues for a blanket prohibition from using human parts even in cases of Hajjah (Burhanudeen 199).

This argument however does not address specifically the issue of organ transplant wherein a true physical and medical need exists. Though there may have been some basis for using hair instruments in the above cited case, these grounds are not as compelling as the case of organ transplant wherein the risk of serious health consequences or repercussion is established. Simply because clemency was not granted in the case of hair instruments does not mean that clemency can or will not be granted in the case of organ transplant where the need is clearly more compelling.

Perhaps an even more cogent argument for the absolute prohibition against using human parts can be made on the basis of Imam Nawawi's reported *Ijma'* (consensus) on the impermissibility to use all human parts (Muslim 216-217). This *Ijma'* coupled with the fact that no commentators (whether early generation or contemporary) have limited the prohibition of using human parts in this Hadith to Tazyeen cases only argues strongly for absolute prohibition of using human parts.

Nonetheless, it is reasonable to here raise the question that if the prohibition against using human parts is indeed absolute, then how is one entitled or allowed to use his or her own body? If one can use his or her own body, then he or she should conceivably be able to use another's as well.

Imam Shafi's stance is that one can eat his or her own body in times of dire necessity (Sharhul Muhazzab Vol. 9, p. 41 qtd. Nadvi 214). According to Imam Abu Yusuf, "there is no desecration in using one's own body part." (Badaius Sanai Vol. 5, p. 133 qtd. in Burhanudeen 203). The aforementioned provide a legal premise for the use of one's own body. The question remains, however, whether this allowance can be extended to the case of taking benefit from someone else's body. Those that argue that such an extension cannot be made assert that using one's own body parts is consistent with the purpose for which the body was created. The body was not, however, created so that other may derive benefit from it and use it. Therefore, it is incorrect to say that since one can use his own body, he should be able to use another's.



Desecration is not incurred in the former case because such use was intended by the Creator. To use an object for that which it was made is not tantamount to desecration; it is judicious and warranted utilization. Therefore, permission to use one's own body does not serve as a premise to use another individual's body, in part or whole (Burhanudeen 204).

On a similar note, some may argue that it should be allowed for an individual to make a bequest of his own organs in spite of the sanctified status of the human body. Since the individual is master of his own body, he or she should have discretion to transact with the body that has been given in their care, i.e. their own body, in whatever manner they please. When the individual voluntarily relinquishes the divinely endowed sanctity of his or her body by making such a bequest, the use of the bequeathed human parts should be permissible. However, this line of reasoning can be disputed on the basis that an individual is *not* given full authority over his own body. Since the body is a trust, it can only be used in a manner consistent with commands of its Creator.

Mutilation

Mutilation is unequivocally banned in Hadith literature. An important reason that organ transplant is disallowed is that in the process of procurement, cutting the human body is necessary. The Shariah includes the cutting of a human body and the removal of his or her body parts for the benefit of another in the category of mutilation which has been prohibited (Bukhari Vol. 2, p. 602 qtd. in Burhanudeen 200). Organ transplantation requires surgical incisions be made. Such incisions are classified in a classical sense as *Amal Jaraahi* (wounding action) which in turn would conceivably fall under the umbrella of mutilation (Burhanudeen 200).

Classical scholars have defined mutilation in various ways. Allamah Ayni, commentator of Bukhari, defines mutilation as "when his nose, his ears, his penis, or any apparent portion of his body is cut" (Umdatul Qari, Vol. 8, p. 296 qtd. in Burhanudeen 200). Imam Suyuti states that mutilation is "cutting a limb or similar acts" (Sharhe Abu Dawood Vol.1, p. 244, qtd. Burhanudeen 201).

Because of the prohibition against mutilation, even scholars that have otherwise given permission to consume or utilize other proscribed agents during *Idhtiraar* say that it is not allowed to consume human flesh even in *Idhtiraar* and even when explicit permission was granted priorly by the other individual:

"And if one says to another, 'Cut my hand and eat it.' It is not lawful to consume it because the meat of a human is not permissible to consume even in the state of dire necessity" (Raddul Mukhtaar Vol. 5, p. 215 qtd. in Burhandeen 201).

Firstly, this ruling highlights that even if one gives permission to another to consume his or her body, it is still not lawful to utilize or consume any portion of that body because cutting of the human body is involved. Secondly, it can be deduced that there is no differentiation between whether the body is brutally and crassly torn apart or whether it is cut in a controlled manner. The text of Raddul Mukhtaar only mentions “cut” and no specification is made as to the type of cutting. Therefore, the default will be to interpret the word “cut” as Mutlaq (unconditioned). On the basis of the principle of “Al-Mutlaq Yajri ala Itlaqihi,” no restrictions or conditions will be externally imposed till we have a textual or other compelling reason to do so. Grounds need to be provided for restricting the unconditioned scope of the original word “cut.” In the absence of such grounds, no difference will be made between the cutting done during wanton mutilation and the cutting done during surgical procedures.

Perhaps on this basis, it is stated in Al-ashbaah wan Nazaair, "An individual in dire necessity cannot consume the food of another individual who is also in dire necessity nor can he consume any portion of the [others] body" (124 qtd. in Burhanudeen 201-202). Furthermore, even in the state of Ikraah-e-Taam (total coercion), one is not allowed to cut or mutilate another's body. This applies even if the other individual gives the coerced individual permission to cut his body. In Badaius Sanaai', Maulana Zafar Uthmani states that this is one category that remains unlawful even during circumstance of coercion: "And similar is the case of cutting any of his limbs...even if that individual allows it...and says to the one coerced 'Do it', it is still not permissible for him to do it because this is from amongst those things that don't become permissible by one giving permission" (Vol. 7, p 177 qtd in Burhanudeen 202).

Ibn Qudamah states that if one kills another out of coercion then both the coercer and the coerced will be given the death penalty (Al-Mughni Vol. 9, p. 321 qtd. in Burhanudeen 202). He also states, " it is not permissible to eat part of his own limbs...and if he [the one in dire necessity] does not find except another human, and that individual is such that a verdict of death has been passed in his regard, it is still not lawful for the former to kill the latter nor to destroy any of his limbs regardless of whether he is a Muslim or disbeliever because this is mutilation. Furthermore, it is not permissible to take the life of another to maintain his own...and if he finds the corpse of an innocent individual, it is still not permissible for him to eat the corpse" (Al-Mughni Vol. 1, p. 79 qtd. in Burhanudeen 203).

The above legal statutes provide legal precedent that the separation of a limb (whether by cutting or otherwise) from a human, dead or alive, for the use of another is prohibited and falls under the purview of mutilation.

Furthermore, Imam Abu Hanifa and Imam Muhammad are of the opinion that once a part of the human body is severed from the human, it is Wajib to bury it. Therefore, if the part is transplanted instead of buried then there is failure to fulfill this obligation of burial. Imam Shafi states that when a body part is severed and separated, it takes on the ruling of carrion and cannot be



reapplied to the same individual from which it was separated because carrion is an impure substance in the Shariah.

However, Imam Abu Yusuf, takes that stance that it is allowed to use one's own body parts even after they have been separated from the body because in his view there is no desecration in doing so. Hanafi scholars rule on the basis of Imam Abu Yusuf's view, i.e. his is the preferred Hanafite opinion (Yusufullah 78-79). This latter verdict can conceivably provide legal precedent for allowing organ transplant because it implies that the human body can potentially be used without desecrating it. The counter response would likely be that this is the ruling concerning an individual using his own body part. This ruling cannot be extended by analogy to organ transplant because in transplant the issue is that of someone other than the owner using the body. The analogy, if made, would be iniquitous.

Altering the Creation of Allah

Allah created entities in the universe with a defined purpose and form.

1. Our Lord! not for naught Hast Thou created (all) this! (Quran 3:19)
2. Have only created Jinns and men, that they may serve Me. (Quran 51:56)

Generally speaking then, it is not permissible to fundamentally alter and change created entities from the natural form in which they were fashioned. The Quran states:

1. "Verily I [Satan] will mislead them, and surely I will arouse in them false desires; and certainly, I will order them to still the ears of cattle, and indeed I will order them to change the nature created by Allah." (Quran 4: 119 cited in *Modern Surgery and Islam*) This verse explicitly prohibits any alterations to creation.
2. No change (let there be) in the work (wrought) by Allah (Quran 30:30)
3. The Prophet *sallallahu alaihe wasallam* cursed those ladies who practise tattooing and those who get themselves tattooed and those ladies who get their hair removed and those who make artificial spaces between their teeth in order to look more beautiful whereby they change Allah's creation. (Ibn Majah cited in *Modern Surgery & Islam*)
4. Ibn al-Abbas reported that the Prophet *sallallahu alaihe wasallam* cursed the males who took the forms of females and the females who take the form of males. He said "Drive them out of your houses." (Al-Bukhari cited in *Modern Surgery & Islam*)
5. Ibn al-Abbas reports that the Messenger of Allah *sallallahu alaihe wasallam* said, "Allah cursed the males who appear like females and the females who appear like males." (Al-Bukhari cited in *Modern Surgery and Islam*)



6. Abu Hurairah reports that the Prophet *sallallahu alaihe wasallam* cursed the man who puts on the dress of a woman, and the woman who puts on the dress of a man. (Abu Dawood cited in *Modern Surgery & Islam*).

7. Ibn Umar reports that the Prophet *sallallahu alaihe wasallam* said, "Allah has cursed the female who wears false hairs and the woman who dresses others with false hairs and the who practises tattooing and the woman who gets others tattooed." (Al-Bukhari and Al-Muslim cited in *Modern Surgery & Islam*)

8. Abu Hurairah reports that the Prophet *sallallahu alaihe wasallam* said, "... and he forbade tattooing." (Al-Bukhari cited in *Modern Surgery & Islam*)

In all the previous texts, the underlying basis or illah (effective cause) for prohibition is changing the creation of Allah. This Illah has been derived from the Quranic passage "whereby they change Allah's creation" cited above (Quran 4:119). It can and has been argued that organ transplantation also necessitates changing and altering the creation of Allah. Such actions have been dubbed satanic in the Quran and extensively prohibited as mentioned in the above narrations. Therefore organ transplant should be disallowed (*Modern Surgery & Islam*).

This argument can be countered by citing innumerable examples where changing entities from their natural state is permitted in Islam, many times even commanded. Examples include the cutting of nails, trimming of moustaches, manufacture of goods using natural material and resources, etc. These two seemingly conflicting bodies of textual injunctions (some disallowing alteration and some allowing the same) can be reconciled by stating that some types of alterations are permitted whereas others are not. Two questions here emerge: 1. What are the parameters of admissible versus non-admissible alteration? 2. Under the purview of which type of alteration does organ transplant fall?

With regards to the first question, it can be stated that there are one of the following conditions should be met before an alteration is deemed permissible: 1. direct or indirect textual basis, warrant, or command exists for the alteration, 2. the alteration is done to return the entity to its natural state (as in reconstructive surgery vs. cosmetic procedures), 3. the alteration is for the purpose of some objective laid out by the Shariah. Additionally, the alteration should not contradict any textual imperative or prohibition.

As to which category of alteration organ transplant falls under, this is a matter that can be argued both ways. In light of the texts that state that sanctity of the human body must be upheld, it may be said that organ transplantation necessitates alterations that violate this sanctity and the integrity of the human body. On the other hand, in view of texts that indicate the need to preserve life and the importance of benefiting others, it can be argued that such alterations



are permissible particularly when such a procedure is no longer considered desecration by Urf.

Life as a Trust

Islam views life as an Amanah (divinely loaned trust). Man is not considered the sole owner of his own body:

1. "To Allah belongeth the dominion of the heavens and the earth; and Allah hath power over all things." (Quran 3:189)
2. "To Allah belongs the heritage of the heavens and the earth; and Allah is well-acquainted with all that ye do." (Quran 3:180)
3. "Knowest thou not that to Allah belongeth the dominion of the heavens and the earth?" (Quran 2: 107)

Since ownership does not exist, it follows that one cannot act and transact with their "life" as they please. Rather, life, when considered as a trust, is something that is in one's guardianship till such time as that trust has to be returned. Those that argue that organ transplant is impermissible state that since the human body and life itself is a trust from Allah, one is restrained as to what he or she may do with their own body and body parts. It is not up to the individual to decide to whether he or she wants to give away part of their body, both before and after death. Organs are not the individual's to give away (Ludhanvi 172).

Interestingly, the body being a trust can perhaps also be used to argue for the permissibility of organ transplant. Man has been directed to utilize medicine, in the broadest sense of the word, for the purpose of upkeeping this trust. In Islamic law, preservation of life is often given precedence over other religious mandates. It is for this very reason that there is an altogether separate corpus of law for the sick and invalid with regards to ritual impurity and rites of worship like prayer, fast, and pilgrimage. In fact, the most heinous of acts become lawful in order to protect this trust as in the case of pronouncing words of disbelief to save one's life: Any one who, after accepting faith in Allah, utters Unbelief, - except under compulsion, his heart remaining firm in Faith - but such as open their breast to Unbelief, on them is Wrath from Allah, and theirs will be a dreadful Penalty. (Quran 16:106). Similarly consuming unlawful meat, pork, or wine when facing death from starvation is not only allowed, it is religious obligation according to Hanafite scholars (Ludhanvi 172). This allowance is derived from the following Quranic verse:

"Forbidden to you (for food) are: dead meat, blood, the flesh of swine, and that on which hath been invoked the name of other than Allah. that which hath been killed by strangling, or by a violent blow, or by a headlong fall, or by being gored to death; that which hath been (partly) eaten by a wild... But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful." (Quran 5:3)

So, to preserve the trust (life and limb) given to one by Allah, there may be some allowance to do actions or use entities that under normal circumstances would be prohibited. Furthermore, it can be argued that man makes daily use of



his own body and that man has been given liberty to use his body as he desires so long as the nature of this use does not contradict any textual injunctions. Therefore, if man is able to use this body, even though it is a trust, he should be able to “use” it in the case of organ transplant as well.

In response, it may be first said that the verses cited can at most be used to prove that it is allowed for the recipient to use the prohibited agent. They cannot be cited to prove that it is allowed for the donor to gift his organs. In the case of organ donation, the life of the donor is not in danger while in the case of receiving an organ, the life of the recipient is truly at stake. Therefore, to use text that gives allowance in certain cases to preserve one’s life to prove the permissibility of organ donation entails iniquitous analogy. The two cases are dissimilar.

Second, to argue that since one uses his organs daily it is allowed to donate (a form of use) his organs is incorrect. Allowance in usage of prohibited entities is only extended when only when the usage does not contradict any textual evidence. However, textual injunctions prohibiting usage of human body parts do exist, and therefore organ donation can no longer fall under the category of tolerated usage. However, proponents of permissibility can still counter argue that such textual injunctions and evidences, in some cases, are over ruled by circumstances of necessity and that organ transplant is such a case.

Concessionary Dispensation in Cases of Necessity

“Forbidden to you (for food) are: dead meat, blood, the flesh of swine, and that on which hath been invoked the name of other than Allah. that which hath been killed by strangling, or by a violent blow, or by a headlong fall, or by being gored to death; that which hath been (partly) eaten by a wild... But if any is forced by hunger, with no inclination to transgression, Allah is indeed Oft-forgiving, Most Merciful.” (Quran 5:3)

The above verse is of particular interest because it has been used by traditional scholarship as the textual basis for the principle that the unlawful is made lawful in situations of dire necessity (*Idhtiraar*). For the purposes of the present discussion, definition parameters for *Idhtiraar* need to be determined. Furthermore, it must be decided whether or not this leniency in cases of *Idhtiraar* can be applied to organ transplant to enact a ruling of permissibility even in the face of evidence that would seem to indicate that organ transplant is impermissible.



Of particular utility in exploring the parameters of Idhtiraar is a five tiered classification of need stratified by extent and degree of need developed by traditional Islamic scholarship.

The first level of need is Idhtiraar (dire necessity). Idhtiraar refers to those circumstances wherein the use of a given agent is necessary for the preservation of life. The use of the unlawful becomes temporarily and conditionally permissible in such circumstances. Three conditions must be met, however, before the usage of proscribed agents becomes lawful:

1. The disease or sickness is truly life imperiling as determined by a qualified authority. A difference of opinion exists as to whether or not the authority need be a Muslim or not.
2. No lawful agent is available to use in place of the proscribed agent, i.e. no alternative is available.
3. Ghalib e Zann (Reasonable certainty) exists that the usage of the unlawful agent is life saving as established by a qualified authority on the basis of usual experiential outcomes. Reasonable certainty is defined by a given outcome being more probable or likely than alternative outcomes (Ludhanvi 172).

It should be noted that despite meeting these three conditions, there are certain case scenarios wherein the unlawful agent will remain unlawful. An example of such a situation is taking another's life in order to save his own (Ludhanvi 172-173).

The second level is that of Hajah (need). Hajah refers to those circumstances wherein the use of an unlawful agent is necessary to prevent undue hardship and severe difficulty. However, Hajah differs from Idhtiraar in that it does not concern itself with life imperiling circumstances. In cases of Hajah, there are allowances in certain mandates of the Shariah such as ritual purity and worship. However, when it comes to the issues of rendering unlawful agents permissible, there is a difference of opinion as to whether Hajah provides sufficient grounds to change a ruling of impermissibility. Such difference of opinion can exist because there appears to be no unequivocal ruling on how much juristic leniency can be awarded in situations of Hajah in the Quran or Hadith. Nevertheless, the Jamhooir (scholarly majority) holds that Hajah does provide sufficient ground for making exceptions to prohibited situations. The usage of proscribed agents in cases of Hajah is acceptable given the three above mentioned conditions are met: 1. The need be genuine and entail undue hardship or severe difficulty, 2. no alternative is available, 3. it should be likely and probable that the performance of the prohibited entity will result in removing the individual from the situation of need (Ludhanvi 174).

Sheikh Syed Ahmed Mohammad Al Hamwee in his commentary on Al-ashbaahu wan Nazaair, a foundational work in Islamic legal theory, discusses



the basis for extending the leniencies afforded in cases of Idhtiraar (which is all that what we have direct textual backing from the Quran for) to situations of Hajah (122 qtd. in Burhanudeen 194). Despite there being no direct textual support from the Quran, Sheikh Al- Hamwee states that applying the ruling of Idhtiraar to Hajah can still be made on basis of certain Ahadith. Sheikh Al- Hamwee also further develops of the concept of “hardship” which is a constituent part of the definition of Hajah. The general principle in the Islamic Shariah is that Mashaqqat (hardship) necessitates Tayseer (lightening/easing) of the given ruling. Hardship can be of three kinds:

1. Azeemah (Major)- loss of life, limb, or bodily function is incurred
2. Mutawassitah (Moderate)- non-life threatening ailments or extension of course of disease
3. Khafeefah (Minor)

It is stated in Al-Ashbaah that though Mutawassitah hardships form a legally acceptable premise to leave a Wajib act (breaking a fast for example), such hardships do not tender allowance to perform a forbidden act, especially if the forbidden act is from the Kabair (major sins) (Al-ashbaah 128, qtd. in Burhanudeen 194). This corresponds to the ruling for Hajah cases. On this basis, it would be plausible to exclude Khafeefah (minor) hardships from qualifying as Hajah because it is a lower level of hardship than that found in Mutawassitah, and Mutawassitah seems to be the lowest level of hardship for which leniency is granted.

The third level is Manfa'at (Benefit). Manfa'at refers to those circumstances in which utilizing certain agents may provide potential physical and material benefit to one's health status, but the forsakement of which does not necessitate any harm. In Manfa'ah the degree of need is much lower than in either Idhtiraar or Hajah. Generally, no allowances or leniencies are given in the case of Manfa'ah (Ludhanvi 173).

The fourth level is Zeenah (Embellishment). In Zeenah, no direct physical or material benefit is afforded to one's health secondary to its utilization. Agents in this category are primarily for fulfilling one's emotional or psychological wants that often hold no direct bearing on physical health per say. Though using an entity for Zeenah is lawful in and of itself, Zeenah provided no premise to change the proscription of a ruling in the Shariah (Ludhanvi 173).

The fifth level is Fudhool (Vanity). Included in this category are those agents whose utilization is necessary only to allay capricious or whimsical desires. In certain cases, utilizing such agents must be avoided because they in and of themselves are disliked in the Shariah (Ludhanvi 173).

The importance of this five tiered classification is that it creates a framework for evaluating which situations can render the impermissible lawful. The question that remains to be answered is whether or not organ transplant can be made to fall under the purview of Idhtiraar or Hajah. It is quite clear that under the normal circumstance, the transplant recipient is in a situation of



Idhtiraar. However, the primary object of debate is not only the permissibility of accepting an organ but also the donation and harvesting of those organs. The organ donor is neither in a situation of Idhtiraar nor Hajah. This raises a body of issues that warrant discussion. What responsibility does one have to his fellow man? Can a necessary situation stand in place of individual necessity? What if the ailing recipient is the individual's mother or child; does this constitute necessity? Would at the very least Hajah exist in this latter situation?

Even if the answer to the latter question is yes, organ transplant may still remain impermissible given that Hajah is not always a premise for leniency. There are circumstances during which the prohibited entity remains prohibited even though Hajah exists. For example, a starving man cannot murder his neighbor and consume his flesh. Here even though a need exist, the prohibited entity remains prohibited and no leniency is awarded. Organ transplant could very well fall into the category of such excepted cases.

To determine whether or not it does, a criterion needs to be developed on the basis of which certain cases can be evaluated for exemption from the general rule of leniency during Hajah cases. Perhaps, the general principle governing excepted cases is that any leniency awarded must not necessitate or incur breach of Huqooqul Ibaad (rights of man). This would leave the sphere of leniency largely confined to Huqooqullah (rights of Allah). Since no social right is being violated during organ transplantation, organ transplant must fall under Huqooqullah. If it is in fact so, organ transplant could seemingly be ruled permissible on the basis of Hajah.

It may be counter argued though that the general principle governing excepted cases is not the aforementioned. Rather it is performing unwarranted activity in another's Milkiyyah (sphere of ownership). If this were so, then organ transplant could arguably be placed amongst the excepted cases and then no leniency would be awarded. Furthermore, it is quite possible that there are some Huqooqul Allah that still fall in the excepted category due to some other external premise or reason. Organ transplant, though only involving Huqooqullah, may then still be deemed impermissible because it falls under the purview of such an exception.

However, this argument is difficult to make because Shahadah (declaration of faith), conceivably the foremost of Huqooqullah, can be forsaken if one's life is at stake (Quran 16:106). In other words, leniency is awarded and the case is not "excepted" on the basis of Shahaadah being a fundamental pillar of the Islamic religion. Therefore, by Dalaaltun Nass (greater decree) all lesser Huqooqullah would also not be excepted and hence would enjoy the same status of potential exemption.

This reasoning can be rebutted by elucidating the fine difference that exists between renunciation of Shahadah (proclamation of faith) and renunciation of faith itself. Both are Huqooqul Allah, but clemency is only awarded regarding



the former not the latter as is clear from the Quran (Quran 5:3). Faith is a right of Allah that is not absolved during cases of *Idhtiraar*, and so to make the principle then that leniency is awarded in *Idhtiraar* cases where *Huqooqullah* (vs. *Huqooqul Ibaad*) are involved would therefore be incorrect. There clearly are some *Huqooqullah* that could still be exempt from those leniencies otherwise awarded during *Hajah* or *Idhtiraar* conditions. Organ transplant if conceptualized as a right of Allah could then still be placed in this excepted category and remain impermissible despite extant need.

Furthermore, opponents of organ transplant could well make the argument that the leniency stated in Quran (Quran 5:3 and 16:106) is textually awarded only in cases of *Idhtiraar*. Organ transplant at most can be classified as *Hajah* as far as the organ donor is concerned. This brings to the fore an even more fundamental question- does a situation in which a patient needs organ qualify as a *Hajah* case from the perspective or standpoint of the organ donor? If an individual is on the verge of death, and one has the means to save the individual, is there technically a *Hajah* for the individual who is in a position to help? What if the one in need is one's relative, mother, or child? Is there a difference if the person in need is a relative as oppose to a non-relative or friend as oppose to a stranger? Is there a difference amongst relatives themselves? If so, what principles constitute the basis for such differentiations? Can the psychological "need" to help others qualify as personal need (*Hajah*)? Imam Bukhari's criticism of the Hanafite school of thought as well as their responses offers a conceptual framework to answer these questions (see *Ma Yanfaun Naas Fi Qaala Ba'dhun Naas*). Some of the salient points associated with that discussion will be touched upon later in this paper.

Before we can move to the alluded to discussion, it is germane to understand an alternative framework for classifying need valence offered by Maulana Zafar Uthmani. Maulana Uthmani departs from the five-tiered classification above and addresses the same issue from the perspective of *Ikrah* (compulsion/coercion). He dichotomizes *Ikrah* into that which is *Ikraahe Tam* (Complete coercion) and *Ikraahe Naaqis* (Mitigated Coercion). *Ikraahe Taam* is found in such situations that man naturally feels compelled or coerced, such as when one's life or limb are at stake. When such duress is present, the unlawful becomes permissible and it devolves upon the individual to utilize the previously unlawful entity in order to save life or limb. *Ikraahe Naaqis* is when there is no such risk of permanent loss. Examples include imprisonment, physical abuse/torture, etc. In such cases, there is no allowance to perform forbidden activities (*Badaius Sanaai'* Vol. 7, p. 175-176 qtd. in Burhanudeen 195).

Hanafite scholars classify the saving of another's life as *Ikrah e Ghair Mulji* (analogous to *Ikraahe Naaqis*). For something to constitute *Ikrahe Mulji* (analogous to *Ikrahe Taam*) five conditions have been set out by Hanafite scholars:

1. The coercer is capable of using and implementing the coercive means



2. in the perspective of the coerced individual, there is Ghaalibuz Zann (probable and reasonable certainty) that the coercer can and will carry out his threat.
3. the threat is immediate
4. the coerced individual does not demonstrate neither any willing acceptance of the coercive situation nor any contentment with it
5. the coerced must exercise resistance

In Ikraahe Mulji, there is no Ridaa (approval) of the coerced and no Ikhtihaar (choice) for the coerced to resist the coercion. In Ikraahe Ghair Mulki, Hanafite scholarship argues that there is no Ridaa but that Ikhtihaar exists. The coerced still has a choice in Ikraahe Ghair Mulji. Based on this, Hanafite scholars conceptualize Ikraahe Ghair Mulji as a trying circumstance that only serves to emphasize the need to carry out the orders of Allah in that situation. No concessions are awarded (Saloojee).

The legal precedent for this discussion is the hypothetical case in which one is asked to drink wine in order to save his or her father's life. Hanafite scholars classify this situation as Ghair Mulji. First, the threat is not directed at the coerced directly and involves neither loss of limb nor of life to the coerced. Secondly, Hanafites cite the axiom that there is no obedience to creation where disobedience to the creator is required. In the above case, one cannot sin (drink wine) to stop another from sinning (killing his father) (Saloojee). If the question of organ transplant is explored in this light, it would seem that the according to this classification there is little possibility to make organ donation permissible on the basis of coercion (which is a type of need), even if the recipient is a relative, because the coercion here is Ghair Mulji. It therefore appears that the need to save one's fellow man will not be considered Hajah and so no leniency regarding the use of prohibited substances will be granted.

Admittedly, Hanafi scholars have abandoned this line of reasoning and Ghair Mulji classification Istihsaanan (on the basis of judicious analogy) in the case of commercial dealings. They have ruled Coerced Sale an effective transaction when done in order to save the life of a family member. In fairness, the sale will be considered Fasid (unsound); the coercer/purchaser will be sinful, and the coerced will have the right to later void the transaction. This right to void a sale is not extended in general situations. This Hanafite concession in commercial dealings is not extended to non-relatives because there is sufficient textual evidence to support the idea that there is a difference between relatives and non-relatives in legal matters (inheritance, child support, etc.). (Saloojee). Whether the Istihsaan made in the case of commercial dealing can be applied to the issue of organ transplant is debatable. In the end, the final categorization of organ transplant in the Istihsaan category versus the original Hanafite ruling of impermissibility may be determined by what is the more equivalent model to organ transplant-coerced sale or coerced consumption of wine.



Impurity of Separated Organs and Fluids

Organs and secretions of the human body are generally considered impure by the Shariah if separated from their original or internal sites (Radaulhaqq). Blood in the arterial tree is pure and one can offer prayers while such blood is circulating in his body. However, if blood exits the body and surfaces in a flowing manner, then, according to Hanafite scholars, this blood is impure and one's state of ritual purity broken. Such a person will have to remove this blood and will have to repeat ablution before he can enter a state of ritual impurity for prayer.

Now, it must be noted that it is not permissible to use or consume impure substance under normal circumstances. The same applies to the exit of feces and urine from the human body. The exit of these substances interrupts the state of ritual purity to all four major schools of Islamic law, not just the Hanafites. It would then stand to reason that it is technically impermissible to place or transplant an impure substance (harvested organ) into the recipient's body because transplant requires the internalization of an "impure" substance.

The impure status of organs is established by the narration: "Whatever [living material] separates from a living individual is carrion." Similar narrations are to be found in Musnad Ahmed, Abu Dawood, and Tirmidhi. Tirmidhi grades the narration as Hassan making it admissible as proof. Sheikh Manawi relates a similar narration in Kunoozul Haqaaq (Burhanudeen 206). All scholars agree that carrion is impure and so organs would seemingly be classified as impure on this basis. It is not allowed to enter, under normal circumstances, an impure substance into one's body. If one does so, then his prayers will be invalid because one cannot pray while carrying an impure substance unless that substance is less than the size of a dirham according to the Hanafite school of thought. For this reason, it would not be allowed to implant another's organ into one's own body. It should be noted that those enteritis that lead to Haram are often also themselves considered impermissible. So, if something prevents one from offering the obligatory prayers, one will be required to shun and avoid that circumstance.

The fact that one uses his own body and sometimes even reimplants parts of his or her own body does not negate this ruling. Using one's own body part is the one exception to the rule because the part was initially a constituent component of their body and it continues to be so after the reimplantation (Burhanudeen 207). As it was not impure in the former case, nor will it be considered so in the latter.

Now, even though the immediate and logical conclusion is that consumption and implantation of impure substances should be disallowed, scholars historically have made concession in this regard when it comes to medicines. In cases of *Idhtiraar*, it is widely accepted that one can use religiously unlawful substances for medicinal purposes. If the case is not one of *Idhtiraar*, then there is a difference of opinion. Imam Abu Yusuf and Imam Mohammad both



ruled that the use of camel urine and horse meat (which to Imam Abu Hanifa is Makroohe Tahreemi) are lawful if for medicinal use (Raddul Mukhtar Vol. 5, p. 216 qtd. Yusufullah 68). Fatawa Bazzazziyyah states that it is lawful to eat pigeon excreta if done for medicinal purposes (Fatawa Hindiyyah Vol. 5, p. 355 qtd. in Yusufullah 69). Fatawa Alamgeeri states that drinking blood or urine and the consumption of carrion is allowed for medicinal purposes when no alternative is found (Yusufullah 69). The aforementioned rulings seem to apply even if the situation is not one of Idhtiraar. Imam Baihaqi allows use of all non-intoxicating substances for medicinal use. Imam Tahawi deems all non-wine substances admissible. Imam Shafi, Imam Muhammad, and Imam Abu Hanifah disagree and forward that it is not permissible to use unlawful substances even for medicinal use. However, the preferred Hanafite opinion is that of Imam Abu Yusuf which states that if in the professional opinion of a clinician there is no lawful substance that offers an alternative treatment, it will be permissible to use an unlawful substance as medicine (Ali).

Therefore, even though there may have been a difference of opinion amongst early Hanafite scholars, later scholars have conditionally allowed usage of Haram and impure products for medical treatment given that:

1. a lawful or pure alternative does not exist, is not easily procurable, or the existence of a lawful and pure alternative is unknown to the individual though in reality such an alternative is available.
2. cure is Yaqeeni Aاداتan (ordinarily certain). This means usually treatment with the impure substance has proven to be effective against the given disease for which it is being used. (Burhanudeen 186)

These conditions are based on the following legal text:

"There is a difference of opinion on treatment with unlawful entities...it has been said that allowance will be rendered [for its usage] in such case that the individual knows that in using it there is cure and he knows not of any other medicine. This is similar to the allowance given to one who is dying of thirst to drink wine. Upon this [latter stance], is the [Hanafite] verdict." (Durr-e-Mukhtar, Vol I., p. 140 qtd. in Burhanudeen 186)

Ibn Abideen in his commentary on Durr-e-Mukhtar, Shaami, explains that "knowing" in the above passage refers to Ghaalibuz Zann (probable and reasonable certainty) not Yaqeen (absolute certainty) (Burhanudeen 186). Non-Hanafite scholars, like Imam Shawkaani and Ibn Hazm, have also made similar exceptions regarding the use of impure substances in medical cases (Nailul Autaar Vol 1, 20; Muhalla both qtd. in Burhanudeen 186).

Certain Islamic legal texts add the condition of procuring the professional opinion and counsel of qualified Muslim doctor to indicate that the usage of the proscribed or impure substance is medically indicated (Fatawa Alamgeeri Vol. 5, p. 355 qtd. in Burhanudeen 187). Maulana Burhanudeen argues that the condition of a qualified Muslim physician is a Qayde Ittiffaaqi (dispensable condition) not a Qayd e Ihtiraazi (requisite condition) (187). If this is so, then the only necessary condition for using proscribed materials is that reasonable



and probable certainty be achieved that such use is medically indicated and beneficial in the absence of alternative lawful treatment. The condition of a qualified Muslim authority serves as a proxy for the aforementioned; it is in and of itself dispensable.

This stance is bolstered by legal precedence that a man dying of thirst or one who has food lodged in his esophagus does not need a Muslim doctor's opinion to drink wine to preserve life or dislodge the morsel respectively. (Al-ashbahun wan Nazair p. 22; Shaami qtd. in Burhanudeen 187). This is an agreed upon tenet. Imam Tahtawi relates consensus of the Balkhan scholars that the patient must additionally himself believe that the treatment is necessary and indicated (Burhanudeen 188). This further proves that a professional opinion does not provide sufficient ground in and of itself; reasonable and probable certainty must be achieved that such use is medically indicated and beneficial, however that certainty be achieved.

In cases where the patient does not have adequate knowledge of his or her disease process and professional opinion is warranted, there is the secondary question of whether or not the medical authority needs to be a Muslim. It would appear however that the condition of the doctor being Muslim was instituted so that a religiously sensitive opinion be rendered (Burhanudeen 188-189).

From the above discussion we can conclude that there is legal ground for the conditional, medicinal use of proscribed substance. However, this stance directly contradicts Ahadith that state that Allah (SWT) has not kept cure in the unlawful: "Indeed Allah has not kept cure in that which He made unlawful unto you."

Imam Ibn Hazam Zahiri Anduloosi reconciles this conflict by stating that if the narration above is in fact sound, then there is still no contradiction per say. When Allah SWT made something permissible (like the consumption of carrion and pork) during Idhtirar, then that item become Halal (lawful) during the window period of permissibility. During this period the entity becomes lawful, so it no longer falls under the purview of the above narration which refers rather to the use of unlawful entities not lawful ones (Al- Muhalla Vol. 1, p. 231 qtd. in Burhanudeen 192). It should be noted that the entity will only remain lawful till such time that the need or necessity exists. After that its lawful status will expire based on the principle: That which is allowed by necessity, its utilization will only be allowed to the extent that the necessity exists (A-ashbaahu wan Nazair 122 qtd. in Burhanudeen 192).

Some scholars, like Imam Shafi and Imam Abu Yusuf, take proof from incident of Urnayeen to derive the permissibility of using Haram for medicinal purposes (Burhanudeen 192). In this incidence, a visiting delegation to Madinah fell ill due to the unfavorable climate of the area. Prophet Muhammad (S) instructed the delegation to consume the milk and urine of camels for medicinal purposes (Bukhari).



However, many scholars disagree saying that that this incident does not constitute proof for using prohibited substances for medicinal use. There are different variants of this narration. Some scholars assert that after looking at all the variants, it appears that only the drinking of milk was ordered by Prophet Muhammad (S). The drinking of urine was a treatment the delegation initiated from their own side. More often, scholars categorize this incident as Khaas (particular exception to the general rule) (Radaaulhaqq). The ruling of a Khaas incident cannot be extended to other cases and is circumscribed to the particular situation in which it occurred.

However, other texts exist which clearly show allowance to use proscribed entities in times of need. For example, there is the incident in which one of the companions of the Prophet Muhammad (S) had his nose severed in the course of battle. Initially, he had a silver “nose” as a replacement, but when this nose became putrid and fetid, he sought permission to have a gold prosthetic nose made. Even though the use of gold is unlawful for males in Islam, permission was granted to this companion (Ali). Another example lies in permission being given to certain male companions of Prophet Muhammad (S) to don silk in battle. Silk clothing was worn in battle in those times to glance and avert sword blows during the war (Ali). These incidents add support to the thinking that impermissible substances can be used conditionally under certain circumstances of need.

The previous discussion has largely focused on circumstances of either Hajat or Idhtiraar. However, sometimes there is neither Hajah nor Idhtiraar but rather a risk of prolonging the course of disease. In such cases, should the use impure or impermissible substance be forsaken? Though there is a difference of opinion on the issue, it has been stated that utilizing the proscribed substance in such cases is still permissible but abstinence is preferred (Fatawa Hindiyyah Vol. 5, p. 355 qtd. in Ludhanvi 175). This lends support to making organ transplant permissible because this verdict establishes that the use of an impure substance can be allowed in even less than Hajah conditions.

It had been previously established that from the perspective of the donor, the “need” to donate an organ to another does not constitute Hajah. However, based on the cited ruling, it may still be possible to make allowance for using an impure organ for transplant (a non-Hajah case) just as use of impure substances for decreasing the length of disease is allowed (a non-Hajah case). In response, it can be stated that such reasoning can at most be used to justify the reception of an organ, not its donation.

Blood and Blood Products

Closely related to organ transplant is the question of the permissibility of blood transfusions which is now a generally accepted decree amongst



contemporary Islamic scholars. Mufti Kifayatullah states that in times of need it is lawful to a healthy individual to give blood to a sick individual. (Kifayatullah) This ruling bears significant influence on the discourse regarding organ transplant and thus warrants scrutiny.

Blood is considered a "part" of the human body. Blood, when it exits in the human body, is impure according to the Hanafi school of thought, as previously mentioned. In these two ways, blood is not different from any other organ in the human body. Blood is also similar to breast-milk in as much as both are parts of the human body. The use breast-milk and blood should technically be disallowed just like the use of all other parts of the human body (Ludhanvi 174). This in fact is the default ruling:

1. "Its sale is not allowed...when the child is no longer dependent on it, drinking breast milk is not allowed and deriving any other benefit from it is also unlawful." (Fathul Qadeer Vol. 2, p. 201 qtd. in Burhanudeen 190).
2. "Man is honored by the Shariah, even if he be a disbeliever. Therefore, his sale, usage...are all tantamount to his desecration... It is for this reason one is not able to sell the breast-milk..." (Raddul Mukhtar Vol. 4, p. 105 qtd in Burhanudeen 190)

Notwithstanding such legal verdicts, scholars have found legal precedent regarding the permissibility of using breast-milk for medicinal purposes. Fatawa Alamgeeri states that the use of breast milk by children is permissible due to necessity and its use by adults intranasally or per os is also permissible if used as medicine (Fatawa Alamgeeri Vol. 4, p. 112 qtd. in Ludhanvi 174). Given this ruling of permissibility, Islamic scholars have analogized the ruling concerning breast-milk to establish the permissibility of using blood and blood products for medicinal ends. It is further argued that this analogy cannot be nullified on the basis of Qiyas ma'al Fariq (iniquitous analogy) given that breast milk is a pure substance, and blood is an impure substance. The analogy remains valid because the case under discussion is one of Hajah or Idhtiraar. In such cases, given that the other necessary conditions are met (see above), blood is no longer a proscribed or impure substance. Therefore, rejection of the analogy blood on breast-milk based on the impermissibility of using impure substances (blood) no longer holds because in one way the substance (blood) is no longer considered proscribed or impure during the window period of Hajah (Ludhanvi 174-175).

It should also be noted that whether the blood comes from a Muslim or non-Muslim has no bearing on the purely legal ruling regarding permissibility of using blood products hereunto detailed. However, due to the danger of undesirable spiritual effects, it is preferred for a Muslim to take blood donated by another Muslim (Ludhanvi 175).

If transfusion of blood and blood products have been ruled lawful by making an analogy on breast-milk, it would seem all too logical that organ transplant

should also be lawful by the same analogy. Since there is medical need, organs should also no longer be treated as impure. Also, in the same way that breast-milk can be used without necessitating desecration or violating the sanctity of the human body, so too should solid organs be used without incurring the same. However, three points of differentiation have been made between organs and blood that warrant mention. Those who maintain that organ transplant is impermissible use these differences to preclude any analogy between breast-milk and organs.

First, organ transplantation, unlike blood transfusion, does not require cutting and operating on the human body (Burhanudeen 191). Organ transplant necessitates violation of the integrity and sanctity of the human body on two levels: 1. surgical methods which are akin to mutilation and 2. the use of human organs is itself demeaning. Now, if the use of human parts was made permissible by the breast-milk analogy (ceding that such an analogy can be made in the first place), then the first type of violation would still be extant. Also, both blood and breast-milk can be harvested without any surgical measures and so analogy between blood and breast-milk is possible as oppose to organ transplant which requires surgical intervention. The counterargument can be made however, that insertion of a needle into the human body is also in a way a type of procedure. One may go so far as to even say that it is a surgical procedure. Therefore, either the analogy between blood and breast-milk should be rescinded or the analogy between organ transplant and breast milk should be permitted and instituted. In reply, it may be said that the minimal degree of invasiveness required during transfusion does not qualify as desecration even if one were to agree that it is a surgical procedure, this latter assertion being itself tenuous.

Also, it can be said that there were certain invasive procedures performed during the time of Muhammad (S), namely cupping and cautery. Therefore, we could categorize the IV insertion required for transfusion amongst these admissible modalities of medical procedures. However, these same instances form a legal precedent for allowing organ transplant. Proponents of organ transplant argue that modern day surgical methods are no longer tantamount to desecration of the human body and thus should be categorized with blood letting puncture with subsequent cupping and Kayy (cauterization). Just as these are permissible procedures in Islamic law, so too should be organ transplant.

One of the central arguments used to establish the impermissibility of organ transplant is that it involves cutting the human body which is a violation of the sanctity of that body. But by this reasoning, all surgical procedures should also be prohibited. Religious scholars often cite the performance of Kayy by Prophet Muhammad (S) himself on Hadrath Muaz (R) for coagulation as legal precedent for allowing surgical procedures. The allowance for surgery is for circumstances where there is need and where the procedure is likely to be beneficial. Also, it is suggested that one resort to surgery only if equivalent alternative treatments are not available. If it is agreed that surgery is allowed,



then there should be no problem with harvesting organs then. This could very well also serve as a basis for allowing organ transplant. If it is said that these types of surgery are allowed in Hajah circumstances and for the donor there is no Hajah, it can be said in response that in cases less than Hajah (like prolongation of illness) allowance has historically been given. Therefore, organ harvesting, which often is the thorny point in organ transplant, should be allowed.

Previously, it has been mentioned that the prohibition of transplanting organs exists secondary to two types of violations: 1. surgical methods akin to mutilation and 2. *use* of human organs. Now, the latter of these can conceivably be made permissible by the breast-milk analogy (ceding that such an analogy is valid) and the former violation can be circumvented by the Kayy precedent.

Scholars that argue against organ transplant can state that the analogy on Kayy is not valid because organ harvesting is much more invasive and involves “tearing apart” of the human body, however sophisticated that tearing may be. This latter assertion may not hold because the reason that Prophet Muhammad (S) did not like Kayy was due to the deadly risks and harms the procedure carried at the time. Kayy was in no way a “sophisticated” or gentle procedure. In fact, in certain narration Muhammad (S) forbade the Sahabah from doing Kayy in view of the potentially deadly consequences and harms it carried. In contrast, modern surgery is by far gentler and the attendant hemorrhagic and infectious risks a great deal fewer. Therefore, if Kayy is allowed then by Dalaalatun Nass (greater decree) modern surgery should be allowed mores.

Notwithstanding these modern advances, it should not be overlooked that surgery today is still much more invasive than the historic Kayy which was mainly performed percutaneously or superficially. The assertion of greater gentleness perhaps may not hold. If one were to remove anesthesia from the equation, modern surgical procedures would not only be untenable but also more horrific and invasive than Kayy. Therefore, the argument that analogy between Kayy and organ harvesting is iniquitous is not altogether far fetched. However, scholars have allowed modern surgery in cases of need and these surgeries just like organ harvesting are more invasive than Kayy. The differentiation between organ removal and other surgical procedures is not altogether clear.

But this argument implies that if there were some method whereby organs could be harvested without surgical intervention then organ transplant would be lawful to use. Just as breast-milk is lawful to *use* so too should be *use* of harvested organs. Also, if surgery constitutes a violation of sanctity, then we have raised the question of why operations allowed under any circumstance. What is more is that transfusions require a needle prick and this has not been taken to constitute desecration. What must be here determined is whether modern techniques in surgery are more akin to mutilation or to the



intravenous needle of transfusion. When scholars in the mid to latter 1900's ruled against transplant, perhaps surgical methods were not so refined nor were transplant success rates as high. So if today neither surgical methods akin to mutilation (by transfusion needle and Kayy analogy) nor improper use of the human body (by breast-milk analogy) exist then there is no violation of the sanctity of the human body and these violations will no longer be a premise for rendering organ transplant impermissible.

The second difference that has been made between blood and organ transplant is that blood is regenerated in the human body as oppose to a donated organ (Burhanudeen 191). Even if blood is donated it, the body will reconstitute the donated amount as oppose to a donated organ. However, according to Hanafite legal theory, as oppose to the Shafite school of thought, there is, as a rule, no consideration given to Mafhoome Mukhalif (reverse obverted contrapositive). Therefore, just because a part's regenerative capacity makes its use permissible does not mean that a part's lack of that regenerative capacity makes it impermissible. The Hanafite stance is that a separate proof is required to establish the ruling in cases of non-regenerative human parts.

However, the initial reason that this point of differentiation was made was not to establish a ruling of impermissibility against organ transplant. Rather, the purpose was to establish that there is a difference between blood and human organs. On the basis of this difference, only blood can be analogized on breast-milk not human organs. Since the analogy cannot be applied to human organ their impermissibility will remain based upon the various proofs previously forwarded. Since the difference in regenerative capacities was not being used to directly establish the impermissibility of organ transplant, Mafhoom Mukhaalif (which is the only way impermissibility could be derived from this point of differentiation) was never applied. Since it was never applied, no criticism can be leveled for applying this principle.

To some scholars, the differentiation made based on regenerative capacities may still seem superfluous and ineffectuous. For example, nails have regenerative capacity. However, once separated from the human body, it is still not lawful for another to utilize those nails in view of their sanctity. So the premise that permissibility is based in the case of blood on its unique ability to be regenerated no longer holds. Furthermore, it can be said that just as the regenerative capacity of an organ/human part does not necessitate a ruling of permissibility (as in nails), so too should non-regenerative capacity (as in some types of organs) not automatically label the organ as non-permissible.

Closely related is the question of organs such as the liver that have the capacity to partially regenerate. If regeneration is the central issue, will liver transplant then be permissible? In this regard, if the basis of proscription is altering the human body in any way, then partially regenerated organs would fall in the same category as non-regenerated organ in as much as some permanent alteration to the organ's natural state is effected in both cases.



Conversely, in the case of blood the alteration is only temporary because complete reconstitution occurs. Of course, it could be said that, even if temporary in nature, some alteration has still occurred even in the case of blood donation.

On the other hand, if the basis of proscription was still assumed to be alteration, alteration being defined as loss of functional integrity, then liver transplant could possibly be categorized with blood as a wholly regenerated part given that there is recovery of necessary function. If this functionality argument were to hold then donating one kidney would also be allowed in view of only one functionally kidney being needed for life. Also, cadaveric transplants should be completely allowed since these organs have no functional utility to being with.

As far as the kidney case is concerned, one can respond by saying that though one may not need the other kidney, he or she may in the future require it in the case of acute renal failure or the like. In this way, it may be considered the individual's responsibility not to dispose of "back-up" organs especially in view of the body being a trust. With regard to cadaveric transplants, it should be also noted that altering the human body is only one basis for proscription. To make organ transplant permissible, effective contestation would have to occur for all other grounds of proscription (sanctity of the human body, mutilation, etc.)

The third difference that can be made between the transfer of blood and that of organs is that blood is fluid while organs are solid. However, this seemingly should have no bearing on the discussion. Even though different rulings have been set out as to how to cleanse different types of impurities, Islamic law makes no difference between solid and liquid impurities in their being impure.

Another scholarly approach to the issue of blood transfusion states that it is improper to make analogy of blood on breast milk not only because breast-milk is pure substance but also because breast-milk was inherently designed to exit the body as oppose to blood. Therefore, it would be more appropriate to make an analogy to another pure fluid substance in the body whose natural state and fate is to stay within the body, saliva (Yusufullah 73). Mufti Kifayatullah argues on this basis for the permissibility of organ transplant. He states that using parts of a human are impermissible only in those cases wherein usage entails desecration. If no desecration is involved, then the usage of human parts is permissible. (Kifayatul Mufti Vol. 9, p. 143 qtd. in Yusufullah 73). To bolster this stance he cites that the water used to wash the mouth of Rasulullah S was given to the ailing for purposes of treatment. This water obviously contained the saliva of the Prophet Muhammad (S) (a part of his body), but it was still being *used* without label of desecration being applied (Nadvi. 214).



In response this has been said that this is an iniquitous analogy because in the cited case, the organ (salivary gland) is left as is. It is only that some secondary benefit has been derived from it. However, in the case of organ transplant the organ itself is removed and no longer remains. The case cited by Mufti Kifayatullah is like making a prayer for someone and then blowing the prayer on the invalid or like passing one's hand over a sick patient's head with intent to heal. In these spiritual methods of treatment, the body part is still being used, however, after the use the body part remains; it is only that some secondary benefit has been derived from the body part. However, it is questionable if this argument holds in view of saliva also being as much a part of the human body as the salivary gland from which it is derived (Nadvi 214).

Religion of Donor

It is Mustahabb to take organs from a Muslim donor but it seems unreasonable to set this as a condition i.e. to make it impermissible to take a donated organ from a non-Muslim. Legal precedent exists to allow consumption of the meat of someone who has received a death sentence and jurists have detailed that this allowance exists even if the individual is a disbeliever. Imam Sarkhasi has allowed that a child be suckled by a disbelieving wet nurse in light of the fact that what is foul within her is related to her beliefs not to her milk. He further supports his stance citing that many Prophets have themselves been suckled by disbelieving women (Al-Mabsoot Vol 15, 127 qtd. in Yusufullah 79).

Ibn Rushd Maliki asserts that it is better that the wet nurse be an honorable believer but even Ibn Rushd has allowed the milk of a disbeliever, given that there is no risk of her feeding or giving drink to the child those substances that are unlawful in the Shariah. The argument runs that if there is allowance in the matter of drinking the milk of a disbelieving woman, then there should be even more allowance in the matter of organ transplant because in the latter case there is a medical necessity (Yusufullah 79-80).

Sale of Blood, Blood Products, and Organs

Under normal circumstances the sale of the human body and body parts is categorically unlawful. However, under those circumstances as above delineated during which the use of blood and blood products becomes lawful, so too does their purchase despite their being parts of the human body. In this case, while it will remain incorrect for the seller to take a price for the sale of blood, it will be lawful for the individual who is in a state of need to purchase it. The sale is unlawful but the purchase is allowed (Ludhanvi 175).

However, according to Imam Shafi it would appear that even sale of human part can be lawful. This is based on the fact that Imam Shafi allows the sale of breast milk even though technically such sale should be impermissible. Imam

Shafi does this on the basis that breast milk is pure and similar to cow milk. He further adds that breast milk is a common form of sustenance, so it should take the same ruling of lawfulness as all other forms of sustenance (Al-Mabsoot Vol. 15, p. 125 qtd. in Yusufullah 81). Also, since it allowed to sell a slave, which is a human body, Imam Shafi states that it should be allowed to sell breast milk as well (Al-Mughni Vol. 4, p. 177 qtd in Yusufullah 82). The preferred opinion to Hanbali scholars seems to be the same. So according to the Shafi and Hanbali schools of thought we have a scenario wherein the sale of a human part is permitted in addition to its purchase in times of dire necessity (Yusufullah 82).

Some Hanafi scholars lean this way as well. They state that the sale of some items that originally are not suitable for sale due to their being Haram or impure can become suitable for sale if they become Qaabile Intifaa (admissible benefitability). An example is the sale of manure whose sale is allowed despite its being impure. Those Hanafite scholars that hold this view state that limbs can have value based on the concept of Diah in Islamic penal law wherein there is a schedule of fines levied for specific damages to the human body. If limbs can have monetary value, then perhaps there is allowance to actualize that value in the form of sale (Yusufullah 82). This latter assertion warrants closer inspection.

Societal Risks of allowing Organ Transplant:

Scholars when adjudicating on issues also utilize the principle of Sadduz Zariyyah (preemptive prohibition). Sometimes even though an entity may in and of itself be permissible, the entity may still be given unlawful status. This principle can be derived, amongst other sources, from the Quranic verse, "...and do not draw close to illegal sexual intercourse." The injunction here is not to refrain from illicit sexual conduct itself but to abstain from all avenues that lead to such misconduct. Issues to consider if organ transplant is made lawful include:

1. Less of a deterrent from misusing one's body because lawful "replacements" are available
2. Exploitation by the rich and creation of underground black markets for organ sale
3. The sale or killing of children, crippled, or destitute individuals to harvest organs
4. Commodification of the human body
5. Devaluation of the human body (Burhanudeen 214-215)

Conclusion

The main arguments on the basis of which organ transplant has been historically ruled as impermissible are:

1. Violation of the sanctity of human life
2. Mutilation
3. Altering the creation of Allah
4. The human body is a trust.
5. Organs are impure.

Arguments in favor of allowing organ transplant are largely based on the principle that the Shariah gives concessions in cases of necessity. However, the scholars that allow organ transplantation do so conditionally after certain requisites are met.

It may be too simplistic to reconcile these scholarly verdicts by simply stating that they are a product of times in which they were ruled. Rather, each camp is grounded in solid, primary textual proofs and legal precedents. The object of this paper has not been to issue a decisive verdict on the issue, but rather to present a conceptual lay of the land as regards the legal and ethical issues regarding organ transplant from an Islamic perspective.

There remains many issues to explore, many questions to answer, and it is possible that scholarly discussion on this issue may continue well into the future. However, from a practical perspective, once a legal verdict of permissibility was passed, a legal precedent came into existence. For Hanafite jurists, it is permissible to pass verdicts on any of the established decrees within their school of thought. The significance of a legal precedent on the side of permissibility is that it offers us such a decree. This not necessarily mean that the evidence is stronger on one side or the other. But since an alternative opinion exists on the issue, we are granted some degree of latitude in issuing verdicts. Perhaps this latitude can find support from the principle that every ruling is considered correct by the issuing body with the possibility of its being incorrect. Ideological pluralism, within bounds, has historically always been honored by traditional Islamic scholarship.

It is likely that on an individual basis, jurists will rule on this decree for individuals in situations of necessity and need on a case by case basis. Large scholarly bodies like the Muslim Shariah Council (UK), Islamic Fiqh Academy (India), and Al-Azhar (Egypt) have also formally declared their positions and ruled on the side of permissibility. By declaring their stance as such, these institutions have gifted the pre-requisite scholarly authorization needed before one can entertain the notion of developing industry standards and guidelines. Islamic scholars have laid out some broad principles regarding the conditions under which organ transplant is allowed and these conditions have been discussed above. To reiterate, it is required that:

1. The transplant is performed for the purpose of saving a life or return of some necessary body function (sight)
2. A qualified authority has pronounced that return to health is likely and probable following the transplant procedure.



3. If the transplant is cadaveric, then the individual must have made a bequest to donate his organs during his life time. The deceased's inheritors must also be given to the transplant (since they are now his or her legal guardians after the individual's death).
4. If the transplant is from a living donor, informed consent is required and no undue harm to the donor may be effected (Yusufullah 84-85).

This framework is perhaps too broad for practical purposes and "real-time" day to day application. Likely, development of well-defined practice guidelines will require the joint expertise of Islamic scholars, clinicians, and lawyers. Terminology such as "qualified authority" and "informed consent" will require further characterization. Though the undertaking is quite laborious, the product is one that is of great service and utility. Such an undertaking may give birth to a procedural template for formulating practice guidelines applicable to Muslim patients in the future. In total, such projects help provide a higher level of patient-centered care which, in many ways, is the object of the good practice of medicine.



Bibliography

Kholwadia, M. A. (2004, July 31). *Organ Transplantations: Legal, Eschatological and Theological Considerations*. Presented at Darul Qasim Organ Transplant Conference.

Riaz, K. (2004, July 31). *The Historical Development of Jewish and Christian Views on Transplantation*. Presented at Darul Qasim Organ Transplant Conference.

Yusufullah, Khalid. Jadeed Fiqhi Masaail. Deoband: Kutub Khana Naeemiyyah, 1998.

Ludhanvi, Mohammad Yusuf. Aap Kay Massail Aur Nn Ka Hal. Karachi: Maktabah Ludhanvi, 1999.

Kifayatullah, Mohammad. Kifaytul Mufti. Lahore: Darul Isha'at, 2001.

Fatawa Haqqaaniyyah. Lahore: Al-Matbaul Arabiyyah, 2003.

Burhanudeen, Mohammad. *Mujooda Zamana Kay Masail Ka Shari' Hal*. Laknow: Makatabah Haram. 1992.

Nadvi, Mujeebullah. *Islaami Fiqh*. Lahore: Maktabah Madiniyyah

Jehl , Douglas. "Islamic Rift in Egypt on Organ Transplants ." New York Times. 21 May 1997. The New York Times Company.
<<http://query.nytimes.com/gst/fullpage.html?res=9A04E5D9173BF932A15756C0A961958260&sec=health&pagewanted=print>>.

Compiled by Howett, Rachel. "Islam and Organ donation." UK Transplant. 2003. UK Transplant.
<http://www.uktransplant.org.uk/ukt/newsroom/fact_sheets/religious_leaflets/islam_and_organ_donation/islam_and_organ_donation.pdf>.

Sahihul Bukhari. Karachi: Qadeemi Kutub Khana. 2nd Editon, 1961.

Ibn Adam, Muhammad. "Is organ donation permissible? ." Islam- The Modern Religion. <www.themodernreligion.com/misc/hh/organ-transplant.html >.



Student of Darul Uloom Deoband, "Modern Surgery & Islam." Inter-Islam. Darul Uloom Bury. <<http://www.inter-islam.org/Lifestyle/serg.html>>.

Saloojee, Shabbir. Darse Bukhari Thaani. 2006. Lenasia, South Africa.

Radaulhaqq. Darse Bukhari Awwal. 2006. Lenasia, South Africa.

Ali, Mohammad. Darse Tirmidhi Awwal. 2006. Lenasia, South Africa

Saabooni, Muhammad Ali. Mukhtasar Tafseer Ibn Katheer. Darul Quraanul Kareem. Beirut. 1981.

USC-MSA Compendium of Muslim Texts. MSA-USC Hadith Database. <http://www.usc.edu/dept/MSA/reference/searchhadith.html>

Asad, M. Quran Search. Islamicity. www.islamicity.com/QuranSearch