LAW & ETHICS OF ORGAN DONATIONS IN ISLAM

DR. SANA SHEIKH

Justice Oliver Wendell Holmes Jr., MOTIVATIONAL AND INSPIRATIONAL QUOTES COLLECTION (2002), http://www.inspirational-quotes.info/ (last visited on Feb. 2, 2011).

sanashaikh@gmail.com; Ssanaa86@aol.com

ABSTRACT: Justice Oliver Wendell Holmes Jr. stated, "many ideas grow better when transplanted into another mind than in the one where they sprung up".[1] The issue of human organ donation and transplantation continues to present a vexing problem for ethicists, philosophers, the medical profession, economists, politicians, jurists, religious leaders and academia. Many convincing arguments have been put forth for and against the "commoditization of the human body." The consistent unbalance between the availability of organ donors in comparison to those in need has once again moved this issue to the forefront of social dialogue. The development and advancement of medical procedures and the increased accessibility in Muslim countries to such procedures has also brought this topic to the forefront of Islamic debate. To thoroughly understand the problems posed by organ donation and transplanting in the Muslim community, an analysis of the underlying principles is warranted.

[DR. SANA SHEIKH. LAW & ETHICS OF ORGAN DONATIONS IN ISLAM. *Rep Opinion* 2025;17(9):1-9]. ISSN 1553-9873 (print); ISSN 2375-7205 (online). http://www.sciencepub.net/report. 01. doi:10.7537/marsroj170925.03

Keywords: Ethics in Islam; Organ Donations; Laws for Organ donations; Islam and Organ Donations

[1] Justice Oliver Wendell Holmes Jr., MOTIVATIONAL AND INSPIRATIONAL QUOTES COLLECTION (2002), http://www.inspirational-quotes.info/ (last visited on Feb. 2, 2011).

PURPOSE AND PROBLEM STATMENT

Among other things, this paper will analyze the arguments pro and against organ donations, it will look at those arguments within the context of Islamic law and assess the present state of laws relating to organ donations in Islamic countries to analyze their underlying principles.

METHODOLOGY

This paper has acquired secondary data and is qualitative in nature. Before proceeding into a discussion of the present state of legal systems in Islamic countries, namely *sharia*[2] law the paper is divided into the following parts:

Part I bullets key differences between Western and Islamic jurisprudence to highlight the key differences between *sharia* law and conventional Western jurisprudence.

Part II delves into Islamic history to establish a basic, and very brief, historical understanding of the developments of Islamic law and the strategies used to ensure its proper application.

Part III tackles the ambitious goal of eradicating the notion that Islamic law has no boundaries and outlines, in order of importance, the sacred and classic sources of *sharia* law.[3]

Part IV analyzes the practical aspects of *sharia* law as it presently pertains to organ donations and addresses the legality of organ donations in Islam.

Part V lists some specific *fatwas* on organ donations.

Part VIdiscusses the central issue of commercializing organs within the Islamic context.

Part VIII presents an analysis of the present state of the law addressing organ donations/selling in two Islamic countries.

Part VIIII lists some key Islamic requirements that must be met before donative procedures are allowed.

Lastly, Part concludes my analysis by making a number of key observations and making some suggestions to improve the current state of legislation on organ transplants/donations.

LITERATURE REVIEW

WESTERN LAW VS. SHARIA LAW

Muslim nations, such as Pakistan, Saudi Arabia and Iran, are governed by the *sharia* jurisprudential system that is both theoretically and practically different from Western jurisprudence. Before delving into the complex and unique depths of *sharia* law, it is both relevant and important for the reader to know some of what makes the *sharia* legal model different from the Western legal system. First, Muslims see the *sharia* as the ultimate and immutable expression of God's will and quite distinct from man-made law that is open to overhauling change.[4] Muslims believe that Prophet Muhammad, by the end of his life, had perfected Islam and passed down to his *umma* (Islamic community) a complete set of rules by which to live by in this world. As such, the legal foundation was solidly laid out in the *Qur'an*, *sunna* and *hadith* thus needing no new additions. Rather, Muslims maintain that all law and its implications can be uncovered by careful and diligent research of such sacred sources. Moreover, unlike its Western counter-part, *sharia's* scope is all encompassing.[5] Like Judaic and canonical Christian law, in addition to addressing purely legal matters, *sharia* concerns itself with ethical, moral, and theological standards.[6] Also, unlike the Western legal system of developing law (i.e., statutes and codes) that is drafted and approved by a centralized national authority, *sharia* law was compiled and clarified by private scholarly studies of Islamic jurisprudence. Lastly, broadly speaking, *sharia* concerns itself mostly with private duties and code of conduct as opposed to public affairs.[7]

II: HISTORICAL BACKGROUND: BASIC FUNDAMENTALS

Sharia is the religious law of Islam. In Arabic, *sharia* literally means the "way to water" or "the path leading to the watering hole.[8]" Within religious context this means that *sharia* is the sole path which, if steadfastly followed, leads believers to a blissful heavenly afterlife promised by God himself. The *sharia* represents a methodical but an uncodified legal system. Methodical because it is a well-reasoned and comprehensive system of doctrines and ideologies that are based on widely accepted well-researched and

[2] *Sharia*, which is the transliteration for "Islamic Law," should technically be written *shari'a*, (pronounced "sha-REE-ah"). The apostrophe stands for the Arabic letter '*ayn* but for sake of simplicity and uniformity I will consistently spell it as simply *sharia*.

[3] This paper will discuss legal and religious principles that are generally applicable to the majority of Muslims and will not delve into the intricacies of different beliefs inherently present in diverging views.

[4] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 30-31 (McFarland & Company, Inc.,) (2007).

[5] *Id.* at 31.

[6] *Id.*

[7] *Id.*

[8] Khurram Murad, *SHARIAH*: THE WAY OF JUSTICE (2010), http://web.youngmuslims.ca/online_library/books/*sharia*h_the_way_to_justice/ (last visited on Feb. 6. 2011).

authenticated religious beliefs.[9] Uncodified because it has never been collected and written down in one authoritative volume. Islam teaches Muslims that a believer's primary duty is to completely and fully submit to the will of God.[10] The *sharia* represents a practical how-to guide that shows Muslims how this submission can be achieved. Religious scholars (*ulama*) play a central role in Islamic society as they study Islam under the guidance of renowned and established scholars and then are given the authority to interpret and apply *sharia* law.

A mastery of *sharia* law is an extremely difficult, intellectually intensive, and time consuming undertaking, and even more so for those who do not have a solid understanding of Islam, working knowledge of its foundational principles, and a linguistic inclination towards the Arabic language.

Islamic law denotes great importance to language. Jurists, when researching legal questions, first determine and designate the text that is most relevant (i.e., holy or scholarly). This is done by conducting detailed linguistic analysis, interpretations, and determining the exact meaning of words within both the legal and religious context. Thereafter, a determination is made as to whether a word is used in a real or metaphorical sense and whether the meaning of a word is clear or ambiguous. Islamic jurisprudence distinguishes between words that are so ambiguous that they cannot be clarified via any means, and words that are either crystal clear or can, with continued research, be clarified. Inherently ambiguous words are not given legal significance and are not sources of rulings. Words that can be clarified are divided further into words that are so clear that their meaning is certain and those words that can be clarified by their linguistic overtones.

Practicing attorneys must also distinguish between general phrases and those specified and more focused. For example, a commandment that instructs Muslims to regularly attend to their prayers[11] is considered a general statement while a statement that states that the penalty for accidently killing another Muslim is freeing a slave[12] is a more particularized statement. Also, practitioners must distinguish between the imperative form of religious commands that obligate an individual to act and the prohibitive form that commands Muslims to refrain from acting. Depending on the outcome of this analysis an act is either deemed lawful or unlawful.

III. SOURCE OF ISLAMIC LAW

Classically, *sharia* is divided into two all-encompassing categories.[13] The first category consists of all acts of worship (*ibadat*).[14] These acts do not change and are considered to be the immutable expression of God's will as Prophet Muhammad taught it and, according to Muslims, is the embodiment of perfection.[15] The government does not police acts of *ibadat* because they are considered internally private affairs and depend on personal choices the consequences of which each individual will face in the hereafter.

Acts that are not considerer *ibadat* are acts of this world that are truly governed by *sharia* law and fall within the second category, *mu'amalat.*[16] M*u'amalat,* which is similar to "positive law", governs the relations between human beings in this world.[17] Sources of classic Islamic jurisprudence are collectively referred to as *usul al-fiqh*, (roots or principles of Islamic jurisprudence). Islamic law, the *mu'amalat*, is based on four primary and highly revered sources. Specifically, the Holy Book (the *Qur'an*), the social and legal traditions of the Muslim community (*sunna* and *hadith*), scholarly consensus (*ijma*) and, legal reasoning by analogy (*qiyas*).[18] Below I will endeavor to briefly explain each category.[19]

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[9] After Schacht, *Islamic Law*, p. 201.

[10] Indeed, Islam itself means to submit.

[11] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* 2:238, http://www.jannah.org/qurantrans/ (last visited on Feb 10, 2011),

[12] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* 4:92, http://www.jannah.org/qurantrans/ (last visited on Feb 11, 2011).

[13] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 29 (McFarland & Company, Inc.,) (2007).

[14] Acts of *Ibadat* include things such as fasting, giving charity, praying, and purification.

[15] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 29 (McFarland & Company, Inc.,) (2007).

[16] Some basic examples of *mu'amalat* are family law, business transactions, banking, land ownership, inheritance, war and peace, judicial processes, hunting, and caring of children.

[17] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 29 (McFarland & Company, Inc.,) (2007).

[18] LAW AND ISLAM IN THE M*IDDLE* EAST 2 (Daisy H. Dwyer ed., Bergin & Garvey) (1990).

[19] Please note that this is an extremely brief introduction to the complexities of the *Qur'an*, the *sunna* and *hadith*, *ijma*, and *qiyas*. I encourage those of you interested to truly learn about these unique sources of law to further

A. Qur'an

Sharia is based on two theological foundations; the first of which is the Holy *Qur'an*.[20] The *Qur'an* is considered by Muslims to be the word of God himself. The *Qur'an* does not contain many specific rules of law. The traditional estimate is that approximately 500 verses have some degree of legal content.[21] Scholar Mohammed Hashim Kamali concludes that less than 3 percent of Quranic text has legal substance.[22] He opines that only 350 out of roughly 6666 verses of the *Qur'an* are of legal consequence but in reality they cover a broad range of issues.[23] According to him, approximately 140 of these verses relate to devotional matters such as prayer, alms, fasting, and pilgrimage.[24] 70 verses address familial matters such as marriage, divorce, paternity, child custody, and inheritance.[25] Another 70 deal with commercial transactions such as sales, leases, loans, usury, and mortgages.[26] 30 address crimes and penalties; 30 speak of justice, equality, evidence, citizens' rights and duties, and consultation in government affairs; and 10 verses focus on economic matters.[27] Putting aside the question of actual numbers, it is quite clear that the *Qur'an* puts forth a number of legal principles. What is unique about the *Qur'an* is that it presents the law not in legal terms but in ethical norms. For example, when addressing business dealings, the *Qur'an* commands traders to deal fairly with each other.[28] This directs those looking to the *Qur'an* for legal guidance to look instead for ethical and moral principles embedded within the Islamic message.

B. Sunna & Hadith

Sunna and *hadith*, the second half of the theological foundation, evolved from the life of Prophet Muhammad.[29] The *sunna*, which is based on the life, teachings, and practices of Prophet Muhammad, clarifies individuals' religious, legal, moral, and social obligations in Islam.[30] They are Islamic traditions, examples taken from Prophet Muhammad's life. *Hadith*, which literally means to report, are the collection of deeds and words of the Prophet that were verbally recorded by many of his devote followers.[31] *Ahadith*[32] are the preserved traditions, habits, and sayings of Prophet Muhammad as known to his close Companions, family members, and staunch followers. Collections of *hadith* by al-Bukhari, who recorded 7,275 in number, and by Muslim ibn al-Hajjaj, who recorded 9,200, are considered by scholars to be the most reliable and authentic. The essential difference between *sunna* and *hadith* is that *hadith* are based on Prophet Muhammad's own life and thus are a biographical basis of Islamic law. The *sunna*, on the other hand, is the entire system of religious, legal and social obligations derived from the *hadith*.[33] *Sharia* law is not a well-defined, organized and cataloged set of rules, codes, or statutes easily applicable to daily life situations. More appropriately, *sharia* law is a set of moral-ethical standards and duties by which devote Muslims earn favor with God in this world and the next. In order to systemize Islamic law scholars rely on Prophetic *sunna*. For example, the issue of "surplus of property" addresses the question of what a Muslim should do with his surplus income if the income exceeds his personal needs.[34] The second Caliph, one of Prophet Muhammad's closest and most reliable Companions, Umar ibn al-Khattab, recalled the Prophet's actions in a similar situation and stated that the Prophet devoted his own surplus to buying military

research them as multiple books have been written about each of them.

[20] *Qur'an* roughly translates into recitation.

[21] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 18 (McFarland & Company, Inc.,) (2007).

[22] Mohammad H. Kamali, LAW AND SOCIETY: THE INTERPLAY OF REVELATION AND REASON IN THE *SHARIA*H 119-120 (1999), *published in* The Oxford History of Islam, 1999 at 107 (John L. Esposito ed., Oxford University Press US 1999).

[23] *Id*. at 119-120.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] Ira M. Lap*Id*us, A HISTORY OF ISLAMIC SOCIETIES 26 (Cambr*Id*ge University Press) (2002).

[29] (*Sunna* translates into "a well-trodden path") SUNNA OR HADITH, http://www.nicheoftruth.org/pages/sunnah.htm (last visited Feb. 05, 2011).

[30] *Id.*

[31] *Id.*

[32] Stands for the plural in Arabic of *hadith* but for the sake of simplicity I will refer to both *hadith* and *Ahadith* as simply *hadith*.

[33] For a more detailed explanation and distinction between sunna and hadith please refer to *Sunna or Hadith*, http://www.nicheoftruth.org/pages/sunnah.htm (last visited Feb. 10, 2011).

[34] Hunt Janin & Andre Kahlmeyer, ISLAMIC LAW: THE *SHARIA* FROM MUHAMMAD'S TIME TO THE PRESENT 49 (McFarland & Company, Inc.,) (2007).

equipment for his troops.[35] The Caliph endorsed that this practice was a Prophetic *sunna* and should be followed by faithful Muslims.[36]

C. *Ijma*

The third source of legal principles followed by the Muslim community is derived from the *ijma*. *Ijma* is the consensus of the Islamic community on religious and legal matters.[37] In Islam, consensus of the Muslim community on religious matters is extremely important because consensus gives legitimacy to scholarly decisions. A *hadith* sourced to Prophet Muhammad states, "[m]y people [the Muslim *umma*] will never agree upon an error."[38] As the British scholar N.J. Coulson explained:

Once formed the *ijma* was infallible; to contradict it was heresy, and the possibility of its repeal by a similar *ijma* of a later generation, though admitted in theory, was thus highly unlikely in practice. Further discussion was precluded not only on those points which were the subject of a consensus, but also on those matters where the jurists had agreed to differ; for if the *ijma* covered two variant opinions, to adduce a third opinion was to contradict it…*Ijma* had thus set the final seal upon the process of increasing rigidity of the law.[39]

D. *Qiyas*

The last source of Islamic jurisprudence is *qiyas*. *Qiyas* are strict analogical deductions drawn from the *Qur'an*, *sunna*, and *ijma*.[40] Scholars use *qiyas* to formulate legal decisions on matters not addressed by the *Qur'an*, *sunna*, or *ijma*.[41] It is a method utilized by Sunni legal scholars to apply traditional law to modern issues.[42] For example, in the text reproduced below the *Qur'an* commands its followers not to partake of wine:

Wine and games of chance, idols and divining arrows, are abominations devised by Satan. Avoid them, so that you may prosper. Satan seeks to stir up enmity and hatred among you by means of wine and gambling, and to keep you from the remembrance of Good and from your prayers. Will you not abstain from them?[43]

Islamic scholars' reason that by analogy, if wine made from grapes is forbidden then wine made from any other substance is also forbidden because the end effect of wine made from any substance is intoxication. Likewise, by analogizing with the *sura* quoted above, Islam forbids drugs because they also cause one to lose his/her senses.

IV. Legal and Ethical Argument For Organ Donations in Islam

The *Qur'an* nor the *sunna* specifically address the issue of organ transplantation or donation.[44] The silence of these primary sources of Islamic law has led Muslims to reach out to the other recognized sources of law in Islam. Even though Islamic discussion in bioethics is a relatively new phenomenon, Islamic writings on ethics and medical ethics are well documented since the time of Prophet Muhammad. Certain jurists condemn the practice, while others provide conditions and circumstances for its acceptable and limited use. A brief examination of the various *fatwas*[45] relating to organ donation will be instrumental in understanding the current state of the organ donation debate in Islam.

A. *Islamic Arguments against Organ Donations*

The majority of the criticism surrounding the acceptableness of organ donation in Islam is around three maxims of Islamic law as described below.

i. *Sacredness of the Human Life and Body*

Opponents of organ donation critical of the practice frame their argument on the basis that human life and body are sacred. Citing this principle they often refer to the Qur'anic verse, which states "O ye who believe! ... Nor kill (or destroy) yourselves: for verily Allah[46] hath been to you Most Merciful!"[47]

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[35] *Id.*

[36] *Id.*

[37] Ahmad Shafaat, Islamic Perspectives: The Meaning of Ijma' (1984), *available at* http://www.islamicperspectives.com/MeaningOfIjma.htm (last visited March 2, 2011).

[38] Austrolabe, My Ummah Will Never Agree on Error, http://austrolabe.com/2006/06/14/my-ummah-will-never-agree-on-error/ (last visited March 1, 2011).

[39] Hunt Janin & Andre Kahlmeyer, Islamic Law: The *Sharia* from Muhammad's Time to the Present 21 (McFarland & Company, Inc.,) (2007).

[40] Witness-Pioneer: A Virtual Islamic Organization, http://www.witness-pioneer.org/vil/Books/SH_Usul/qiyas.htm (last visited Feb. 3, 2011).

[41] *Id.*

[42] *Id.*

[43] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* 5:90-92, http://www.jannah.org/qurantrans/ (last visited Feb. 12, 2011).

[44] Fn 44

[45] A fatwa is a ruling on a point of Islamic law that is given by a recognized authority.

[46] *Allah* is the Islamic connotation for God. *Allah* is revered by Muslims as the Supreme Being, creator of all things and the divine reality. *Holy Qur'an*, Surah 112,

While this verse forbids the taking of one's own life, another forbids the taking of another's life, "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."[48] Understanding these verses within the context of the Biblical passage, "do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God? You are not your own"[49] and the prophetic tradition reported by his wife Aisha, which states that "breaking the bones of the dead is equal to breaking the bone of the living,"[50] makes the sacredness of human life and body apparent. Whether this sacredness is violated by organ donation falls to the rendering of the judge or jurist decreeing the fatwa.

ii. Human Body as a Trust

The Qur'an states "Allah has created every animal from water: of them there are some that creep on their bellies; some that walk on two legs; and some that walk on four. Allah creates what He wills for verily Allah has power over all things."[51] The Qur'an also states "seeing that ye were without life, and He gave you life; then will He cause you to die, and will again bring you to life; and again to Him will ye return."[52] Scholars claim that the above quoted verses of the *Qur'an* affirm God's ownership over our bodies.[53] Opponents and scholars alike believe that alteration of the human body is forbidden because it is a trust from God. This includes the giving and receiving of organs and follows from the idea that the trusteeship is from birth and beyond death, and in order to complete the covenant with God, the body must be returned intact and unaltered.

iii. Human Body to a Means-to-an-End

According to *fatwa al-Amghiriyyah*, "a person owing to hunger find himself on the verge of death and is unable to find even the meat of a dead animal in order to save himself, and at that instant is offered human flesh, it would *not* be permissible for him to partake of it."[54] This fatwa from the Hanafi *madhhab* (school of thought) is used as a source of persuasive law forbidding the use of the human body as a means to achieve another end. Scholars argue that the combination of the various passages quoted above lead to the logical conclusion that humans were not created to be a means to anything other than the worship of God.

B. Islamic Arguments Pro Organ Donations

Conversely, scholars favoring the permissibility of organ donation generally cite the following maxims to support their argument.

i. Public Welfare

The concept of public welfare holds extreme importance within the *sharia* and Muslim community. The various schools of thought view *maslahah* (greater public welfare) as a principal part of Islamic jurisprudential interpretation. The concept is based doctrines of necessity and equitable consideration. *Sura Baqara*, as found in the Qur'an, coherently addresses the necessity prong of this test, specifically stating:

"He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been invoked besides that of Allah. But if one is forced by necessity, without willful

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Ayats 1-4 ("say: He is Allah, the One and Only; Allah, the Eternal, Absolute; He begetteth not, nor is He begotten; And there is none like unto Him").

[47] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Baqara, verse 29, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[48] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Ma'*Id*ah, verse 32, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[49] THE DAILY BIBLE VERSE: 1 Corinthians 6:19-20, http://thedailybibleverse.blogspot.com/2008/01/daily-bible-verse-192008-1-corinthians.html (last visited March 5, 2011).

[50] Multif Muhammad Ibn Adam and Darul Iftaa, ISLAM THE MODERN RELIGION: IS ORGAN DONATION PERMISSIBLE? (2011, Sunan Abu Dawud, Sunan Ibn Majah & Musnad Ahmad), http://www.themodernreligion.com/misc/hh/organ-transplant.html (last visited March 4, 2011).

[51] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Nour, verse 45, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[52] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Baqara, verse 28, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[53] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Baqara, verse 28, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[54] Abul Fadl Mohsin Ebrahim, "Organ Transplantation: Contemporary Sunni Muslim Legal and Ethical Perspectives" (1995) 9 Bioethics 291 at 294.

disobedience, nor transgressing due limits, then is he guiltless. For Allah is Oft-forgiving Most Merciful."[55]

A prophetic tradition, narrated by Jabir b. 'Abdullah reaffirms and highlights this need for necessity:

"Allah's Messenger (*pbuh*) one day in the course of his sermon made mention of a person among his Companions who had died and had been wrapped in a shroud not long (enough to cover his whole body) and was buried during the night. The Apostle of Allah (*pbuh*) reprimanded (the audience) that a person was buried during the night (in a state that) funeral prayer could not be offered (over him by the Messenger of Allah). (And this is permissible only) when it becomes a dire necessity for a man."[56]

Scholars advocating for organ donation point to the above quoted sources, specifically emphasizing that this need or necessity for the procedure to save lives validates its permissibility. They maintain that necessity makes the unlawful permissible.

Additionally, these scholars also maintain that the principle of equity also promotes the permissibility of organ donation by stressing the balance of the harm. As stated in the Mejelle, the lesser evil is tolerable in order to prevent a greater harm.[57] These scholars find that harm is tolerable if it is used to meet social obligations. According to this principle, if someone dies because an organ cannot be found, all of society is harmed. These scholars support their view by referencing the *Qur'an*ic verse which emphasizes the oneness of society. Specifically, where the *Qur'an* states that the saving of one life is equal to that of saving the entire people.[58] In sum, the principle of equity would dictate that a lesser harm may be tolerated if the Muslim society as a whole is benefiting from the action. Following the premise of necessity, the claim of bodily sanctity is superseded by the need to render a greater and more equitable service to society. That being said, these scholars *do not* give full approval of the practice of organ donation but permit and tolerate it as an act arising out of necessity only under strictly limited circumstances.

ii. Altruism

Scholars advocating for organ donation also cite the concept of altruism as being pivotal in Islam. Specifically, the *Qur'an* states:

"show their affection to such as came to them for refuge, and entertain no desire in their hearts for things given to the (latter), but give them preference over themselves, even though poverty was their (own lot). And those saved from the covetousness of their own souls, they are the ones that achieve prosperity."[59]

The prophetic tradition, as narrated by Anas, also supports the usage of altruism to permit organ donations. It states that "none of you will have faith till he wishes for his brother what he likes for himself."[60] The Qur'an also states "by no means shall ye attain righteousness unless ye give (freely) of that which ye love ..."[61] A combination of these authoritative sources, as quoted above, supports the argument of permitting organ donation under the principal of altruism in Islam.

iii. Sacred Trust

Opponents and proponents, alike, use the maxim that human life is a sacred trust from God to support their argument. Opponents of organ donation and transplantation reference *sharia* principles that the human body belongs to God and that it is not at man's complete disposal. The Grand mufti of Egypt, Tantawi, replied to this statement in a *fatwa* declaring that the entire universe belongs to God and that this allows man to dispose of his body for the purposes of good within His dominion.[62] Thereafter, opponents rebutted with the prophetic tradition narrated by Aisha in which the Prophet stated that breaking the bone of a dead man was as serious an act as that of breaking the bones of a living individual. Thereafter, the Grand mufti replied that

[55] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Baqara, verse 173, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[56] *Sahih Muslim* trans, by Abdul Ham*Id* S*Id*diqui at Book 4, Number 2058.

[57] Dariusch Atighetchi 2, *Islamic Bioethics: Problems and Perspectives*, (Dordrecht: Springer, 2007).

[58] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Ma'*Id*ah, verse 32, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[59] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Hashr, verse 9, http://www.jannah.org/qurantrans/ (last visited Feb. 22, 2011).

[60] Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef Az-Zuba*Id*i, *Sahih Al-Bukhari*, trans. by Muhammad Mohsin Khan (Riyadh: Dar-us-Salam Publications, 1996) at Vol. 3, Book 2, No. 13.

[61] English translation of the meaning of the Quran (original text by Abdullah Yusuf Ali: 1934), *sura* Imuran, verse 92, http://www.jannah.org/qurantrans/ (last visited Feb. 25, 2011).

[62] Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives*, (Dordrecht: Springer, 2007) at 171.

such a prohibition did not apply when the violation was aimed at saving a life.

V. *FATWAS* ON ORGAN DONATION

The topic of organ donation has been debated by the Islamic jurists for the past two decades. The following are some of their relevant rulings:

1. Ayatollah S. Makarem stated it was lawful to donate to non-Muslims except when the recipient was at war with Muslims. Sunni Sheikh Yusuf al-Qaradawi made a similar declaration but excluded apostates as potential recipients.[63]

2. The Supreme Council of Ulama in Riyadh has allowed both organ donation and transplantation in cases of necessity. It has dictated that the organ could come from either a live donor or a cadaver. In so holding, the Ulama also declared that both donations of vital organs and donations detrimental to the donor's normal life are forbidden.[64]

3. The Fiqh Academy of the Organization of the Islamic Conference in Jeddah and the Grand mufti of Egypt, Dr. Sayyed Al-Tantawi, allowed the use of the organs of a person who died in an accident with the caveat that the necessity requires the use of the organ to save a patients life. Additionally, these authorities forbade the sale of human organs with the understanding that such sales violated human dignity and honor.

VI. SALE OF ORGANS

Scholars and jurists from all Islamic regions have forbidden the sale of organs and deemed such sales to be *batil* (false and null). Primary reason cited for such a ruling is that a person cannot trade that which he does not own and selling an organ is akin to selling a person. As support for this ruling, scholars cite the prophetic tradition that "there are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment. Of these three, one is he who enslaves a free man, then sells him and eats this money."[65] This leads to the logical conclusion that setting a price on human organs is impermissible in Islam. Conversely, scholars state that this conclusion may be nullified if the sale serves a greater societal good and promotes justice (i.e. saves a human life).

VII. ANALYSIS OF ORGAN SELLING/DONATION LAWS IN ISLAMIC COUNTRIES

A. Organ Donation in Iran

Legitimate fear of potential unethical trade, exploitation, and other immoral conduct has limited policymakers from endorsing systems that compensate organ donations. However, in 2000, Iran brought into force its *Organ Transplantation Act* and in effect, created the world's first compensated kidney donation system.[66] This model is premised on the above-detailed Islamic principles and is permitted solely for the purpose of saving a human life.[67] The legislation authorizes the government to establish the Charitable Foundation of Special Disease (CFSD), a non-governmental organization (NGO) given the primary responsibility for providing monetary compensation to unrelated kidney donors.[68]

Here is a snapshot of how the procedure is meant to work: A potential donor applies to another organization, the Association for Supporting Renal Patients (ASRP), and signs a pledge and notarized letter of agreement consenting and waiving future claims for compensation.[69] Thereafter, ASRP conducts a detailed psychological and medical check of the donor to ascertain his/her suitability.[70] Upon satisfactory completion of such procedures, the donor is paired with a suitable and anonymous recipient.[71] After ASRP procures the donated kidney, the donor collects a fixed amount of compensation (ten million rials) from CFSD.[72] Additionally, the government pays for all transplant and post-transplant costs.[73]

B. Organ Donation in Pakistan

Until recently, Pakistan was amongst one of the few countries in the world that lacked any legislation concerning tissue and organ transplantation. By enacting the *Transplantation of Human Organs and Human Tissues Ordinance* of 2007 (Ordinance), Pakistan has attained international standards by enacting legislation to regulate transplantation of human organs and end their illegal trade.[74] The passage of the

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[63] *Oxford Islamic Studies Online, "Bio-ethics" online*: Oxford University Press ‹http://www.oxfordislamicstudies.com/article/book/islam-9780195174304/islam-9780195174304-chapter-39?_hi=2&_pos=9› (last visited March 6, 2011).

[64] *Id.*

[65] "Organ Transplantation: An Islamic Ethico-Legal Perspective" (2002) F1MA Yearbook 5.

[66] Ghods AJ, Savaj S (November 2006). "Iranian model of paid and regulated living-unrelated kidney donation". *Clin J Am Soc Nephrol* 1 (6): 1136–45.

[67] Alireza Bagheri, "Compensated Kideny Donation: An Ethical Review of the Iranian Model" (2006) 16 Kennedy Inst. Ethics J 269.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ORDINANCE 2007 PROMULGATED (Pakistan Press International, 2007)

Ordinance is an important achievement for Pakistan in its constant struggle towards achieving a rational legal regime consistent with international standards as well as principles of *sharia* law followed by surrounding Muslim nations.

Pakistan's Senate unanimously passed legislation to regulate organ and tissue donations in an effort to curb the sale of human organs and stop "transplant tourists"[75] from engaging in illegal and unethical conduct.[76] Professor Syed Anwar Naqvi of the Sind Institute of Urology and Transplantation in Karachi states that "the poverty faced by vast number of donors who are primarily bonded farm workers and the exploitative behavior of the landowners to whom they owe money impose an irresistible coercive pressure on these poor would be sellers."[77] He adds that "under such circumstances there can be no voluntary sale; rather what occurs is a forced sale without full access to information under duress and in vain hopes of escaping the clutches of poverty."[78]

Director of the Sindh Institute of Urology and Transplantation (SIUT) Professor Dr. Adib Rizvi, said that the Senate of Pakistan unanimously adopted the bill after a struggle spanning over 20 years.[79] Specifically stating that "by implementing this legislation, the exploitation of the poor vendors who were attracted to sell organs for a meager sum, with the large amount going to the middle men and other concerned people, will be legally stopped."[80] Dr. Rizvi added that the country will now be able to shed the label of being called "an organ bazaar."[81] The bill, which is now a federal law, contains provisions for "regulating the removal, storage, and transplantation of human organs and tissues."[82]

The law has banned the practice of "organ tourism" and organ transfers from a living related donor can now be taken under very stringent conditions.[83] In no case is a financial transaction allowed.[84] No foreigner can have an organ transplantation in Pakistan.[85] The Ordinance finally brings Pakistan in line with the rest of the Islamic world in the crucial area of organ transplantation.

VIIII. CONDITIONS UNDER WHICH ORGAN DONATIONS IN ISLAM ARE ALLOWED

In Islam, certain conditions must be met before an organ can be donated from a living donor.[86] For example, both the donor and donee must be in "full possession of [their] facilities so that [they are] able to make a sound decision by [themselves]."[87] Also, both the donor and donee must be "an adult and, preferably, at least twenty-one years old."[88] The procedure "should be done on [the individual's] free will without any external pressure."[89] The donated organ "must not be a vital organ on which his/her survival or sound health is dependent upon."[90] Lastly, "no transplantation of sexual organs is allowed."[91]

Islamic jurist have also placed strict restrictions on donations from deceased donors.[92] The donation

http://www.highbeam.com/doc/1G1-168409822.html (last visited March 6, 2011).

[75] This term refers to the practice by which impoverished donors sell their organs to richer compatriots or patients from wealthier countries where organs for transplant purposes remain in short supply. According to World Health Organization (WHO) data from 2005, 66,000 thousand kidney transplants are carried out in the world each year. Transplant tourism made up about 10 percent of global transplantation practices. According to some estimates, Pakistan's share of this illegal trade stands at approximately 1,500 organs per year provided to transplant tourists for a fee. *Id.*

[76] PAKISTAN SENATE PASSES HISTORIC LAW REGULATING DONATION, SALE OF ORGANS TO "TRANSPLANT TOURISTS" ILLEGAL, (transplant news 2010) http://www.allbusiness.com/government/government-bodies-offices-legislative/14091054-1.html (last visited March 6, 2011).

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] Transplantation of Human Organs and Human Tissues Ordinance (Pakistan, 2007)

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] Sheikh Ahmad Kutty, FATAWA: ISLAM'S VIEW ON ORGAN TRANSPLANTS AND DONATIONS (2002) http://www.infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=8307, (last visited March 6, 2011).

[87] Id.

[88] Id.

[89] Id.

[90] Id.

[91] Sheikh Ahmad Kutty, FATAWA: ISLAM'S VIEW ON ORGAN TRANSPLANTS AND DONATIONS (2002) http://www.infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=8307, (last visited March 6, 2011).

[92] *Id.*

"must be done after having ascertained the free consent of the donor prior to [their] death."[93] Judges have found that this condition can be satisfied through a will or by signing a donor card but "where organ donation consent was not given prior to a donor's death, the consent may be granted by the deceased's closest relatives who are in a position to make such decisions on [the donee's] behalf."[94] Before the donation can be made a medical examiner must evaluate the organ and make the determination that the organ or tissue is able to "save the life or maintain the quality of life of another human being."[95] Also, an organ must be removed only from the deceased person after the death has been ascertained via reliable medical procedures.[96] Interestingly, scholars authorize the harvesting of organs from "victims of traffic accidents if their identities are unknown" but such a procedure can take place "only following the valid decree of a judge."[97]

X. Conclusion and Suggestions on Improvements

The sale and donation of organs bring up interesting questions central to the primary principles of bioethics, namely, beneficence, autonomy, and justice. Such questions and their answers address unique views that remain rightfully in-conflict with one another, especially when looked at within the kaleidoscope of religion. One thing that remains certain is that their remains much room for improvement which can only occur if dialogue surrounding these discussions continues.

If society accepts the view that the above stated three bio-ethical principles can be harmonized and the sale/donation of organs should be recognized then I would put forth the notion that some standard improvements are required. Some suggestions for improving the current state of organ donations are as follows: 1) private sales must be officially banned and a centralized system of procurement must be established; 2) the organ donor and recipient must be of the same nationality or jurisdiction to prevent the development of an international organ trade which would be much harder to regulate; 3) transplants from unknown sources must be banned to preserve the medical welfare of both recipients and donors; 4) donor compensation must be a fixed amount or based on a pre-established matrix to avoid the valuation of individual organs and thus negotiations of private sales; and 5) anonymity of the donor and recipient must be maintained to avoid possible private agreements between parties which would erode the central purpose of establishing a regulated organ donation system.

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[93] *Id.*

[94] Sheikh Ahmad Kutty, FATAWA: ISLAM'S VIEW ON ORGAN TRANSPLANTS AND DONATIONS (2002) http://www.infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=8307, (last visited March 6, 2011).

[95] *Id.*

[96] *Id.*

[97] *Id.*