Chapter 13

Organ Donation and Transplantation in Islam

An Opinion

Mohammed Zubair Butt

INTRODUCTION

The excerpted fatwa[1] contained in this chapter is based on my consultation and collaboration with the late Amjid Ali, project lead and strategic partner for the United Kingdom's National Health Service Blood and Transplant (NHSBT) program; Dr. Dale Gardiner, consultant in Adult Intensive Care Medicine and, at the time,[2] UK Deputy National Clinical Lead for Organ Donation for the National Health Service (NHS); and a select group of Muslim scholars, academics, and clinicians. It results from six months of dedicated research covering a number of jurisprudential, ethical, and medical concerns related to organ transplantation. In addressing these issues, I have generated sufficient clarity in my own mind to posit a tentative Islamic edict on whether organ donation and transplantation is permitted within Sunni Islamic law.

While this fatwa resulted from dedicated research in 2018/2019, my study of the Islamic juridical perspectives on organ donation and transplantation began in 1996 as a postgraduate student in the fatwa department at Darul Uloom Karachi. It was here that I was first introduced to the published deliberations, resolutions, and recommendations of the International Islamic Fiqh Academy and the stock answer offered by the fatwa department at Darul Uloom Karachi. The latter stated, quite briefly, that Islamic juridical authorities differed on the matter and as such those afflicted with organ failure were permitted to adopt any of the established ethico-legal opinions (fatwas) they wished.[3] When I reflect back on that view, I recall feeling frustrated at the brevity of the position statement, yet that view endured with me until I offered my own fatwa some twenty-two years later (see below). During this

interval period, I have remained continually engaged with the issue in a number of capacities. These perspectives and lived experiences have provided me with, what I believe to be, a more holistic understanding of the problem space as well as the way in which organ failure, donation, and transplantation influences people's choices, behaviors and, ultimately, lives.

As a research scholar, I have continually engaged in the study of the Arabic, Urdu, and English literature of Muslim scholars and jurists, noting their arguments for and against organ donation and transplantation. I have also reviewed many academic books and papers written by non-Muslim scholars and clinicians on the ethical concerns around transplantation. My study has allowed me to become sufficiently familiar with the secular as well as Islamic views and their respective evidences, and enabled me to separate primary and secondary implications and considerations of the matter at hand.

As a hospital chaplain, I am intimately aware of the lived experiences of Muslim patients suffering organ failure. I have been privileged to share their personal stories, learn about their hopes and fears, and witness how renal failure had impacted their lives and those around them. In relation to renal patients in particular, I have witnessed their fatigue, suffering, and discomfort in undergoing dialysis, the repeated repositioning of the fistula site, and the bruising it leaves behind. Some patients I have tended to were on the transplant waiting list but did not survive to see that dream come true. I have also been privileged to share the experiences of those that had received an organ. Some were successful and went on to lead more normal lives, while others returned as inpatients due to organ rejection. I have visited patients who have subsequently died of liver failure, while others have survived after receiving a liver from a donor.

As an educator, I have been able to share my learning of both the theoretical ethics arguments as well as the practical insights I have gained from patients, families, clinicians, and activists at a number of fora. I have taught second-year medical students in Leeds, participated in the Islamic Medical Ethics Forum and the Organ Donation Task Force, and given dozens of lectures on the topic through the residential training course for Muslim chaplains run by the Muslim Spiritual Care Provision in the NHS, as well as in the Chaplaincy Certificate program at the Markfield Institute of Higher Education and the Diploma Program in Contextual Islamic Studies and Leadership at the Cambridge Muslim College. I have also lectured on the topic for Al Balagh Academy and as a participant in Birmingham Peer Educator Project run by Kidney Research UK.

In March 2014, it was Kidney Research UK that facilitated an introduction with the late Amjid Ali, who was working to convene a meeting with Imams and scholars on organ, blood, and bone marrow donation. In his initial correspondence, Amjid Ali communicated a number of key priorities including

securing an updated fatwa, confirming the permissibility of transplantation and donation in Islam. In my response, I made clear that, while I was keen to enter a discussion with key UK-based scholars, I was not interested in procuring a fatwa of permissibility that did not address the concerns voiced by dissenting voices. This initial exchange marked the beginning of a deep and cordial relationship in which the late Amjid Ali very quickly accepted that any updated fatwa would have to follow the evidence, irrespective of the outcome.

In the five years leading up to the fatwa, I have attended dozens of stakeholder meetings, which included local Islamic religious authorities, Muslim community leaders, expert clinicians, and other stakeholders. Despite the lack of consensus regarding how to advance organ donation and the Islamic perspectives on the issue, these local engagements were important for two reasons. First, if a new fatwa was to be issued, it should come from UK scholars rather than from abroad. I firmly believed that UK Imams and scholars had to take ownership of the issue and could no longer afford to remain noncommitted or to prevaricate. It was only a matter of time before England would take the lead of Wales in moving to a deemed consent system of organ procurement. Such a move would greatly impact Muslim choices on the matter, and hence we needed a local perspective issued by leading Islamic authorities in the UK. Moreover, UK Imams and scholars are also better apprised of their local context than those abroad and have better access to modern medicine and skilled clinicians. In any case, seeking opinion from abroad invited a whole plethora of opinions to which UK Muslims may not necessarily subscribe, and such opinions already existed but had very little traction in the UK. Second, in order to maximize impact, it was vital to engage senior scholars in the UK whose opinion was respected among the wider global Islamic jurist community. In order to pursue this, we attempted to bring together a small collaborative group of religious scholars and medical experts. Despite several attempts to bring together a working group, issues of capacity hamstrung efforts at making progress. I thus realized that I would have to personally undertake the task or, at the very least, lead on it. My need for clarity, the impending law change to deemed consent and the growing demand from local Muslim umbrella organizations, such as the National Burial Council, became the catalyst for my reluctantly taking on the task of research and fatwa writing. The late Amjid Ali provided the scope of what he wished me to cover, which included a review of two previous fatwas and my opinion on a range of organ donation options. He also made it clear to his superiors within NHSBT that NHSBT would have to work with whatever conclusion I reached, and a position of impermissibility was entirely a possible outcome.

Despite my many years of involvement with organ transplantation, I had never penned a fatwa on organ transplantation; rather, I would refer to the

stock answer of my alma mater. Indeed, even when a close relative required a heart transplant and sought my opinion, I simply supplied him with that position statement. My caution has its roots in Islamic theology and ethics. A fatwa, despite its nonbinding nature, is still an opinion that explains God's law. When a Mufti expresses this law, as mentioned by Ibn al-Qayyim (d. 597/1200)[4] and al-Nawawī (d. 676/1277),[5] he/she is penning a position on behalf of God. In fact, Ibn al-Qayyim titles his work *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn*, which translates as "Informing of the Signatories [judges and Muftis] on Behalf of the Lord of the Worlds [of the laws related to the deeds of man]."[6] Al-Qarāfī (d. 684/1285) likens the relationship between the Mufti and God to that between a court translator and a judge, in which the translator relates that which is communicated to him from the judge,[7] while al-Shāṭibī (d. 790/1388) describes the Mufti as vicegerent of the Prophet (peace and blessings of Allah be upon him) as, like the Prophet (peace and blessings of Allah be upon him), he relates from God, applies divine law to the deeds of the obligated according to his consideration, and executes the divine command in the masses through the office of vicegerency.[8] Accordingly, it is imperative for a mufti to remain cognizant of the precarious station he/she occupies and that such a station is not a platform for expressing personal opinions, employing pure rationalism, or venting personal emotions.[9] It is in view of this that Islamic jurists, right from the generation of the Companions of the Prophet (peace and blessings of Allah be upon him), have remained fearful in issuing fatwas and have enjoined and practiced caution in this regard. As I now reflect backward, my years of reticence to offer an opinion and my attempt to seek security in the opinion of senior scholars were mostly due to the burden of this representation and vicegerency. Additionally, a ruling can be only as good as the conceptualization upon which it is based. I had always felt that I needed a better understanding of the multiple dimensions of the ethical problem space before I rendered an opinion.

What follows is my view after years of experience and study. I tried to approach the question with an open mind, allowing myself to go wherever the evidence would lead me. My study included a review of relevant works in English, Arabic, and Urdu penned by Islamic jurists as well as *fiqh* academies. I also mined legal texts of all four Sunni schools of Islamic jurisprudence, Qurʾanic exegeses, and commentaries on hadith compendia. Beyond religious writings, I perused works on medical ethics, human dignity and philosophy, and medical journal articles on the topic. In this regard, I am particularly indebted to Dr. Aasim I. Padela and Dr. Dale Gardiner, the latter of whom very kindly shared his works and insight with me and used his knowledge and experience to suggest important resource materials, even before I had any intention of putting the fatwa together.

Once I addressed each of the areas of enquiry on my list and developed my provisional fatwa, I shared my work with the late Amjid Ali and a select group of scholars, academics, and medical professionals for review and comment. While my substantive position remained the same, the feedback I received from these individuals pushed me to add more detail, address a few subsidiary issues, and make other small adjustments. I would like here to express my sincere gratitude to all of these individuals, some of whom prefer to remain anonymous, while the following individuals have agreed for me to mention their names: Dr. Aasim I. Padela,[10] Dr. Mufti Abdurrahman Mangera, and the postgraduate students at the Whitethread Institute, Mufti Amjad M. Mohammed,[11] Shaykh Dr. Asim Yusuf,[12] Mufti Faraz Adam,[13] Maulana Dr. Mansur Ali,[14] and Shaykh Dr. Rafaqat Rashid.[15] It should be noted, however, that this does not necessarily mean that the individuals mentioned here agree entirely with all [or any] of what I have opined.

Finally, I would like to state that my fatwa is independent of pressure from NHSBT. This independence is demonstrated by my conclusion that donation after circulatory determination of death is not permissible until the point of elective irreversibility has lapsed. Equally, donation after neurological determination of death (DNDD) is not permitted before terminal apnea has resulted in irreversible hypoxic cardiac arrest and circulatory standstill.

AQ: Please check whether square brackets [ ] can be changed to parentheses ( ) in the non-quoted sentence throughout the chapter.

THE FATWA: ORGAN DONATION AND TRANSPLANTATION IN ISLAM

While organ transplantation is viewed to be a relatively new phenomenon, the legal manuals of Muslim jurists contain discussions of more primitive forms. The founder jurists of the Ḥanafī School, for example, opined on the return and replacement of a fallen tooth. Imām Abū Ḥanīfa (d. 150/768) and Imām Muḥammad (d. 189/408) disallowed both, while Imām Abū Yūsuf (d. 182/401) allowed the return of a fallen tooth but not the graft of a tooth from a cadaver.[16] Similarly, al-Nawawī (d. 676/1277) records a difference of opinion among Shāfiʿī jurists of Iraq and Khorasān in relation to the return of a fallen tooth. The former considered it impermissible, as they deemed it to be impure, while the position of the school was that of the latter, who considered it to be pure.[17] The Prophet (peace and blessings of Allah be upon him) is reported to have miraculously returned the eye of one of his Companions, Qatāda ibn al-Nuʿmān, after it had fallen on to his cheek during the Battle of Uḥud, and it was subsequently the better and sharper of the two eyes.[18] He is also reported to have reattached the arm of his Companion, Khubaib ibn Yasāf, during the Battle of Badr, leaving only a line as a scar.[19]

The discussion below represents my opinion on xenotransplantation, autotransplantation, and homotransplantation, and presupposes the following:

1. The situation is one of medical necessity, namely, to save life or restore a fundamental bodily function where transplantation is the only viable option.
2. The harm to a live donor is negligible or relatively minor that it does not disrupt the life of the donor.
3. There is a reasonable chance of success.
4. The organ or tissue is donated with willing consent without any form of coercion.
5. The procedure is conducted with the same dignity as any other surgery.

Xenotransplantation

The transplant of animal organs and tissue that are pure (i.e., the animal is lawful to eat and has been killed in accordance with Islamic law) is permitted. This also falls under what has been subjugated to humans for them to benefit in a variety of ways[20] and is included in the general exhortation to take up medical treatment with that which is lawful.[21] The classical legal manuals of all schools are replete with statements allowing the use of animal organs and tissue that are pure.[22] However, they also clearly state that impure organs and tissue, with teeth and bones being the oft-repeated but not exclusive examples, are not permissible to use.[23] Moreover, if used, there is a difference as to whether they have to be removed once again. According to Imām Abū Ḥanīfa and Imām Mālik (d. 179/795), a bone graft using impure (e.g., porcine) bone does not have to be removed despite being originally impermissible. If removal would lead to harm to life, limb, or bodily function, then the position of the Shāfiʿī and Ḥanbalī schools is that it will not then be removed. There are some jurists within the Shāfiʿī School who hold that it will be removed, even if it would lead to harm to life, limb, or bodily function, while Imām al-Nawawī states that, if the individual is needy and cannot find a pure alternative, he is excused.[24] In summary, the transplant of animal organs and tissue that are pure is permissible. Equally, when there is no permissible alternative, the transplant of animal organs and tissue that are impure is also permissible.

Autotransplantation

Autotransplantation is the transplant of an organ or tissue from one part of the body to another part in the same individual. Imām Abū Ḥanīfa and Imām Muḥammad held that, once a tooth had fallen out it required burial like the

rest of the body, while Imām Abū Yūsuf held that there was no desecration in the return of the tooth to the original site. Imām Abū Yūsuf is also to have reported that, on another occasion, when he enquired from Imām Abū Ḥanīfa, the latter saw no blame in it.[25] Mālikī legal manuals also ascribe permission to Imām Abū Ḥanīfa and also to Ibn Wahb (d. 197/813) and Ibn al-Mawwāz (d. 269/882) from the early Mālikī jurists. This is also the dominant opinion within the Mālikī School, although there is a contrary position.[26] Latter Ḥanafī jurists describe an excised part of the body, such as an ear, as being pure for the person from whom it was excised, even if was still detached from the original site.[27] The position of the Ḥanbalī School is that replant is permitted, as a fallen tooth or an excised body part remains pure.[28] This is also the position of the Shāfiʿī jurists of Khorasān and the adopted position within the Shāfiʿī School.[29] Thus, the majority opinion across the jurists of all four schools is that, in principle, replant to the original site is permissible. The primary pivot of the deliberations is on the purity of the excised body part, while jurists of the Ḥanafī School also mention the absence of a compromise of human dignity.[30] Both premises, arguably, also maintain in autotransplantation, wherein there is only a change in site. The body part remains pure and there is, arguably, no compromise in human dignity. On the contrary, the body part forms a more vital function than when in its original site, for example, transplant of a blood vessel from the arm or leg in a coronary bypass. This position also upholds one of the fundamental goals of Islamic law, namely, protection of life; is supported by the legal maxim: *al-ḍarar yuzāl*—the harm is to be removed;[31] the pursuit of optimal benefit to the individual; and a fortiori analogy with the permission to excise a gangrenous limb, as the transplanted organ or tissue is retained in the case of autotransplantation.[32]

Homotransplantation

Homotransplantation is the transplant of an organ or tissue from one individual to the body of another individual. Classical jurists opined on, albeit primitive, forms of homotransplantation and they deemed it to be normatively impermissible. Frequent examples are hair extensions, human bone as a splint or a graft, skin, and nails. The reasons cited are human dignity, impurity of the excised body part, the hadiths prohibiting the breaking of the bone of a dead person and using human hair extensions, and deception.[33] However, al-Subkī (d. 756/1355) and other latter jurists of the Shāfiʿī School did allow the use of bone from individuals who were deemed to lack a life of dignity in law. It was also deemed permitted when it was left as the only available option.[34] Contemporary scholars have added further reasons, which I will include in my discussion below:

Critical Points of Debate in Homotransplantation

There are a number of issues representing the critical points of debate over the permissibility of homotransplantation.

Human Dignity

Human dignity in Islam is recognized by all humans as an expression of God's favor and grace. It is the absolute natural right of every individual, regardless of gender, color, race, or faith. This right is established from the explicit, alluded, and inferred meanings of the evidentiary texts. Examples of evidentiary texts wherein human dignity represents the principal theme and purpose of the text are as follows:

1. And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference. (Q.17:70)

   According to the exegetes Abū al-Saʿūd (d. 951/1505) and Maḥmūd al-Alūsī (d. 1270/1854), this dignity extends to all humans, including both pious and sinners, with al-Alūsī adding that they have been endowed with nobility and numerous excellences that cannot be encompassed.[35] Al-Qurṭubī (d. 671/1273) suggests that, from all the reasons suggested for the superiority of the human race, the correct reason is the faculty of intellect, which is the basis of obligation.[36] The faculty of intellect is also a reason reported from the Companion, Ibn ʿAbbās.[37]
2. O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (Q.49:13)

   The inherent dignity of mankind is sacred, and the only ground for superiority is God-consciousness (*taqwā*). Ibn Kathīr (d. 747/1373) explains that all people are equal in their earthly connection to Adam and Ḥawwāʿ (Eve). They differ only in matters of religion, namely, obedience to Allāh and following His Messenger.[38] Thus, while inherent human dignity is common to all humans, there is a lever of acquired dignity founded in faith and practice in which humans differ. This varies from person to person among adherents of even the same faith and is not the dignity that is of primary relevance to the discussion on organ transplantation.
3. [So remember] when your Lord said to the angels, "Indeed, I am going to create a human being from clay. So when I have proportioned him

and breathed into him of My spirit, then fall down to him in prostration." (Q.38:71–72)

4. It is narrated from [ʿAbdurraḥmān] ibn Abū Laylā that Qays ibn Saʿd and Sahl ibn Ḥunaif were at al-Qādisiyya when a funeral possession passed by them both so they both stood. It was said to them, "Indeed, it [funeral possession] is of the people of the land [of non-Muslims]." So they said, "Verily, a funeral possession passed by the Messenger of Allāh, peace and blessings be upon him, so he stood. It was said to him, 'Verily, it is a Jew.' So he said, 'Is it not a person?'" (Muslim)[39]

Examples of evidentiary texts wherein human dignity is not the principal theme and purpose of the texts, yet they do embody a necessary rationally concomitant inference of the same are as follows:

1. We have certainly created man in the best of stature. (Q.95:4)
2. And [remember], when your Lord said to the angels, "Indeed, I will make upon the earth a vicegerent." They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" He said, "Indeed, I know that which you do not know." (Q. 2:30)
3. Do you not see that Allah has subjugated to you whatever is in the heavens and whatever is in the earth and has amply bestowed upon you His favours, [both] apparent and hidden? (Q.31:20)
4. And do not kill the soul that Allāh has made unlawful [to be killed] except by [legal] right. (Q.6:151)

Each of the above verses suggests a necessary rationally concomitant inference that human beings are bestowed with dignity. This dignity is inherent, independent of faith,[40] ethnicity, lineage, social rank, personal excellence, or any other qualification,[41] universal and enjoyed equally by every member of the human fraternity, all of whom have been created from a single soul.[42] It exhibits in a variety of ways, including being fashioned in the best of forms[43] with direct divine involvement and breathing of the divine spirit;[44] having a life that is protected by default from physical and verbal assault, thus prohibiting suicide,[45] endangering life,[46] taking life without just cause,[47] slander,[48] backbiting,[49] ridicule, defamation, insult;[50] having freedom of conscience;[51] and subjugation of the entire universe for the benefit and service of humans.[52]

Notwithstanding, there is a certain degree of subjectivity inherent in the concept of human dignity as the evidentiary texts do not define its precise parameters. In the absence of a provision in the evidentiary texts, the social norms of people of sound nature play a significant role in determining what those parameters are.[53] While regard to social norms is not an independent

legal proof and has a rather circumstantial character, when the conditions of validity are satisfied, a ruling formed on the basis of social norm is, nevertheless, authoritative.[54] Such a ruling is, however, fluid and liable to change when there is a change in the norm.[55] This is further complicated by the accelerated pace of social change in modern times due to increased mobility in terms of socioeconomic status and the unprecedented movement of people. Thus, it is quite possible to argue that jurists who cited human dignity as a reason to prohibit the use of body parts did so on the basis of the norms of their times. Today, however, organ transplantation is viewed in a totally different light, and, rather than a violation of human dignity, it is seen as the ultimate gift.

Another aspect of the discussion is whether human dignity is an inviolable absolute preeminent right or whether it admits to a degree of permeability. A study of Islamic law manuals reveals that human dignity does admit to a degree of permeability in the event of competing rights, benefits, and harms. Prominent examples include discussions regarding extracting a live neonate from the womb of a dead mother, reclaiming property that has been ingested by one who has died, survival anthropophagy, and the right of requital for murder or bodily injury. I discuss these examples in detail in the fuller fatwa online.[56]

Impurity of the Excised Body Part

One reason cited to prohibit the use of human body parts is that it involves the transplant of that, which when removed, is rendered impure. However, there are two reasons why I believe this cannot justify prohibiting homotransplantation. First, the majority opinion is that the excised body part is pure. Thus, the relied upon opinion in the Mālikī School,[57] the more correct position in the Shāfiʿī School,[58] and the position of the Ḥanbalī School[59] are that an excised body part is pure. The Ḥanafī School, however, considers an excised body part that has flowing blood to be impure, but not bone, teeth, and hair according to the correct position. In addition, as mentioned earlier, latter Ḥanafī jurists describe an excised body part as being pure for the person from whom it was excised, which represents a reconciliation of the conflicting opinions within the school.[60]

Second, the use of an impure substance for therapeutic purposes is permissible in cases of extremis, according to many notable jurists of the Ḥanafī School. This is the adopted position within the school and remains the favored opinion among contemporary Ḥanafī jurists. It is the opinion of the authors of *al-Nihāya*, *al-Tahdhīb*, and *al-Dhakhīra*, Qāḍī Khān (d. 592/1196), al-Marghīnānī (d. 593/1197) in *al-Tajnīs*, al-Ḥaṣkafī, and Ibn ʿĀbidīn.[61]

Hadiths Prohibiting the Breaking of the Bone of a Dead Person

Another reason cited to prohibit the use of human body parts is the hadiths prohibiting the breaking of the bone of a dead person.

> It is narrated from ʿĀʾisha that the Messenger of Allah (peace and blessings of Allah be upon him) said, "Breaking the bones of the dead is like the breaking of it whilst alive."[62] (Abū Dāwūd)

The same narration is reported with an addition in the text:

> It is narrated from ʿĀʾisha that she heard the Prophet (peace and blessings of Allah be upon him) saying, "Verily, breaking the bones of the dead whilst dead is like the breaking of it whilst alive." viz. in the sin.[63] (Muṣannaf ʿAbd al-Razzāq)

It is argued that this provides respect for human dignity and applies equally to both the living and the dead. It is prohibited to break the bone or excise the body part of a live person, except where this has been permitted by the law. Equally, it is prohibited to do the same for a dead person.

However, the response to this is that this hadith relates to when the action is with deliberate disrespect or ill intent. The background to the incident in the hadith, as explained by Imām Jalāl al-Dīn al-Suyūṭī on the authority of the Companion, Jābir, is that the Prophet (peace and blessings of Allah be upon him) sat at the edge of a grave with a group of his Companions when a gravedigger removed a bone from either the shin or the arm and set about to break it. The Prophet (peace and blessings of Allah be upon him) said, "Do not break it, for your breaking of it when dead is like your breaking of it when alive. Rather, bury it to one side of the grave."[64] The hadith commentator, al-Ṭībī (d. 743/1343), states in his commentary on *Mishkāt al-Maṣābīḥ*, "In here is an indication that respect for the dead is desired in all that is mandatory like its respect when alive and its denigration is prohibited just as in life."[65] Thus, the explicit meaning of the hadith provides for the prohibition of deliberate denigration of the human body, whether alive or dead. In homotransplantation, there is no intent to denigrate by any party. On the contrary, altruism and beneficence are the underlying motives, and the procedure is performed in a clinical setting with all the normal care and respect. Furthermore, in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm in the violation of human bodily integrity in human organ procurement and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Hadiths Prohibiting the Use of [Human/ Nonhuman] Hair Extensions

Another reason cited to prohibit the use of human body parts is the hadiths prohibiting the use of hair extensions.

> It is narrated from ʿĀʾisha that a girl from the Anṣār married and that she became sick causing her hair to fall out. So they intended to join [hair] to her. So they asked the Prophet (peace and blessings of Allah be upon him) who said, "Allah has cursed the woman who joins [to her or someone else's hair] and the woman who asks to join [to her hair]."[66] (al-Bukhārī)
>
> It is narrated from Asmāʾ bint Abū Bakr that a woman came to the Prophet (peace and blessings of Allah be upon him) and said, "O Messenger of Allah! I have a newlywed daughter who has come out with pustules and so her hair has fallen out. Should I join to it?" He said, "Allah has cursed the woman who joins [to her or someone else's hair] and the woman who asks to join [to her hair]."[67] (Muslim)

It is contended that this provides for the prohibition of the use of human body parts even when there is no disrespect in the process of retrieval.

However, jurists have differed in their approach to this reported prohibition of extensions to hair. Jurists of the Ḥanafī School prohibit the use of human hair, citing the obvious meaning of the hadith text, and reasoning that every part of the human body enjoys dignity, which is debased by its use. Ibn ʿĀbidīn has also suggested deception as a possible reason. Nonetheless, there is also one report from Imām Muḥāmmad that the use of human hair is permissible, as the Prophet (peace and blessings of Allah be upon him) is reported to have shaved his head and distributed his hair among his Companions from which they used to seek blessing. However, this report has not been received with acceptance in the school, as the distribution was for seeking blessing, not for use. The Ḥanafī School does, however, allow the use of hair extensions and braids using animal or artificial hair, as this is a form of permissible adornment.[68]

The Mālikī School prohibits the use of human hair. Imām Mālik himself extends the prohibition to anything that is intended to resemble hair, whether animal or artificial. The early Mālikī jurist, al-Bājī (d. 474/1081), reasons that the text of the hadith is general and that it is a form of changing the creation.[69] Al-Qāḍī ʿIyāḍ explains that some scholars hold that the prohibition is limited to extension with hair, and this is the opinion of Layth ibn Saʿd (d.175/791). Others opine that any form of extension is prohibited, and this is the opinion of Imām Mālik, [the Shāfiʿī] al-Ṭabarī (d. 498/1105), and a group of scholars. Others still, like Ibrāhīm al-Nakhaʿī (d. 96/715),[70] have opined that placing hair on the head is permissible; it is only joining that is

prohibited. Some have said that all of these forms are permissible. Al-Qāḍī ʿIyāḍ then concludes,

> As for fastening coloured silk ribbons, so that is not of joining and nor is that its intent. It is rather for beautification and embellishment, just as it is fastened around the waists and jewellery is tied around the necks and the hands and feet are adorned with it. A further understanding is that this is prohibited, whether at a time of necessity or otherwise, for the newlywed and for others, and that it is from among the major sins because the actor has been cursed.[71]

Al-Qurṭubī describes the position of Layth ibn Saʿd as being anomalous and resembling more of the Literalist School, while he describes the position taken by Ibrāhīm al-Nakhaʿī as pure literalism and a disregard for the context. He rejects outright the position of absolute permission, describing it as definitively void.[72] Al-Qāḍī ʿAbd al-Wahhāb[73] and Ibn Rushd (d. 595/1198)[74] specifically identify deception as the *ratio legis*, while al-Qarāfī (d. 684/1285), after citing Ibn Rushd, states, "I have not seen for the Mālikī and Shāfiʿī and other jurists in the identification of the effective cause besides deceiving the husbands in order to increase the dowry." However, al-Qarāfī questions this causation as the prohibition remains even when the husbands are aware and there is also no deception in tattooing, which is also prohibited. Zarrūq (d. 899/1493) also alludes to this.[75] Al-Qarāfī concludes,

> And that which is in the hadith of changing the creation of Allāh, I have not understood it, for verily change for the sake of beauty is not reprehensible in the law, such as circumcision, clipping the nails and hair, dying with henna and dying the hair etc.[76]

Notwithstanding, deception is the dominant theme in the deliberations of the Mālikī School with the false hair, itself, being named deception. When there is no intention to give the perception of natural hair, such as colored forelocks or colored silk ribbons, numerous jurists of the school have held it to be permissible.[77]

The Shāfiʿī School also, unanimously, prohibits the use of human hair, citing the generality of the hadith text and human dignity. Impure nonhuman hair is also prohibited on account of the generality of the hadith text and impurity. Pure nonhuman hair is prohibited for a spinster according to the correct opinion in the school and permitted for a married woman with the permission of her husband according to the more correct opinion in the school. Despite recording it as the more correct opinion of the school, al-Nawawī states, "The opinion of one who opines prohibition without exception is stronger due to the obvious generality of the sound hadiths." Al-Ghazālī, though, refers to the more correct opinion of the school as the more logical of

the two viewpoints. Deception of a prospective suitor or a husband is another cited reason for prohibition.[78]

There is a range of opinions in the Ḥanbalī School in relation to the use of human hair extensions. The correct opinion in the school is prohibition. However, a number of jurists in the school have described it as permissible but reprehensible. Effectively, the hadiths have been interpreted to provide reprehensibility. A further opinion is that it is permissible with the permission of the husband. The use of animal hair is also prohibited according to the correct position in the school. However, here too, a number of jurists in the school have described it as permissible but reprehensible. The use of non-hair extensions is also reprehensible on account of the generality of the hadith text. Imām Aḥmad himself is reported to have considered any form of extension as reprehensible, whether, hair, wool, or other, whether it is with the knowledge and for the pleasure of the husband or otherwise. However, he is reported to have considered braids from other than human hair to be permissible if they were tied on but not joined on. Ibn Qudāma opines:

> The obvious understanding is that the prohibited is only the joining of the hair with the hair because, in it, is deception and the use of the hair of disputed impurity. And other than that is not prohibited due to the absence of these reasons in it and the achievement of benefit in terms of beautifying the woman for her husband without any harm.[79]

In summary, the Ḥanafī School cites the obvious meaning of the hadith text, human dignity, and deception; the Mālikī School cites the generality of the hadith text, deception, and change in creation; the Shāfiʿī School also cites the generality of the hadith text, human dignity, and deception; and the Ḥanbalī School cites the generality of the hadith text and deception.

A study of the various hadiths related to the prohibition of hair extensions reveals that the hadiths may be categorized as follows:

1. Hadiths that do not mention a context nor allude to a *ratio legis*. They simply state that Allah or the Prophet (peace and blessings of Allah be upon him) has cursed the woman who joins [to her or someone else's hair] and the woman who asks to join [to her hair]. Hadiths of this category have been reported from ʿĀʾisha,[80] Asmāʾ bint Abū Bakr,[81] Ibn ʿUmar,[82] and Abū Huraira[83] and others.
2. Hadiths that mention a context. ʿĀʾisha[84] and Asmāʾ bint Abū Bakr[85] have reported hadiths of this category; two of which have been mentioned above. In all of their narrations, the context is of a young newlywed whose hair had fallen out due to illness. Her mother/relatives wish to resort to hair extensions. In one narration, the husband wishes for her

[to be with him],[86] which suggests that the marriage is yet to be consummated. In some narrations, the hair extensions are at the insistence of her husband.[87] In one report,

> It is narrated from ʿĀʾisha that a woman from the Anṣār married her daughter and her hair then fell out. So she came to the Prophet (peace and blessings of Allah be upon him) and mentioned that to him. So she said, "Her husband has ordered me that I should join in her hair." So he said, "Indeed, the women who join [to her or someone else's hair] have been cursed."[88] (Al-Bukhārī)

3. Hadiths that allude to a *ratio legis*. Hadiths of this category are reported from Mūʿāwiya.

   Saʿīd ibn al-Musayyab narrated that Mūʿāwiya came to Medina the last time he came there. So he delivered a sermon to us and took out a tuft of hair. He said, "I did not think that anyone did this [used false hair] besides the Jews. Verily, the Prophet (peace and blessings of Allah be upon him) called it untruth/falsehood." (Al-Bukhārī)[89]

   The same hadith is also reported by Muslim (d. 261/875)[90] and others.[91] The categorization of the use of false hair as al-zūr—untruth/falsehood is an obvious allusion to deception, and thus deception constitutes the prima facie ratio legis. This is precisely what al-Qāḍī ʿAbd al-Wahhāb and Ibn Rushd of the Mālikī School specifically identified. In addition, al-Khaṭṭābī (d. 388/996) states in Maʿālim al-Sunan,

   And "the women who join" are those who join their hair with the hair of other women. They intend thereby to lengthen the hair. They give the impression that that is of their original hair. Sometimes the woman is thin-haired and of little hair, or her hair is reddish, and so she joins on to her hair black hair, and thus that is untruth and a lie, and so it was prohibited. As for braids, the people of knowledge have granted dispensation in them. And that is because deception does not happen with them, for one who looks at them does not doubt that that is artificial.[92]

   The context of the newlywed reported from ʿĀʾisha and Asmāʾ bint Abū Bakr also lends strength to this identification of effective cause. While it is true that, in some narrations, the hair extensions are at the insistence or instruction of the husband, and so this points away from deception being the effective cause, a possible response to this is that the Prophet (peace and blessings of Allah be upon him) maintained a firm stance, despite the absence of deception in this case, in order to discourage the practice so that prospective suitors would not be deceived.
4. There is yet another category of hadiths reported from Ibn Masʿūd that is of interest. The hadiths of this category have been cited by a number of jurists, including Ibn Rushd, al-Qarāfī, al-Wansharīsī (d. 914/1508), and Zarrūq.[93] Al-Bukhārī (d. 256/870) has recorded the hadith as follows:

It is narrated [by ʿAlqama] from ʿAbdullāh [Ibn Masʿūd], he said, "Allah has cursed the female tattooists, the women who get tattooed, the women who have facial hair removed, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah." So that reached a woman from Banū Asad referred to as Umm Yaʿqūb. So she came and said, "Verily, it has reached me that you have cursed such and such women." So he replied, "Why should I not curse those whom the Messenger of Allah (peace and blessings of Allah be upon him) has cursed and those who are [cursed] in the Book of Allah?" So she said, "I have indeed read between the two covers [of the Book of Allah], but I did not find in it what you say." He said, "If you had indeed read it you would have found it. Did you not read: 'And whatsoever the Apostle gives you, so take it, and whatsoever he forbids you, so abstain [from it].'" She replied, "But of course!" He said, "Verily, he forbade it."[94] (Al-Bukhārī)

Muslim has recorded the same hadith as follows:

> It is narrated [by ʿAlqama] from ʿAbdullāh [Ibn Masʿūd], he said, "Allah has cursed the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah." So that reached a woman from Banū Asad referred to as Umm Yaʿqūb and she used to recite the Qurʾān. So she came to him and said, "What is the statement that has reached me from you that you have cursed the female tattooists, the women who get tattooed, the women who have facial hair removed, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah?" So ʿAbdullāh replied, "Why should I not curse those whom the Messenger of Allah (peace and blessings of Allah be upon him) has cursed and those who are [cursed] in the Book of Allah?" So the woman said, "I have indeed read what is between the two covers of the Book but I did not find it." So he said, "If you had indeed read it you would have found it. Allah, exalted and majestic is He, said, 'And whatsoever the Apostle gives you, so take it, and whatsoever he forbids you, so abstain [from it].'"[95] (Muslim)

While the jurists cited above have prefixed these hadiths with mention of the woman who joins [to her or someone else's hair] and the woman who asks to join [to her hair], there is no actual reference to them in these hadiths. The same is true for the versions reported by ʿAbd al-Razzāq (d. 211/829),[96] Ibn Māja (d. 273/887),[97] al-Nasaʾī (d. 303/915),[98] and Ibn Ḥibbān (d. 354/969),[99] with al-Nasaʾī also recording three narrations via the channel of Qabīṣa ibn Jābir (d. 69/689) as opposed to ʿAlqama (62/681). They too do not refer to the woman who joins [to her or someone else's hair] and the woman who asks to join [to her hair].[100] Abū Dāwūd (d. 275/889) has reported this hadith via two channels. In the

> channel of ʿUthmān ibn Abū Shayba (d. 239/853) there is no mention of either the woman who joins [to her or someone else's hair] or the woman who asks to join [to her hair]. This is in conformity with the rest of the versions. Muḥammad ibn ʿĪsā (d. 224/839), however, mentions "the women who join [to their or someone else's hair]" instead of "the women who get tattooed."[101] Thus, it would appear that this is an error by Muḥammad ibn ʿĪsā. Consequently, this hadith falls short of being a basis for identifying change in creation as an effective cause for the prohibition of hair extensions; particularly when there is a stated, more obvious cause of deception. Hair extensions effect no lasting change, and thus designating them as a change in creation appears to be misplaced. And Allah knows best.

Deception is not relevant to the issue of homotransplantation and so the prohibition on hair extensions cannot be extended to homotransplantation on this basis. At most, it may be said that [human/any form of] hair extensions are prohibited as they are specifically identified by the hadith text and, even when there is no deception, the prohibition of hair extensions remains. Additionally, hair extensions are an embellishment, whereas the transplant of human organs is to save life or restore vital bodily function. If human hair extensions are deemed to be relatively frivolous and an affront to human dignity, the same, arguably, does not necessarily endure in the case of saving a life or restoring vital bodily function.

Mutilation—*muthla*

One reason cited to prohibit the use of human body parts is that it involves mutilation (*muthla*) of the donor. Lexically, *muthla* (also *mathula*) connotes punitive excision of the nose, ears, genitalia, or other limbs, and takes its lexical significance from *mathal*, which connotes being made an example of.[102] There are express hadiths that provide for the normative prohibition of *muthla* in the context of war and mutual hostilities.[103] However, there is a difference of opinion among the jurists as to whether this prohibition amounts to unlawfulness or blameless abomination. Al-Qāḍī ʿIyāḍ has recorded both opinions,[104] while al-Nawawī, after citing al-Qāḍī ʿIyāḍ,[105] appears to be inclined toward abomination.[106] There is also further detail as to whether the prohibition is absolute or qualified. The opinions in the Ḥanafī School are that mutilation is normatively unlawful,[107] unless it is retaliation in kind, incidental, or serves a valid purpose.[108] Al-Mawṣilī (d. 683/1298) opines that *muthla* is permissible before capture, as it serves to subdue and inflict greater harm upon the enemy.[109] Al-Zaylaʿī describes this opinion as good—*ḥasan* and has likened it to the use of fire.[110] Al-Ḥaṣkafī also upholds al-Mawṣilī's

position.[111] Ibn al-Humām opines that *muthla* is permissible if it ensues during the course of a duel and appears to be inclined toward retaliation in kind not being *muthla*. If the offender has caused several bodily injuries to numerous persons, the law of equal retribution will be enforced for each individual, even if it results incidentally in the mutilation of the offender.[112] The Mālikī School also considers mutilation of a captive to be unlawful, unless it is retaliation in kind. Mutilation that ensues in the heat of battle is permitted.[113] The Shāfiʿī School considers mutilation of a captive to be unlawful,[114] while jurists of the Ḥanbalī School describe it as both abominable and impermissible, unless it is retaliation in kind or for strategic interests.[115] It is thus clear that *muthla* is a measure in which the underlying intent is punitive and which, according to the majority, is normatively prohibited, but allowed in the interest of achieving a higher objective, such as victory in warfare, in the pursuit of the right of requital or the interest of parity, such as retaliation in kind.

However, in homotransplantation, there is no punitive intent. On the contrary, altruism and beneficence are the underlying motives and, in light of the legal maxim *al-umūr bi maqāṣidihā* (the actions are [judged] by their purposes), homotransplantation should, arguably, be judged according to the underlying intent and should thus be deemed an altruistic deed, rather than *muthla*. This is also supported by the statement of Ibn Sayyid al-Nās (d. 734/1349), which Ibn al-Ḥumām also cites[117] and appears to be inclined toward, in which Ibn Sayyid al-Nās draws a distinction between requital and *muthla*, with *muthla* being that which is initial without being penal.[118] Ibn Ḥibbān[119] and Ibn Ḥazm (456/1071)[120] also drew a clear distinction between requital and *muthla* several centuries earlier. Even if punitive intent is not afforded due regard, the principle remains, as discussed earlier, that, in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm in the violation of human bodily integrity in human organ procurement and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Changing the Creation of God—*taghyīr li khalq Allah*

Another reason cited to prohibit the procurement of human body parts is that it involves changing the creation of God, the prohibition of which is founded in a verse of the Holy Qurʾan and sound hadiths.

> And I will most certainly mislead them; and I will most certainly fill them with empty hopes; and I will most certainly order them and so they will most certainly slit the ears of the cattle; and I will most certainly order them and so they

> will most certainly alter the creation of Allah. And whoever takes Satan as a guardian instead of Allah, so he has certainly suffered a manifest loss. (Q.4:119)

Al-Ṭabarī (310/923) has recorded a number of interpretations of "and so they will most certainly alter the creation of Allah."[121]

- This refers to changing the creation of animals through castration. (Ibn ʿAbbās, Anas ibn Mālik, Al-Rabīʿ ibn Anas, ʿIkrima, Abū Ṣāliḥ) Ibn Kathīr also adds Ibn ʿUmar, Saʿīd ibn al-Musayyab, Abū ʿIyāḍ and Sufyān al-Thawrī.[122]
- The creation of Allah means the religion of Allah. (Ibn ʿAbbās, Ibrāhīm al-Nakhaʿī, Mujāhid, ʿIkrima, Qatāda, al-Ḥasan al-Baṣrī, al-Qāsim ibn Abū Bazza, al-Suddī, al-Ḍaḥḥāk) Ibn Kathīr also adds al-Ḥakam and ʿAtāʾ.[123] Al-Rāzī (d. 606/1210) also adds Saʿīd ibn Jubayr and Saʿīd ibn al-Musayyab and explains this as changing the primordial nature upon which each human is born or changing the lawful to the unlawful [and vice versa].[124]
- "and so they will most certainly alter the creation of Allah." through *washm*—tattooing. (Al-Ḥasan al-Baṣrī) Al-Rāzī categorizes this opinion as altering all situations related to the outward appearance,[125] which also includes castration.

Al-Jaṣṣāṣ (d. 370/942) also mentions the same three opinions[126] as al-Ṭabarī. Al-Ṭabarī then decrees the interpretation of "the religion of Allah" to be the most worthy of being deemed correct, which then includes all that is prohibited, including prohibited cases of animal castration and tattooing.[127] However, the majority opinion is that the beneficial castration of animals is permitted. The Ḥanafī School permits the castration of animals, when it serves a purpose, but not humans. The use of a branding iron is also permitted. Similarly, ear piercing for females is permitted, and cauterization is permitted for therapeutic reasons.[128] The Mālikī School takes a similar position in relation to castration with the exception of the horse, unless it becomes rabid. Branding too is permitted, but the face should be avoided.[129] Ear piercing for females is also permitted.[130] Ibn al-ʿArabī described the use of the branding iron and the wounding of the sacrificial animal in Ḥajj as exceptions to altering the creation of Allāh.[131] The Shāfiʿī School allows castration of only legally edible animals when in their infancy; otherwise, it is unlawful. Circumcision, branding and, when needed, cauterization are exceptions to the prohibition.[132] Ear piercing for females is also permitted in the relied upon opinion.[133] Imām Aḥmad is reported to have held the castration of animals as abominable, except when there was a fear of loss. Al-Qāḍī Abū Yaʿlā (d. 458/1066) and Ibn ʿAqīl (d. 513/1120) of the Ḥanbalī School regarded it as

unlawful, as in the case of humans. Branding too is prohibited, unless it is required for identification.[134] Ear piercing for females is permitted in the correct opinion of the school.[135]

The prohibition of altering the creation of God is also adduced from the sound hadiths in which the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty are cursed. These hadiths have been reported by al-Bukhārī, Muslim, ʿAbd al-Razzāq, Ibn Māja, al-Nasaʾī, Abū Dāwūd, Ibn Ḥibbān (and others) with variations in wording and have been referred to earlier under the discussion of hair extensions. The hadiths conclude with the phrase "the changers of the creation of Allah" or similar. The wording of Muslim, for example, is as follows:

> It is narrated by ʿAlqama from ʿAbdullāh [Ibn Masʿūd], he said, "Allah has cursed the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty, and the changers of the creation of Allah." (Muslim)

Al-Ṭībī (d. 743/1343) opines that "for beauty" is possibly related to all practices mentioned [namely, tattooing, removing facial hair, and making spaces between the teeth], although the most apparent association is with the last practice.[136] Mullā ʿAlī al-Qārī (d. 1014/1606)[137] and al-ʿAẓīmʾābādī (d. 1329/1910)[138] also concur. Ibn al-Malak (854/1450) states that all the attributes compete in their association with "for beauty."[139] Badr al-Dīn al-ʿAynī (d. 855/1360), however, positively associates it with "the women who make spaces between the teeth."[140] Shaykh ʿAbd al-Ḥaqq al-Dehlawī (d. 1052/1642) also does the same, but acknowledges the possibility of an association with all practices mentioned, and that that is more appropriate to the meaning, even if the first is more apparent in view of the wording.[141] Al-Sindhī also mentions both possibilities.[142] Al-Nawawī opines that this indicates that the prohibition is when this is done in the pursuit of beauty. If one has to resort to this for treatment or a tooth defect, there is then no blame.[143] Al-Ṭībī,[144] Ibn Ḥajar (d. 852/1449),[145] al-ʿAynī,[146] al-Sanūsī (d. 895/1490),[147] Mullā ʿAlī al-Qārī,[148] and al-Dehlawī[149] also concur. The sum of this discussion is that, if (the final or all three of) these practices are not in pursuit of vain and frivolous aims, but rather for valid reasons of need, they are then permitted.

Ibn Ḥajar opines[150] that "the changers of the creation of Allah" is an essential attribute for each of one who tattoos, removes facial hair, or makes spaces between the teeth. Mullā ʿAlī al-Qārī[151] and al-ʿAẓīmʾābādī[152] make similar comments. Al-ʿAynī also makes the same point asserting that this is why "the changers" have been mentioned (in the narration of al-Bukhārī) without the

conjunction "and," as each of these practices is a change of the creation of Allah, falsification and deception. However, this reasoning of al-ʿAynī does not hold up in light of the narration of Muslim, as "the changers" have indeed been mentioned with the conjunction "and" (والمغيرات) as can be seen above. Al-ʿAynī also acknowledges an opinion that "the changers" is associated with only the practice of making spaces between the teeth.[153] Al-Bājī opines that this applies to when the change lasts. If the change does not endure, and is merely a form of adornment, such as antimony—*kuḥl* and henna for females, then it is permitted in the opinion of Imām Mālik.[154] Al-Qāḍī ʿIyāḍ states that some of our scholars have said that this prohibited practice that is the subject of warning is that which lasts, for that is changing the creation of Allah. As for that which does not last, such as the use of antimony, the people of knowledge attach no blame to it.[155] The Shāfiʿī commentator, Ibn Raslān (d. 844/1440) also holds the same,[156] while al-Sahāranpūrī (d. 1346/1927) of the Ḥanafī School cites this position.[157] Al-Ṭabarī, however, adopts a very literal interpretation and prohibits any change in the pursuit of beauty to what the woman is born with. This includes filing otherwise straight teeth, shortening long teeth, or removing teeth that are abnormally extra. Similarly, in al-Ṭabarī's opinion, the removal of a beard, mustache, and hair under the bottom lip, whether through shaving or cutting, is also prohibited. Al-Ṭabarī regards this to be changing the creation of Allah and the removal of abnormal facial hair to also fall under the prohibition of *al-namṣ*.[158] Ibn al-Mulaqqin (d. 804/1401) also upholds the opinion of al-Ṭabarī.[159] Al-Qāḍī ʿIyāḍ concludes from al-Ṭabarī's position that, according to al-Ṭabarī and those that hold this view, if one is born with an extra finger or limb, it cannot be excised, as this falls within changing the creation of Allah, unless the extra finger or tooth is a cause of suffering and pain.[160] However, al-Dehlawī offers an alternative interpretation opining that "the changers of the creation of Allah" is an allusion to the effective cause of the prohibition and abomination. However, this does not necessitate that every change is unlawful, as it is not an effective cause in itself; the effective cause of prohibition is the prohibition of the lawgiver, and this is the *ratio legis* to the prohibition. Thus, the long and short of the issue is that the lawgiver has permitted certain changes and proscribed others on account of the additional extension and abomination.[161] In addition, al-Sahāranpūrī expresses his dissatisfaction with al-Ṭabarī's position, arguing that the obvious understanding of changing the creation of Allah is that any animal created in its normal form is not to be changed, and not that what has been created abnormally, such as a beard for women or an extra limb, cannot be changed and is rather changing the creation of Allah.[162] Notwithstanding, al-Ṭabarī's position in relation to the removal of extra fingers and limbs finds favor in the Mālikī[163] and Shāfiʿī[164] schools. Imām Aḥmad too is reported to have said that the additional finger will not be excised.[165]

In contrast, the Ḥanafī School allows the excision of the additional finger or limb if the dominant presumption is that the procedure will be successful.[166] Al-Ṭabarī does not, however, enjoy similar support in relation to his position on the removal of abnormal facial hair. The Ḥanafī School regards the removal of a beard, mustache, and hair under the bottom lip for women to be preferable. Even the eyebrows may be tidied up provided they do not resemble those of an effeminate.[167] The relied upon opinion in the Mālikī School is that the removal of such facial hair is mandatory, and to fail to do so is *muthla*.[168] The Shāfiʿī School regards its removal to be preferable,[169] while the Ḥanbalī School regards the shaving of it to be permissible, but not plucking on account of the obvious meaning of the hadith. Ibn al-Jawzī (d. 597/1200), however, permitted plucking, reasoning that the prohibition was due to deception or being a specific trait of immoral women. Another opinion in the school is that it is permitted if the husband demands it.[170]

The discussion above helps to inform the conclusion that the prohibition of changing the creation of God is not absolute but qualified. Some changes, such as male circumcision, removal of pubic hair, and clipping of the nails are actually mandatory. Cosmetic changes that do not endure, such as the use of makeup, are permitted. The safe correction of abnormalities that cause physical[171] suffering and pain is permitted in all schools, and permitted in the Ḥanafī School, even without physical suffering and pain. Enduring changes from the original norm, such as tattooing and filing the teeth, are prohibited unless the change is for therapeutic reasons. Removal of abnormal facial hair is preferable/permitted in the majority opinion and mandatory for females in the Mālikī School. Change practiced universally by Muslims of sound nature, such as ear piercing, is permitted. Change that is practiced by Muslims of sound nature in a (comparatively) limited geographical location, such as nose piercing, is permitted for the inhabitants of that (comparatively) limited geographical location according to Ḥanafī jurists.[172] Shāfiʿī jurists, however, do not consider a limited practice of change, such as nose piercing, to be permitted, although they see no blame in the subsequent wearing of a nose ring.[173] However, the phrase used by Shāfiʿī jurists of *firqa qalīla*—small section suggests that they considered the practice of nose piercing to be limited to a relatively small geographical area while the reality is quite different. Additionally, mutilation that ensues in battle, retaliation in kind, is incidental, or serves a valid purpose is permitted in the majority opinion; beneficial castration of animals and the use of a branding iron are permitted in the majority opinion; and practices that are not in pursuit of vain and frivolous aims but rather for valid reasons of need are permitted. Thus, the long and short of the issue, as stated by al-Dehlawī, is that the lawgiver has permitted certain changes and proscribed others on account of the additional extension and abomination.

Homotransplantation is not a vain or frivolous pursuit but a procedure founded on altruism and the desire to benefit others that restores vital bodily functions. Furthermore, if a prohibition of changing the creation of Allah is conceded in homotransplantation, then in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm of changing the creation of the donor is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Self-Ownership and Property Rights

The issue of self-ownership and property rights, or rather a lack thereof, is another reason cited to prohibit the donation of human body parts. The argument offered is that the human body is not a property that can be made the subject of sale, and so cannot also be gifted, and that we do not have ownership of our bodies, and so do not have the right of disposal through sale, gift, or bequest. The sale of a free person is prohibited by consensus,[174] and so it is argued, that which cannot be sold cannot also be gifted, as expressed in the legal maxim: "That which the sale of is permitted, its gift is permitted, and that which is not is not."[175] The absence of self-ownership means that we cannot consent to donation of our body parts, as can be concluded from the legal maxim: "One who does not have the right of free disposal does not have right to grant permission therein."[176]

First, legal maxims are theoretical abstractions that express general rules that apply to most of their related particulars rather than absolute precepts that apply to all.[177] This is aptly demonstrated by the full wording of the first maxim: "That which the sale of is permitted, its gift is permitted, and that which is not is not, except in some situations."[178] Both al-Zarkashī[179] and al-Suyūṭī,[180] who cite this maxim, go on to discuss a number of exceptions. Thus, it is arguable that the donation of human organs is simply another exception to this maxim. Second, this particular maxim, in its full form at least, appears to be cited only by jurists of the Shāfiʿī School. The Ḥanbalī School expresses only that which affirms the first half of the maxim: "The gift of the sale of which is permitted is valid specifically."[181] The Mālikī and Ḥanafī Schools do not appear to refer to it at all. In fact, the opinion of impermissibility in the Ḥanafī School of *hiba al-mushāʿ*—gifting divisible commonly owned property[182] in contrast to the permissibility of *bayʿ al-mushāʿ*—sale of divisible commonly owned property would suggest that this maxim is not recognized in the Ḥanafī School. The second maxim too appears to be cited by only the Shāfiʿī School, for which al-Zarkashī also mentions three exceptions.[183] Thus, here too, it is also arguable that the donation of human organs is simply another exception to this maxim. Third, legal maxims are not, in themselves, binding principles, but rather

indicative of recurring themes in the body of the law. Thus, these maxims alone, even if accepted as valid, are insufficient to affect a ruling of the impermissibility of donating organs. Furthermore, the sale of expressed human milk is subject to a difference of opinion across the four schools. In the Ḥanafī School, expressed human milk cannot be sold, even if it is that of a concubine, except in the opinion of Imām Abū Yūsuf.[184] The Mālikī[185] and Shāfiʿī[186] schools, however, allow the sale of expressed human milk and consider it to be analogous to the milk of livestock. Imām Aḥmad is reported to have expressed his abhorrence at the sale of expressed human milk. Jurists of the Ḥanbalī School, however, have expressed opinions of both permissibility and prohibition, with the majority and more correct opinion of the school being permission. One opinion also restricts the permission to concubines. The sale of male human milk is prohibited by agreement in the school.[187]

Having explained the above, my own assessment is that the emphasis on the lack of self-ownership and the human body not being property is misplaced. Ownership, which is experienced in its most complete and recognizable form in moveable and immovable property, does not bring absolute right of disposal. On the contrary, one remains bound by a number of divine laws in the disposal of the property; for example, one cannot lend or borrow on interest, gamble, squander, or enter into commutative contracts involving gross uncertainty. Equally, stewardship does not equate to the absence of the right of disposal, such as in the case of an agent, guardian, or executor. Rather, here too, one remains bound by a number of divine laws. Thus, the actual issue is, what level of autonomy and authority does the individual enjoy over his person? The jurists discuss this under the exposition of the concept of rights.

In the Ḥanafī School, the contemporaries al-Sarakhsī (d. 483/1090)[188] and al-Bazdawī (d. 482/1089)[189] appear to be the first to present a coherent classification of the rules of law and the consequential obligations and duties around a set of rights. However, the almost identical sentence structure and exposition of both works lend credence to the idea that they may have relied upon an earlier work or benefited from the work of one another, but it is al-Bazdawī's work that received all the attention with subsequent commentaries. Both works classify the set of rights as follows:

1. Laws that are the exclusive rights of God;
2. Laws that are the exclusive rights of individuals;
3. Laws that comprise both rights but the rights of God are preponderate; and
4. Laws that comprise both rights but the rights of individuals are preponderate.

Many later Ḥanafī scholars have used this classification, including al-Nasafī (d. 710/1308),[190] al-Taftāzānī (d. 792/1390),[191] Ibn al-Malak (d. 854/1450),[192] Ibn al-Ḥumām,[193] Ibn Quṭlūbughā (d. 879/1474),[194] Ibn Nujaym (d. 970/1563),[195] and Mullā Jīwan (1130/1718).[196]

The rights of God relate to rights of public interest over which no one individual has an exclusive right. Their association with God is not on account of want, for God is above all wants, but rather to ennoble what is of huge significance, great benefit, and widespread excellence.[197] These rights cannot be canceled or waived by anyone save God. These, in turn, are of eight types: (1) *ʿibādāt khāliṣa*—acts of pure devotion, such as faith, prayer, obligatory alms, fasting, and Ḥajj.; (2) *ʿūqūbāt khāliṣā*—perfect punishments, such as the prescribed punishments for adultery, theft, and drinking wine; (3) *ʿuqūba qāṣira*—imperfect punishments, such as depriving the killer of inheritance from the killed; (4) matters that revolve between devotion and punishment, such as *kaffārāt*—expiations; (5) acts of devotion with an element of *muʾūna*—impost, such as *ṣadaqa al-fiṭr*; (6) impost with an element of worship, such as *ʿushr*—tithe; (7) impost with an element of punishment, such as *kharāj*—land tax; and (8) *qāʾim bi nafsih*—the right that exists of itself, such as one-fifth of war booty, mines, and buried treasures.

The exclusive rights of the individual represent that which relate to specific interests, such as the prohibition of appropriating the wealth of another,[198] payment of bloodwit, and compensation for destroyed or usurped property. These are private rights designed to protect individual interests and are innumerable.[199]

An example in the Ḥanafī School of that which comprises elements of both a right of the individual and a right of public interest over which no one individual has an exclusive claim and the latter right is also preponderate is the punishment for *qadhf*—slander. There is both a private interest and a public interest and, in this case, the public interest is preponderate. Consequently, the aggrieved party cannot waive the punishment for the offender or accept compensation, it is not inherited, and the state is bound to carry out the prescribed punishment.[200]

An example of that which comprises elements of both a right of the individual and a right of public interest over which no one individual has an exclusive claim and the former right is this time preponderate is the right of *qiṣāṣ*—requital in which the aggrieved party may pardon the offender or accept bloodwit.[201]

Jurists of the Mālikī School have expressed the classification of rights slightly differently. Al-Qarāfī presents a tripartite classification:

(1) The [exclusive] right of God, which he defines as a right that cannot be waived by the individual. This includes matters of private and public

interest, such as the prohibition of *ribā*, *gharar*, gross uncertainty, intoxicants, theft, adultery, slander, murder, and injury;
(2) The [exclusive] right of the individual, which he defines as a right that stands waived if the individual waives it, such as debts and receivables, otherwise every right of the individual is combined with the right of God in His instruction to render the right to whomever it is due; and
(3) The right in which it is disputed as to whether the right of God or right of the individual is preponderate, such as in the punishment for slander.[202]

Some of this is repeated by the more recent Mālikī scholar, Muḥammad ʿAlī ibn Ḥussain al-Makkī (d.1376/1948), who offers a quadripartite classification of obligation that ensues from the right of God and the right of the individual, and smoothens out any inconsistencies of al-Qarāfī as follows:

(1) Obligation of the exclusive right of God that does not admit to any waiver at all, such as the requirement of faith and the forsaking of disbelief;
(2) Obligation of the exclusive right of individuals over one another. They are exclusive in the sense that they can be waived by the individual, such as debts and receivables, but fall under the general divine instruction to render rights to whomever they are due. Thus, there is no right of the individual that is not also a right of God.
(3) Obligation of both aforementioned rights, but the preponderance of which is disputed, such as in the punishment for slander.
(4) Obligation of the right of God over the individual and of the right of the individual in general, which the individual cannot waive. This includes the squandering of wealth through contracts of *ribā*, *gharar*, and gross uncertainty; aimless destruction of property; and the prohibition of theft. It also includes harming the intellect through intoxicants and lineage through adultery. The agreement of the individual to waive such a right is of no consequence.[203]

This quadripartite classification is, in substance, the same classification first presented by al-Sarakhsī and al-Bazdawī except for their third category. In the classification of al-Sarakhsī and al-Bazdawī, the right of God is preponderate in this third category, as is the position of the Ḥanafī School in relation to the punishment of slander, while in the Mālikī classification, preponderance is subject to dispute in this category, which is actually recognition of the position of the Shāfiʿī[204] and Ḥanbalī[205] schools and an opinion in the Mālikī School.[206]

In the Shāfiʿī School, al-Ḥiṣnī (d. 829/1426) presents a tripartite classification that appears to presuppose a perpetual conflict between the right of God and the right of the individual as follows:

(1) That in which the right of God is given preference, such as all the mandatory devotions;
(2) That in which the right of the individual is given preference as an expression of divine mercy, such as uttering words of apostasy under duress; and
(3) That in which the preference is disputed among the jurists, for which he provides a list of examples.[207]

Jurists of the Ḥanbalī School do not appear to offer an organized classification of the rights of God and the rights of the individual in the manner of particularly the Ḥanafīs and also the Mālikīs. However, Ḥanbalī jurists do refer to both types of rights in their legal manuals.

The life and body of the individual combines both a right of the individual and a right of God (in terms of public interest over which no one individual has an exclusive claim).[208] The individual enjoys the right of disposal until such disposal conflicts with the right of God. The injunctions of Shariʿa to prohibit and prescribe punishments for adultery, slander, drinking wine, and so on, are all aimed at securing public interest, which, in the examples given, are in the form of protection of lineage, honor, and intellect. Similarly, the legal injunctions to prohibit suicide, self-harm, murder, and injury are aimed at the same. In fact, all of the injunctions of Shariʿa, both positive and negative, aim to uphold both types of rights, but where there is a mutual tension, the right of God (public interest) is preponderate. The question thus remains as to where public interest, which is a function of the balance of benefits and harms, lies in the issue of homotransplantation. As long as public interest is served and the benefits to the recipient outweigh the harms to the donor, homotransplantation cannot be deemed to be impermissible on account of a lack of self-ownership.

Blocking the Means—*Sadd al-Dharāʾiʿ*

This refers to the doctrine of blocking the lawful means to an unlawful end before it actually materializes and is invoked to argue that the legalization of organ transplantation will lead to the exploitation of an already disadvantaged underclass, a commercial organ trade, and organ tourism. Thus, organ transplantation should not be legalized.[209] The exploitation of a disadvantaged economic underclass was expressed by the late grand mufti of Pakistan, Mufti Moḥammad Shafīʿ, in 1967, in his treatise on organ transplantation.[210] Abū al-Aʿlā Maudūdī used a slippery slope argument, concluding that legalization would, eventually, result in nothing of the body being left to bury.[211] I would make three observations in this regard.

First, the doctrine of *sadd al-dharāʾiʿ* is not recognized by the Ḥanafī and Shāfiʿī schools as a principle in its own right and is rather subsumed by other

principles, such as *qiyās*—analogical reasoning, *istiḥsān*—juristic preference, and *ʿurf*—custom. It is the Ḥanbalī and, more particularly, the Mālikī schools that afford it recognition as a proof in its own right. Jurists, such as al-Qarāfī[212] and al-Shāṭibī,[213] conclude that the conceptual legitimacy of the doctrine is agreed upon, and it is, primarily, only the extent of application and the grounds that may be said to constitute the means that are disputed. Al-Zarkashī reports a similar sentiment from al-Qurṭubī.[214] Abū Zahra (d. 1394/1974) also reaches the same conclusion.[215]

Second, the Mālikī School has divided the means into three types based upon the probability of the lawful means leading to an unlawful end. According to al-Zarkashī's report from al-Qurṭubī, if a lawful means definitely leads to an unlawful end, such means is not the subject of discussion and is rather related to the principle of, "That, which there is no escape from the unlawful except through its avoidance, the commission of it is unlawful." similar to "That, without which the mandatory is not complete, is mandatory." If a lawful means predominantly leads to an unlawful end, all four schools consider the means to be unlawful. If a lawful means predominantly does not lead to an unlawful end, or if a lawful means may lead to a lawful or an unlawful end with equal probability, there is then a difference of opinion.[216] However, al-Qarāfī and other Mālikī jurists offer a slightly different categorization. First, a means that is of significance and is prohibited by consensus, for example, digging a deep pit in a public pathway. Second, a means that is of no significance and is permitted by consensus, for example, maintaining a vineyard that may end up as wine. Third, a means that is of disputed status, for example, deferred sales—*buyūʿ al-ājāl* in which the vendor sells his product for £10 payable after one month and then purchases the same product back before the end of the month (i.e., immediately) for £5 at spot.[217] This transaction is effectively a loan of £5 to the buyer on which he pays £5 interest at the end of the month. The Mālikī and Ḥanbalī schools give consideration to the end result and prohibit this transaction, while the Ḥanafī and Shāfiʿī schools allow this transaction as the contract form is sound. Abū Zahra, however, offers a quadripartite categorization.[218] The first category relates to means that result in harm with absolute certainty, such as digging a deep pit behind the door of a property in an unlit pathway so that anyone who enters will undoubtedly fall into the pit. If the commission of the act is without sanction, such as a pit in a public pathway, the perpetrator is culpable by consensus. If the commission of the act is fundamentally lawful, such as digging a sewer in private property that causes a neighbor's wall to collapse, there are then two opposing views. The first considers the commission permissible as a lawful exercise of right in one's property. The second considers the commission impermissible, as preventing harm takes priority over securing a benefit.[219] The second category relates to means that seldom result in harm, such as

maintaining a vineyard that may end up as wine. Commission of such means is undoubtedly permitted.[220] The third category relates to means for which the preponderant outcome is harm, but not with absolute certainty, such as selling grapes to a wine merchant. According to Abū Zahra, dominant presumption will be treated as absolute certainty, and this is the opinion of Imām Mālik and Imām Aḥmad only and is not a consensus position, as appears to be the claim of al-Shāṭibī.[221] The fourth category relates to means that frequently result in harm, but the frequency does not reach the level of dominant presumption or absolute certainty. Imām Mālik and Imām Aḥmad consider such means impermissible in view of the end, while Imām Abū Ḥanīfa and Imām Shāfiʿī consider the means permissible in view of the contract form being sound and the harm not being the dominant end.[222] Many of the cases cited above are discussed in the Ḥanafī School under the notion of assisting in sin. According to Imām Abū Ḥanīfa, if the commodity is exclusively for what is unlawful, such as in the sale of wine, it is prohibitively abominable. If it is not exclusively for what is unlawful, such as the sale of pressed grapes to a wine merchant, and any unlawfulness is rather the result of the action of an agent of volition, it then carries no abomination. Equally, if the deed itself is not unlawful, and any unlawfulness is rather the result of the action of an agent of volition, it carries no abomination. Imām Abū Yūsuf and Imām Muḥammad, however, take a contrary position in the latter two circumstances.[223]

The question remaining is, with reference to the UK, what role, if any, and to what degree of certainty, does the legalization of organ transplantation play in the exploitation of an already disadvantaged underclass, the creation of commercial organ trade and organ tourism? I would suggest that the fears expressed here are not the experience in the UK, and that the governance structures in the UK make such extremely unlikely. Thus, the doctrine of *sadd al-dharāʾiʿ* is, arguably, not relevant for the UK.

However, in developing countries where evidence of the practice exists, a discussion on the doctrine is warranted. It is clear that it is not the case that the legalization of organ transplantation in developing countries will lead to exploitation of consideration, a commercial organ trade or organ tourism as a matter of absolute certainty or predominantly, and thus, a ruling of prohibition is not warranted. It is also not a matter of equal probability. It is either seldom or more frequent than that, but less than dominant presumption. In such case, it remains a disputed matter. According to the principles of Imām Mālik and Imām Aḥmad, the doctrine of *sadd al-dharāʾiʿ* renders it unlawful, while according to the principles of Imām Abū Ḥanīfa and Imām Shāfiʿī it is lawful. I would argue that it is not legalization that gives rise to exploitation, but rather a failure of governance that allows it. Countries with relatively strong governance structures do not encounter the exploitation that is suffered by countries with weak governance.

Third, the reason why such exploitation exists is the lack of an adequate supply of organs. An increase in the supply of organs would reduce the demand for organs. Thus, legalization of transplantation would, arguably, improve the situation rather than create a problem.

Living/Altruistic Organ Transplantation

In the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that living/altruistic organ transplantation is permissible provided:

1. The situation is one of medical necessity, namely, to save life or restore a fundamental bodily function and transplantation is the only viable option.
2. The harm to the donor is negligible or relatively minor that it does not disrupt the life of the donor.
3. There is a reasonable chance of success.
4. The organ or tissue is donated with express and willing consent.
5. The procedure is conducted with the same dignity as any other surgery.

Death in Islam

In Islam, death is defined as the departure of the soul from the body.[224] The removal of the soul from the body by angels assigned to this task is an oft-repeated theme in the Holy Qurʾan,[225] while one particular sound hadith describes this for the believing person as "flowing like the water flows from the mouth of the water pot."[226] The reality of the soul though is not definitively expounded in the evidentiary texts. When the Prophet (peace and blessings of Allah be upon him) was asked about the *rūḥ*, which, according to the majority opinion, is a reference to the soul as opposed to Gabriel or another angel,[227] he relayed the following verse:

> And they ask you about al-rūḥ—the soul. Say, "The soul is of the amr—affair of my Lord and you have not been given of the knowledge but little." (Q.17:85)

Exegetes generally explain that the sound position is that the reality of the soul has intentionally been left obscure as a demonstration of man's inability a fortiori to comprehend the reality of God.[228] A number of Muslim scholars have, however, offered a range of opinions on the reality of the soul, but these are only conjecture heavily influenced by the philosophical and theological discussions of their times. This can be witnessed, for example, in the opinion of al-Ghazālī,

> So know that, that which strives towards Allah, Most High, that it may achieve His closeness, is the heart, not the body. And by the heart, I do not mean the perceived piece of flesh, but rather it is from the secrets of Allah, powerful and exalted is He, the sensory perception does not perceive it, a subtlety from amongst His subtleties. Sometimes it is referred to as al-rūḥ—the soul, sometimes as al-nafs al-muṭmaʾinna—the contented soul, and the sharīʿa refers to it as al-qalb—the heart, as it is that which is the primary vehicle for that secret and through which the entire body becomes a vehicle and instrument for that subtlety. The lifting of the veil from that secret is from ʿilm al-mukāshafa—the Science of Unveiling, and that is something that is withheld. In fact, there is no dispensation in its mention. The extent of what may be said in its regard is that it is a precious jewel and a valuable pearl more noble than these visible bodies. It is nothing more than a divine amr as He, Most High, has said, "And they ask you about al-rūḥ—the soul. Say, 'The soul is of the amr [affair] of my Lord.'" All creations are ascribed to Allah, but its ascription is nobler than the ascription of all limbs of the body. For the creation and the command are both for Allah, and the command is loftier than the creation. And this precious jewel that bears the trust of Allah, Most High, and which is precedent on account of this station over the heavens, earths and the mountains when they refused to carry it and were apprehensive of it from the realm of the command. And it is not understood from this that this is an allusion to its infinite pre-existence, for one who holds the infinite pre-existence of the souls is deceived, ignorant and does not know what he is saying. So let us grasp the reins of discussion in relation to this discipline for it is beyond what is our present concern. The intent is that this subtlety is the one that strives to get near to the Lord as it is from the affair of the Lord. From Him is its emanance and to Him is its return. As for the body, it is its vehicle which it rides and the medium through which it strives. So the body for the soul in the path of Allah, Most High, is like the she-camel for the body on the path of the Ḥajj, and like the fetcher and storer of the water which the body is in need of. So every knowledge, the intent of which is interest of the body, so it is from the sum of the interests of the vehicle.[229]

Then, in relation to what constitutes death, al-Ghazālī says,

> Know that people hold many false notions in which they have erred in relation to the reality of death. So, some presume that death is non-being and that there is no assembly, no resurrection and no consequence to good and evil. And that the death of the human is like the death of animals and the desiccation of vegetation. This is the opinion of heretics and everyone who does not believe in Allah and the Last Day. One group presumes that he becomes non-existent upon death and does not perceive pain from punishment or enjoy reward as long as he is in the grave until he is returned at the time of the Assembly. Others have said, "The soul continues to exist and does not become non-existent upon death and it is the souls that are rewarded or punished rather than the bodies. And the bodies will not be raised nor assembled at all." All of these notions are corrupt and inclined away from the truth. Rather, that which the paths of reflection bear

> witness to, and which the verses and reports speak of, is that the meaning of death is only change of state, and that the soul continues to exist after departing the body; either punished or rewarded. And the meaning of its departure from the body is the cessation of its administration in the body by the body leaving its control, for the limbs are instruments of the soul which it employs, to the extent it [soul] holds with the hand, hears with the ear, sees with the eye, and knows the reality of things with the heart. And the heart here denotes the soul and the soul knows the things independently without an instrument. It is for that reason that it feels pain directly from the varieties of grief, distress and sadness and it enjoys varieties of happiness and pleasure. And all of this is not related to the limbs. So, all that which is a direct attribute of the soul, it remains with the soul after departure from the body. And that which belongs to it through the medium of the limbs, so it becomes obsolete with the death of the body until the soul is returned to the body. It is not farfetched that the soul is returned to the body in the grave. It is not farfetched that it is delayed until the day of resurrection. And Allah knows best what He has decided for every one of His servants. The obsoleteness of the body upon death resembles the obsoleteness of the limbs of the paralysed individual due to the corruption of nature that occurs in him and the hardness that sets in the sinew not allowing the penetration of the soul in it. So the knowing, intelligent, perceiving soul continues to exist and utilise some limbs whilst others have escaped its control. And death connotes the rebellion of all limbs. All the limbs are instruments and it is the soul that is the utiliser of them. And by the soul, I mean of the human the meaning that perceives sciences, the pains of griefs and the pleasures of happinesses. And whenever its administration in the limbs becomes obsolete, it does not lose the sciences and perceptions, nor do the happinesses and griefs become obsolete, and nor does its ability to perceive pains and pleasures become obsolete. The human, in reality, is the immaterial being that perceives the sciences and the pains and pleasures. And this does not die, viz. does not become a non-being. The meaning of death is the cessation of its administration in the body and the body ceasing to be an instrument for it, just as the meaning of paralysis is the cessation of the hand being a used instrument. Thus, death is absolute paralysis in all the limbs, and the reality of the human is his nafs and rūḥ, and that continues to exist.[230]

Al-Ghazālī presents cognitive functions as direct attributes of the soul without the medium of any part of the physical body. However, there is no clear scriptural basis for this and we know today to be untrue. Cognition, perception, volition, and thought are all functions of the cerebral cortex. Notwithstanding, what is clear is that, in Islam, death, namely, the departure of the soul from the body, is a metaphysical phenomenon. The reality of the soul, its entry into and departure from the body are beyond our ability to perceive and observe directly. This necessitates that entry and departure have to be determined through physical signs. Glazing of the eyes is the single event expressly mentioned in the hadith.[231] Additionally, Muslim jurists have used

somatic signs, mainly based upon observation, to indicate the imminence and incidence of death. In the Ḥanafī School, limpness of feet, inclination of nose, sinking of temples, and hanging of the scrotal skin due to the recession of the testicles are identified as signs of the imminence of death experienced by a *muḥtaḍar*—one who has been visited by death/angel of death.[232] The Mālikī School identifies respiratory arrest, glazing of the eyes, parting of the lips, and limpness of the feet as signs of actual death wherein the soul has departed the body. The glazing of the eyes has also been described as an antecedent to death.[233] The Shāfiʿī School identifies limpness of feet, inclination of nose, secession of palms, hanging of the scrotal skin due to recession of the testicles, sinking of temples, separation of both forearms, and elasticity of facial skin to be signs of death.[234] The Ḥanbalī School identifies limpness of feet, secession of palms, inclination of nose, elasticity of facial skin, and sinking of temples as signs of death, with the sinking of temples and inclination of nose as relatively more certain signs.[235]

It is clear from this discussion that the physical signs of death indicating the metaphysical departure of the soul from the body were, on the whole, identified through observation, experience, and rational enquiry. These signs are not definitive. In fact, the Ḥanafīs identified some of the signs as antecedent to death after which death would soon occur, while other jurists identified the very same signs as evidence of actual death. If the death occurs suddenly, or doubt remains as to whether death has indeed occurred, the Ḥanafī School requires a delay until death is positively ascertained, even if that is with putrefaction.[236] The position of the Mālikī School is very much the same with mention also of a delay of two or three days.[237] If the death occurs due to trauma, such as a lightning strike, intense grief or fear, torture, burns, drowning, a fall, or an illness that behaves like death, the Shāfiʿī School also requires certainty of diagnosis, such as putrefaction, even if it takes a delay of three days.[238] The Ḥanbalī School also requires a delay until death is ascertained with certainty.[239]

It is evident from the above discussion that dominant presumption normally suffices to determine death, but where there is a reason to doubt the occurrence of death, the declaration of death will be delayed until the doubt is removed. Jurists employ a number of terms to indicate the degree of certainty, ranging progressively from fancy—*wahm* to doubt—*shakk*, presumption—*ẓann*, dominant presumption—*ẓann ghālib*, and certainty—*yaqīn*. Doubt connotes outcomes that are equally probable without inclining toward any one outcome. Presumption connotes the preponderant outcome when the remaining outcome(s) is/are not disregarded. The remaining outcome(s) is/are termed fancy. Dominant presumption connotes the preponderant outcome when the remaining outcome(s) is/are disregarded. Dominant presumption is akin to certainty, which connotes apodictic judgment that does not entertain

doubt.[240] Thus, a diagnosis of death normatively requires a dominant presumption of death wherein the probability of life has been disregarded. If there are confounders to diagnosing death, an apodictic diagnosis of death that does not entertain doubt is required.

It is interesting to note that cardiac arrest is not mentioned by the classical jurists as a sign of death. However, contemporary Muslim scholars have recognized irreversible cardiorespiratory arrest as a reliable sign of departure of the soul, as also resolved by the IIFA.[241] The same resolution also recognized the irreversible cessation of all brain function as a reliable sign of departure (even without cardiac arrest).[242] This is the opinion of a number of scholars, such as Dr. ʿUmar Sulaymān al-Ashqar,[243] Dr. Muḥammad Naʿīm Yāsīn,[244] Dr. Aḥmad Sharf al-Din,[245] and others. However, the Mecca-based IFA did not consider whole-brain death to be sufficient to affect a ruling of death but also required cardiorespiratory arrest.[246] This is also argued by Shaykh Bakr ibn ʿAbdullāh Abū Zaid,[247] Shaykh Muḥāmmad Saʿīd Ramaḍān al-Būṭī,[248] Shaykh Badr al-Mutawallī ʿAbdul al-Bāsiṭ,[249] Shaykh Muḥammad al-Mukhtār al-Salāmī,[250] Dr. Tawfīq al-Wāʿī,[251] Shaykh ʿAbd al-Qādir al-ʿImārī,[252] Shaykh ʿAbdullāh al-Bassām,[253] and Dr. Muḥāmmad al-Shinqīṭī[254] and was the decree of the Fatwā Committee of the Kuwait Ministry of Endowments.[255] Most contributors to the IFA (India) deliberations in 2007 on brain death rejected the notion that brain death alone was actual death,[256] and the academy resolved, "When the respiratory system collapses completely and the signs of death are apparent, only then it would be declared that the patient is dead. His will would take effect from that time. The inheritance will be released and the period of when the respiratory system collapses completely."[257] I too am of the opinion that cardiorespiratory function supported by mechanical ventilation cannot be discounted when determining death. These are not functions that can be disregarded, and so dominant presumption is not achieved. On the contrary, it is a confounder, which, arguably, then requires an apodictic diagnosis of death that does not entertain doubt. Some scholars have offered the story of the cave sleepers who slept for 300/309 years to then be awoken[258] as evidence that loss of consciousness alone is not sufficient to indicate the departure of the soul. However, the admissibility of this event as evidence would, in my opinion, require loss of capacity for consciousness as opposed to loss of only consciousness. Notwithstanding, the legal maxims, *al-yaqīn la yazūl bi al-shakk*—certainty is not removed by doubt[259] and *al-aṣl baqāʾ mā kān ʿālā mā kān*—the normative position is for what was to remain upon what it was[260] and the principle of *istisḥāb al-ḥāl*—presumption of continuity (in the Mālikī,[261] Shāfiʿī,[262] and Ḥanbalī[263] schools), require that the individual is considered to be alive until there is evidence to the contrary. This is also congruent with one of the primary objectives of Islamic law of protection of life and is supported by the statement of Muslim jurists that, where there is

a reason to doubt the occurrence of death, the declaration of death will be delayed until the doubt is removed.

The deliberations of contemporary Muslim scholars do not appear to take account of the discussions, and indeed controversies[264] in Western bioethical discourse surrounding the definition of death. While a binary division of whole brain and brainstem criteria is acknowledged and sometimes discussed almost synonymously, there does not appear to be any appreciation of the philosophical definitions that these criteria attempt to determine. In Western bioethical discourse, it is acknowledged that the criteria for determining death must be related to some overall concept of what death means,[265] and what is essential to the nature of the human species and, therefore the loss of which is to be called "death" is a philosophical or moral question, not a medical or scientific one.[266] There are several candidates for this philosophical definition of death:

- Irreversible loss of vital fluid, blood, and airflow—this is a view of the nature of the human being that identifies the human essence with the flowing of fluids in the animal species. When the circulatory and respiratory functions cease, the individual is dead[267] as the loss of vital fluid, blood, and airflow will most certainly be followed by a chain of events at the end of which all features of life will disappear.[268] The corresponding criterion for this is the irreversible cessation of cardiorespiratory functions which is determined by apnea and the absence of pulse, and so on.[269]
- Irreversible loss of function of the organism as a whole—this is the view that the living being is a superior entity and, as such, it is essentially different from the mere sum of the individual parts of the body and their functions. Once a body has lost its integrating capacity (through loss of whole-brain function) it becomes a mere collection of organs that can still be viable through extensive external support, but once this support is withdrawn, all features of life will soon disappear. This definition emphasizes the loss of vegetative functions (respiration, circulation, hormonal secretion, etc.) and disregards consciousness and cognitive functions, as consciousness and cognition are properties possessed by persons and, as such, are irrelevant to the concept of death. The corresponding criterion for this is the irreversible loss of whole-brain function for which the Harvard[270] or other (e.g., Minnesota[271]) criteria may be used.[272] However, the very physiological basis of this criterion was questioned by Shewmon who provided examples demonstrating that most integrative functions of the body are not mediated through the brain.[273] In fact, the criterion is described as an *unacknowledged* legal fiction as "it does not fit with the biological definition of death established in medical practice and endorsed by public bioethics commissions, nor does it fit with the common concept of death. It is a state

in which profound neurological damage causes the permanent loss of consciousness and the inability to meaningfully interact with the world or operate many bodily functions, which arguably makes people's lives lacking in any humanly significant value. Nevertheless, it strains credibility to think that a corpse can remain warm to the touch, heal wounds, gestate babies, or go through puberty."[274] There is also a dissonance between the definition and its criteria as the former emphasizes vegetative functions only, while the latter includes all brain functions. It is also observed that only a small number of functions, mostly limited to the brainstem, are tested, whereas a more thorough testing of patients who meet the standard do, in fact, retain many brain functions, including the secretion of hormones and temperature regulation.[275] The 2008 report from the President's Council on Bioethics on "Controversies in the Determination of Death" concluded that: "If being alive as a biological organism requires being a whole that is more than the mere sum of its parts, then it would be difficult to deny that the body of a patient with total brain failure can still be alive, at least in some cases."[276]

- Cognitive death (loss of personhood)—irreversible loss of that which is essentially significant to the nature of man.[277] Vegetative or homeostatic functions will be replaceable by artificial technology, but a mechanical substitute for consciousness is conceptually absurd. Death should be the loss of the functions that are irreplaceable, that is, personhood. The corresponding criterion for this is the irreversible loss of higher brain function, which is determined by the absence of responsiveness and voluntary movements. However, a person in a persistent vegetative state or a child with hydranencephaly (has no cerebral hemispheres and the cranial cavity is full of cerebrospinal fluid) is considered dead under this definition, despite spontaneous respiration, swallowing, and grimacing in response to painful stimuli.[278]
- Irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity to breathe—both are essentially brainstem functions and the concept is argued to express philosophical, cultural, and physiological concerns. This definition emerged primarily from the work of the philosopher David Lamb and neurologist Christopher Pallis and is the definition used in the UK,[279] which has never endorsed the concept of whole-brain death.[280] The reticular activating system (RAS) in the upper brainstem regulates arousal and consciousness while respiration is controlled by several discrete centers within the brainstem. While the latter are tested directly through the apnea test, the RAS cannot [currently] be tested directly and it is rather assumed that the destruction of a variety of nearby test centers means that the RAS too is destroyed.[281] According to Pallis, the loss of the capacity for consciousness can be thought of as a reformulation (in terms of modern neurophysiology) of the older cultural

concept of the departure of the "conscious soul" from the body. In the same perspective, irreversible apnea can also be thought of as the permanent loss of the "breath of life."[282] It is clear that the loss of either consciousness or spontaneous respiration alone does not equate to death. PVS patients with spontaneous breathing and patients who are conscious but do not have spontaneous breathing (like the late Christopher Reeve) are not dead. Truog and Miller ask, what is it about the combination of the two that makes a difference?[283] Truog and Miller's argument is that brain death is not death but it is still morally acceptable to retrieve vital organs under the principles of consent and non-maleficence.[284] Potts and Evans accept that brain death, whether whole or brainstem, is not death and that "there were never sound empirical grounds for criteria of death based on the loss of testable brain functions while the body remains alive." However, they dispute the claim that the removal of organs is morally equivalent to "letting nature take its course," arguing that it is the removal of vital organs that kills the patient, not his or her disease or injury.[285]

- Departure of the soul from the body—as in the Hellenic, ancient Egyptian, Chinese, Judeo Christian, Islamic, Hindu, and most other religions and cultures. The separation of body and soul is recognized as being difficult to verify scientifically and is rather "best left to religious traditions, which in some cases still focus on the soul-departure concept."[286] Others opine, "It would, however, be impossible to derive criteria of death from this concept because of the impossibility of ascertaining the locus of the 'soul'"[287] In his address to an International Congress of Anaesthesiologists, Pope Pius XII stated, "Where the verification of the fact in particular cases is concerned, the answer cannot be deduced from any religious and moral principle and, under this aspect, does not fall within the competence of the Church. Until an answer can be given, the question must remain open. But considerations of a general nature allow us to believe that human life continues for as long as its vital functions—distinguished from the simple life of organs—manifest themselves spontaneously or even with the help of artificial processes."[288]

Organ Donation after Circulatory Determination of Death (DCDD)

This refers to the situation in which organs are removed after a patient is observed to have both stopped breathing and been without a pulse for a minimum of 5 minutes[289] (in the UK). These are typically patients who are ventilator dependent due to disease, spinal cord injury or neurological trauma that does not meet brain-death criteria, and so on. After the specified period without evidence of the return of circulatory or respiratory function, the patient is

declared dead on the premise that irreversibility has been achieved, and the organs are expeditiously removed. While 2 minutes (in fact, 65 seconds) is sufficient to discount autoresuscitation, it is not impossible to successfully resuscitate patients after they have been pulseless for 5 minutes or more.[290] Bernat et al. argue that permanence is 100 percent predictive of irreversibility and so when patients meet the criteria for permanence, they can be treated as if they meet the criteria for irreversibility.[291] Miller and Truog reject this, arguing that:

> This stance unfortunately conflates a prognosis of imminent death with a diagnosis of death. Even if it is true that permanence infallibly predicts irreversibility, it does not follow that, when the cessation of circulation is permanent, the patient is already dead (as distinct from about to be dead).[292]

Miller and Truog go on to state that

> treating permanence as a valid indicator of irreversibility fails to reflect the critical difference in the logic of these two concepts. As Marquis observes, "A condition is permanent if the condition is never actually reversed. A condition is irreversible if the condition never could be reversed. In short, irreversibility entails permanence; permanence does not entail irreversibility."[293]

Despite this rejection, Miller and Truog hold that we should simply abandon the dead donor rule for the sake of transparency.[294] Joffe et al. call for a moratorium on the practice of donation after cardiocirculatory death until open public debate has been had, as they believe that it "is not ethically allowable because it abandons the dead donor rule, has unavoidable conflicts of interests, and implements premortem interventions which can hasten death."[295] McGee and Gardiner list a number of criticisms of DCDD but defend the view that irreversibility can reasonably be interpreted to mean permanence and that DCDD candidates can legitimately be categorized as dead. They consider that the line of argument by Bernat et al. does not adequately explain the rationale to this claim, and rather opens itself to the criticism of confusing prognosis with a diagnosis or conceding that the patient is not dead but that there is no problem in that. Therefore, they offer an alternative line of argument in which their main argument is that "there is a problem in adopting a criterion for declaring death whose satisfaction is dependent on actions which are expressly ruled out as inappropriate."[296] The concept of irreversibility is ambiguous and can mean either or both (a) not capable of being resuscitated by CPR or other human action (regarding which McGee and Gardiner concede that nobody really knows when this point is given the variability of this point among patients); or (b) not capable of autoresuscitation. In the cases where resuscitative measures are not appropriate, only interpretation (b) need

apply (for which 5 minutes is more than adequate). They go on to argue that notions of irreversibility, as defined by reference to human conduct such as CPR or other resuscitative efforts, are recent concepts reflecting recent developments in technology, and that it makes sense to decide to continue to classify those people who were dead before the advent of CPR as dead post CPR, just in those cases where CPR is inappropriate and so does not apply.[297] McGee and Gardiner offer a two-tier criterion of death and state that they cannot see any problem, either logical or ethical, with this way of proceeding.

> We would refuse to call dead those people upon whom we intend to use the technology unless and until, having used the technology, we failed to revive them, or unless and until we know that any effort to revive them would now fail. Only from that point would we declare these people "dead." By contrast, in the case of those on whom it is not appropriate to use the technology at all, we would continue to declare them dead at the time and in accordance with the practice that was current before the advent of this new technology.[298]

However, this understanding of irreversibility does not accord with the notion of the soul departing the body and rather allows the retrieval of organs before such departure giving credence to the charge that it implements premortem interventions which can hasten death. While contemporary Muslim scholars have recognized cardiorespiratory arrest as a reliable sign of departure of the soul, they have also required it to be irreversible. This stipulation of "irreversibility" is to ensure that the soul has indeed departed and, while this stipulation is a recent introduction to the definition of death, it is arguable that it was always implied but had to be expressly stated only because we decided we would interfere with the body of the dying/deceased. Thus, DCDD is not permissible until the point of elective irreversibility has lapsed.

Organ Donation after Neurological Determination of Death

In the UK, this refers to the situation in which organs are removed after brain injury is suspected to have caused irreversible loss of the capacity for consciousness and irreversible loss of the capacity for respiration before terminal apnea has resulted in hypoxic cardiac arrest and circulatory standstill. This is also known as heart beating donation. The patient will be maintained on the ventilator because spontaneous respiration has ceased. Before diagnosing brainstem death, the following conditions must be fulfilled:

1. Etiology of irreversible brain damage. There should be no doubt that the patient's condition is due to irreversible brain damage of known etiology.
2. Exclusion of potentially reversible causes of coma.

3. There should be no evidence that this state is due to depressant drugs.
4. Primary hypothermia as the cause of unconsciousness must have been excluded.
5. Potentially reversible circulatory, metabolic, and endocrine disturbances must have been excluded as the cause of the continuation of unconsciousness.
6. Exclusion of potentially reversible causes of apnea, such as neuromuscular blocking agents and other drugs.[299]

Brainstem death is diagnosed by performing, on two separate occasions, five brainstem reflexes and an apnea test:

1. Pupils should be fixed in diameter and unresponsive to light.
2. There should be no corneal (blink) reflex.
3. Eye movement should not occur when each ear is instilled, over 1 minute, with 50 milliliters of ice cold water, head 30°. Each eardrum should be clearly visualized before the test.
4. There should be no motor response within the cranial nerve or somatic distribution in response to suborbital pressure. Reflex limb and trunk movements (spinal reflexes) may still be present.
5. There should be no gag reflex following stimulation to the posterior pharynx or cough reflex following a suction catheter placed down the trachea to the carina.[300]

If none of the above five tests confirm the presence of brainstem reflexes, an apnea test will be conducted.[301]

If the first set of tests shows no evidence of brainstem function, there need not be a lengthy delay prior to performing the second set. A short period of time will be necessary after reconnection to the ventilator to allow return of the patient's arterial blood gases and baseline parameters to the pretest state, rechecking of the blood sugar concentration and for the reassurance of all those directly concerned. Although death is not confirmed until the second test has been completed, the legal time of death is when the first test indicates death due to the absence of brainstem reflexes.[302]

However, a diagnosis of death on the basis of the irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for respiration does not, on two accounts, satisfy the definition of death according to the IIFA, which requires: (1) complete, irreversible cessation of all brain [and not just brainstem] function; and (2) the onset of decomposition.[303] The IIFA verdict on organ donation also required the complete cessation of all brain functions [and not just of the brainstem].[304] Similarly, it does not satisfy the definition of death according to the Mecca-based IFA,[305] the

Fatwā Committee of the Kuwait Ministry of Endowments,[306] most contributors to the IFA (India) deliberations in 2007 on brain death,[307] Shaykh Bakr ibn ʿAbdullāh Abū Zaid,[308] Shaykh Muḥāmmad Saʿīd Ramaḍān al-Būṭī,[309] Shaykh Badr al-Mutawallī ʿAbd al-Bāsiṭ,[310] Shaykh Muḥammad al-Mukhtār al-Salāmī,[311] Dr. Tawfīq al-Wāʿī,[312] Shaykh ʿAbd al-Qādir al-ʿImārī,[313] Shaykh ʿAbdullāh al-Bassām,[314] and Dr. Muḥāmmad al-Shinqīṭī,[315] all of whom did not consider even whole-brain death alone to be sufficient to effect a ruling of death but also required cardiorespiratory arrest. I, too, am of the opinion that brainstem death or even whole-brain death alone is not sufficient to indicate departure of the soul and that cardiorespiratory function supported by mechanical ventilation cannot be discounted when determining death. Thus, DDBD following irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for respiration is not permitted before terminal apnea has resulted in irreversible hypoxic cardiac arrest and circulatory standstill.

Deceased Organ Donation and Transplantation

In the event that all requirements have been satisfied to indicate the departure of the soul from the body, and in the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that deceased organ donation and transplantation of all organs/tissues besides the gonads is permissible provided:

1. The situation is one of medical necessity.
2. There is a reasonable chance of success.
3. The organ or tissue is donated with the willing consent, whether express or implied, of the deceased.
4. The procedure is conducted with the same dignity as any other surgery.

Transplantation of the gonads is not permissible as they continue to carry the genetic characteristics of the donor even after transplant into the recipient. This raises concerns from a Shariʿa perspective in relation to a reproductive process outside of the marital union and the effect this will have on ensuring that the lineage of the resultant offspring is secure. In this regard, I endorse the first clause of Resolution No. 57/8/6 passed by the IFFA concerning the transplant of sexual glands. However, contrary to the second clause of the same resolution concerning the transplant of genital organs, I see no reason for the prohibition of transplanting the external genitalia, as further to the transplant, they take the rule of the body of the recipient and do not carry the genetic characteristics of the donor.

Respecting the Wishes of the Donor

The opinion of the European Council for Fatwa and Research (ECFR) concluded with three points, which I will now address. The first point related to respecting the wishes of the donor, his heirs, or a third party authorized by the donor in deciding who the beneficiary should be and decreed that it was necessary to adhere to this wish as much as possible. While directed donation is currently possible for live donors under current legislation across the UK, deceased organ donation must, in principle, be unconditional. However, after it is established that the consent or authorization for organ donation is unconditional, a request for the allocation of a donor organ to close family relative or friend can be considered, but priority must be given to a patient in desperately urgent clinical need. Patients registered on the NHSBT Super-Urgent or Urgent Heart lists, Super-Urgent or Urgent Lung lists, Super Urgent Liver list will always take priority, if the organ is clinically suitable for them.[316] The UK system prefers equity,[317] utility,[318] and benefit[319] over personal autonomy and does not allow directed donation to a specific social group defined by race, religion, ethnicity, gender or sexual orientation, and so on. The existing rules being thus, I do not feel that any further discussion is warranted for the purpose of this chapter.[320]

Is a Written Instruction a Legal Bequest?

The second point made by the ECFR was that a written instruction to donate posthumously will be governed by the laws on bequests and the heirs or other third party could not alter the bequest. However, an instruction, whether verbal or written, to donate body parts posthumously does not meet the legal requirement of a valid bequest in any of the four Sunnī schools of jurisprudence. The Ḥanafī School stipulates that the object of bequest must admit to proprietary transfer through contract during the life of the testator, which is not the case for body parts.[321] The Mālikī School stipulates that the object of bequest must be desired and transferable, such as through sale, and cannot be what one cannot legally own.[322] Similarly, the Shāfiʿī School stipulates that the object of bequest must be desired, of licit benefit and admit to elective transfer from one party to another.[323] The Ḥanbalī School stipulates the possibility of it being the object of bequest, which includes the requirement of ownership, licitness, and admission to proprietary transfer.[324] In truth, the stipulations of all four schools amount to the same thing, namely, ownership, licitness, and admission to proprietary transfer. Thus, in the absence of self-ownership and admission to proprietary transfer at least, it is clear that a verbal or written instruction to donate body parts posthumously is not a legal bequest. I have already established that, rather than

self-ownership, the life and body of the individual combines both a right of the individual and a right of God and that the individual enjoys the right of disposal until such disposal conflicts with the right of God. If the right of God is preponderate, that right cannot be waived, compensated for nor inherited. If the right of the individual is preponderate, such as in the right of requital, the individual may waive the right, accept compensation in the form of bloodwit, and the right can also be inherited.[325] However, it cannot be made the object of bequest, as there is no ownership and it does not admit to proprietary transfer. The Shāfiʿī School, in particular, expressly states that this does not apply to the likes of the punishments for slander and requital, even if they can be inherited or the guilty party can be absolved.[326] Therefore, an instruction, whether verbal or written, to donate posthumously will not be governed by the laws on bequests and the heirs or other third party are not bound by this instruction. At best, it may be considered a bequest in the lexical sense only, as also suggested by the Dār al-Iftāʾ al-Miṣriyya,[327] and is rather a ceding of the donor's right to posthumous bodily integrity for the benefit of the recipient in a manner that it is also aligned with the public interest. Although the heirs are not bound by such instruction, they cannot also prevent such instruction from being carried out. It also follows that, as the right of God is preponderate in human bodily integrity, such right cannot be inherited by the heirs. Thus, in the absence of any living instruction by the deceased, the heirs cannot consent to organ donation as surrogates of the deceased.

Implied Consent

The third point made by the ECFR was that, in any jurisdiction in which the law of deemed consent applies, the absence of an expression not to donate is implied consent. Without commenting on the merits of such a law, I concur that, any jurisdiction in which such law does (and is widely known to) exist, the absence of an expression to opt out is, under Islamic principles, implied consent to donate.

And Allah knows best.

NOTES

1. Editorial considerations prevent reproducing the entire fatwa in this chapter. Rather I have excerpted the most important elements and left off my review of previous fatwas and ancillary issues. The full fatwa is available from this website: https://nhsbtdbe.blob.core.windows.net/umbraco-assets-corp/16300/organ-donation-fatwa.pdf.

2. Dr. Dale Gardiner was appointed National Clinical Lead for Organ Donation, NHSBT in June 2018 after the retirement of Dr. Paul Murphy.

3. More recent answers given by the same fatwa department model a similar sentiment but with more discussion and a further softening of tone toward one who adopts the opinion of permissibility. Fatwa no. 87/311.

4. Muḥammad ibn Abī Bakr ibn Ayyūb ibn Qayyim al-Jawziyya, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn* (Riyadh: Dār Ibn al-Jawzī, 2002), 2:17.

5. Muḥyī al-Dīn al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab* (Jeddah: Maktaba al-Irshād, n.d.), 1:72.

6. Mashhūr ibn Ḥasan, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn: The Prolegomena* (Riyadh: Dār Ibn al-Jawzī, 2002), 1:8.

7. Aḥmad ibn Idrīs al-Qarāfī, *Anwār al-Burūq fī Anwāʾ al-Furūq* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 4:89.

8. Abū Ibrāhīm Isḥāq al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām* (Beirut: Dār al-Fikr, 1922), 4:140–141.

9. Muḥammad Taqī al-ʿUthmānī, *Uṣūl al-Iftāʾ wa Ādabuhū* (Damascus: Dār al-Qalam, 2014), 16.

10. Dr. Aasim I. Padela, MD, MSc, Initiative on Islam and Medicine and Medical College of Wisconsin, coeditor of this edited volume.

11. Principal Jurisconsult of Markaz al-Ifta wa'l-Qaḍā, Bradford.

12. Nur al-Habib Foundation, British Board of Scholars and Imams, and Fellow of the Royal College of Psychiatrists

13. Amanah Finance Consultancy.

14. Lecturer in Islamic Studies, Cardiff University.

15. Academic Director, Al Balagh Academy.

16. Abū Bakr al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ* (Quetta: Maktaba Rashīdiyya, 1990), 5:132; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:362.

17. Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:146–147.

18. ʿAbdullāh ibn Muḥammad ibn Abī Shayba, *Al-Kitāb al-Muṣannaf fī al-Aḥādīth wa al-Āthār* (Beirut: Darul Kutub al-ʾIlmiyya, 1995), 6:403.

19. Ibn Abī Shayba, *Al-Kitāb al-Muṣannaf fī al-Aḥādīth wa al-Āthār*, 6:403.

20. "Lawful for you are the animals of grazing livestock except for that which is recited to you . . ." (Q.5:1)

"And the grazing livestock He has created; for you in them is warmth and [numerous] benefits, and from them you eat." (Q.16:5)

"And He has subjected to you all that is in the heavens and all that is in the earth; all from Him. Verily, in that are signs for a people who think deeply." (Q.45:13)

21. Al-Sajistānī, *Sunan Abī Dāwūd*, 2:183; and al-Tirmidhī, *Jāmiʿ al-Tirmidhī* , 2:25.

22. Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 1:92; Muḥammad al-Ṭūrī, *Takmila al-Baḥr al-Rāʾiq* (Karachi: H.M. Saʿīd, n.d.), 8:205; Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 5:354; Aḥmad al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib* (Rabat:

Moroccan Ministry of Endowments and Islamic Affairs, 1981), 1:93; and al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:147.

23. Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 1:92; al-Ṭūrī, *Takmila al-Baḥr al-Rāʾiq*, 8:205; Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:362; al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib*, 1:93; and al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:147.

24. ʿAbd al-Wahhāb al-Baghdādī, *Al-Ishrāf ʿalā Nukat Masāʾil al-Khilāf* (Cairo: Dār Ibn al-Qayyim, 2008), 1:344–345; Aḥmad al-Qarāfī, *Al-Dhakhīra* (Beirut: Dār al-Gharb al-Islāmī, 1994), 1:80–81; Ibrāhīm al-Shīrāzī, *al-Muhadhdhab* (Jeddah: Maktaba al-Irshād, n.d.), 3:145; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:144–146; and Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 2:488.

25. Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 5:132; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:362.

26. Muḥammad al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl* (Riyadh: Dār ʿĀlam al-Kutub, 2003), 1:172–173; al-Kharashī, *Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 1:99; ʿAbd al-Bāqī al-Zarqānī, *Sharḥ al-Zarqānī ʿalā Sayyidī Mukhtaṣar Khalīl* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2002), 1:65; and Muḥammad al-Dusūqī, *Ḥāshiya al-Dusūqī ʿalā al-Sharḥ al-Kabīr* (Beirut: Dār al-Fikr, 1998), 1:104.

27. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir* (Karachi: Idāra al-Qurʾān wa al-ʿUlūm al-Islāmiyya, 1997), 1:417; Muḥammad ʿAlāʾ al-Dīn al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār* (Karachi, H.M. Saʿīd, 1986), 1:207; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 1:207.

28. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 2:488 and 11:543.

29. Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:146–147.

30. I will discuss the concept of human dignity in Islam under the discussion of homotransplantation.

31. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir*, 1:250.

32. Muḥammad al-Sarakhsī, *Kitāb al-Mabsūṭ* (Beirut: Dār al-Fikr, 2000), 27:269; Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 5:360; ʿIllīsh, *Sharḥ Minaḥ al-Jalīl ʿalā Mukhtaṣar al-ʿAllāma al-Khalīl* ,1:726; Muḥammad al-Mawwāq, *Al-Tāj wa al-Iklīl li Mukhtaṣar Khalīl* (Riyadh: Dār ʿĀlam al-Kutub, 2003), 7:545; al-Shīrāzī, *al-Muhadhdhab*, 9:43; Zakariyyā al-Anṣārī, *Fatḥ al-Wahhāb bi Sharḥ Manhaj al-Ṭullāb* (Beirut: Dār al-Maʿrifa, 1994), 2:193; and Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 2:488 and 13:338.

33. Al-Sarakhsī, Sharḥ *Kitāb al-Siyar al-Kabīr*, 1:92; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 5:125 and 132; al-Sarakhsī, *Kitāb al-Mabsūṭ*, 15:109; Ḥasan ibn Manṣūr al-Awzjandī al-Farghānī, *Fatāwā Qāḍī Khān* (Quetta: Maktaba Rashīdiyya, 1983), 3:404; Ibn al-Humām, *Fatḥ al-Qadīr* (Quetta: Maktaba Rashīdiyya, n.d.), 1:83; Zain al-Dīn, *Al-Baḥr al-Rāʾiq* (Karachi: H.M. Saʿīd, n.d.), 6:81; al-Ṭūrī, *Takmila al-Baḥr al-Rāʾiq*, 8:205; Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 5:354; al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6:372–373; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:373; ʿAbdurraḥmān ibn Muḥammad, *Majmaʿ al-Anhūr fī Sharḥ Multaqā al-Abḥur* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 4:180; al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ*

al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib, 1:93; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:147 and 1:269; Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 1:52; Ibn Mufliḥ, *Kitāb al-Furūʿ*, 1:120; ʿAbdurraḥmān ibn Muḥammad al-Maqdisī, *Al-Sharḥ al-Kabīr* (Beirut: Dār al-Kitāb al-ʿArabī, 1983), 1:78; and Ibn Yūnus al-Bahūṭī, *Sharḥ Munthā al-Irādāt*, 1:58.

34. Al-Shirwānī, *Ḥāshiya al-Shirwānī ʿalā Tuḥfa al-Muḥtāj*, 2:126–127.

35. Abū al-Saʿūd Muḥammad al-ʿAmādī, *Irshād al-ʿAql al-Salīm ilā Mazāyā al-Kitāb al-Karīm* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.), 5:186; and Maḥmūd al-Alūsī, *Rūḥ al-Maʿānī fī Tafsīr al-Qurʾān al-ʿAẓīm wa al-Sabʿ al-Mathānī* (Beirut: Dār al-Fikr, 1994), 9:171.

36. Muḥammad ibn Aḥmad al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān* (Peshawar: Maktaba Ḥaqqāniyya, n.d.), 10:190.

37. Al-Alūsī, *Rūḥ al-Maʿānī fī Tafsīr al-Qurʾān al-ʿAẓīm wa al-Sabʿ al-Mathānī*, 9:171.

38. Ismāʿīl ibn Kathīr al-Dimashqī, *Tafsīr al-Qurʾān al-ʿAẓīm* (Damascus: Dār al-Faiḥāʾ, 1998), 4:277.

39. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim* (Karachi: Qadīmī Kutub Khāna, 1956), 1:310.

40. ʿUmar ibn Ibrāhīm, *Al-Nahr al-Fāʾiq* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2002), 3:428.

41. 23489: "It is narrated from Abū Naḍra, 'Someone who heard the sermon of the Messenger of Allah (peace and blessings of Allah be upon him) on the middle day of the days of al-Tashrīq told me that he said: "O people! Verily, your Lord is one and verily, your father is one. Verily, there is no superiority for an Arab over a non-Arab or for a non-Arab over an Arab, or for a red man over a black man, or for a black man over a red man, except in terms of taqwā. Have I conveyed the message?" They said, "The Messenger of Allah (peace and blessings of Allah be upon him) has conveyed the message."'" (Musnad Aḥmad); Aḥmad ibn Ḥanbal, Musnad Aḥmad (Beirut: Muʾassasa al-Risāla, 2001), 38:474.

42. "O mankind, fear your Lord, Who created you from a single soul and created from it its mate and dispersed from them both many men and women. And fear Allah, by whom you demand of one another, and the ties of kinship. Indeed Allah is ever, over you, a Watcher" (Q.4:1).

43. "He created the heavens and earth with truth and formed you and perfected your forms; and to Him is the [final] return" (Q.64:3).

44. "He [Allah] said, 'O Iblīs! What prevented you from prostrating to that which I created with My hands? Did you become arrogant, or were you [already] among the haughty?'" (Q.38:75).

"[So remember] when your Lord said to the angels, 'Indeed, I am going to create a human being from clay. So when I have proportioned him and breathed into him of My spirit, then fall down to him in prostration'" (Q.38:71–72).

45. ". . . And do not kill yourselves, . . ." (Q.4:29).

46. ". . . and do not throw [yourselves] with your [own] hands into destruction . . ." (Q.2:195).

47. "And do not kill the soul which Allah has forbidden, except by right" (Q.17:33).

48. "Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in the world and the Hereafter; and for them is a great punishment" (Q.24:23).

49. "And do not backbite each other. Would one of you like to eat the flesh of his brother when dead? You would abhor it" (Q.49:12).

50. "O you who have believed, let not a people ridicule [another] people; perhaps they may be better than them; nor [let] women [ridicule other] women; perhaps they may be better than them. And do not insult one another and do not call each other by [offensive] nicknames" (Q.49:11).

51. "And say, 'The truth is from your Lord, so whoever wills—let him believe; and whoever wills—let him disbelieve'" (Q.18:29).

"There is no compulsion in [acceptance of] the religion" (Q.2:256).

52. "And He has subjected to you all that is in the heavens and all that is in the earth; all from Him. Verily, in that are signs for a people who think deeply" (Q.45:13).

"Do you not see that Allah has subjugated to you whatever is in the heavens and whatever is in the earth and has amply bestowed upon you His favours, [both] apparent and hidden?" (Q.31:20).

53. Jalāl al-Dīn ʿAbdurraḥmān al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir* (Beirut: Dār al-Fikr, n.d.), 130.

54. Ibn al-Humām, *Fatḥ al-Qadīr*, 6:157; ʿAlī Haider, *Durar al-Ḥukkām Sharḥ Majalla al-Aḥkām* (Riyadh: Dār ʿĀlam al-Kutub, 2003), 1:51; and Wahba al-Zuḥailī, *Uṣūl al-Fiqh al-Islāmī* (Beirut: Dār al-Fikr, 2001), 2:859.

55. Muḥammad Amīn, *Majmūʿā Rasāʾil Ibn ʿĀbidīn* (n.p.: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.), 2:126; al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām*, 2:198; Aḥmad ibn al-Shaykh Muḥammad al-Zarqā, *Sharḥ al-Qawāʿid al-Fiqhiyya* (Damascus: Dār al-Qalam, 1989), 227; al-Zuḥailī, *Uṣūl al-Fiqh al-Islāmī*, 2:861; and Taqī al-ʿUthmānī, *Uṣul al-Iftāʾ wa Ādābuhū*, 296.

56. See https://nhsbtdbe.blob.core.windows.net/umbraco-assets-corp/16300/organ-donation-fatwa.pdf.

57. Al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 1:42; al-Kharashī, *Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 1:99; ʿAbd al-Bāqī al-Zarqānī, *Sharḥ al-Zarqānī ʿalā Sayyidī Mukhtaṣar Khalīl*, 1:65; and Muḥammad al-Dusūqī, *Ḥāshiya al-Dusūqī ʿalā al-Sharḥ al-Kabīr* (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, n.d.), 1:429.

58. Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:269.

59. Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 1:52; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 2:488.

60. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir*, 1:417; al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 1:207; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 1:207.

61. ʿAlī al-Farghānī al-Marghīnānī, *Al-Hidāya* (Multan: Maktaba Shirka ʿIlmiyya, n.d.), 1:42; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 1:210 and 5:228; and Maḥmūd al-Bukhārī, *Al-Muḥīṭ al-Burhānī*, 8:82–83.

62. Al-Sajistānī, *Sunan Abī Dāwūd*, 1:101–102.

63. ʿAbd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2002), 9:170–171.

64. Sharaf al-Ḥaq al-ʿAzīmʾābādī, *ʿAwn al-Maʿbūd ʿalā Sunan Abī Dāwūd* (Oman: Bait al-Afkār al-Duwalyya), 1383.

65. Al-Ṭībī, *Al-Kāshif ʿan Ḥaqāʾiq al-Sunan* (Riyadh: Maktaba Nazār Muṣṭafā al-Bāz, 1997), 4:1414.

66. Muḥammad ibn Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Karachi: Qadīmī Kutub Khāna, 1961), 2:878.

67. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:204.

68. Al-Kāsānī, *Badāʾiʿal-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 5:125; Ibn al-Humām, *Fatḥ al-Qadīr*, 6:63; Muḥammad ibn Maḥmūd al-Babartī, *Sharḥ al-ʿInāya ʿalā al-Hidāya* (Quetta: Maktaba Rashīdiyya, n.d.), 6:63; Uthmān ibn ʿAlī al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 4:376–377; Zain al-Dīn, *Al-Baḥr al-Rāʾiq*, 6:81; ʿUmar ibn Ibrāhīm, *Al-Nahr al-Fāʾiq*, 3:428; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:373.

69. Sulaimān ibn Khalaf al-Bājī, *Kitāb al-Muntaqā Sharḥ al-Muwaṭṭaʾ* (Cairo: Dār al-Kitāb al-Islāmī, n.d.), 7:267.

70. Ibn Abī Shayba, *Al-Kitāb al-Muṣannaf fī al-Aḥādīth wa al-Āthār*, 5:202; and ʿAbd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf*, 3:64.

71. Al-ʿIyāḍ ibn Mūsā al-Yaḥṣabī, *Ikmāl al-Muʿlim bi Fawāʾid Muslim* (Al-Manṣūra: Dār al-Wafāʾ, 1998), 6:652–653.

72. Al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān*, 5:250–251.

73. Al-Yaḥṣabī, *Ikmāl al-Muʿlim bi Fawāʾid Muslim*, 6:651.

74. Muḥammad ibn Aḥmad ibn Rushd, *Al-Muqaddamāt al-Mumahhadāt* (Beirut: Dār al-Gharb al-Islāmī, 1988), 3:458–459.

75. Aḥmad Zarrūq, *Shārḥ Zarrūq ʿala Matn al-Risāla* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2006), 1055.

76. Al-Qarāfī, *Al-Dhakhīra*, 1:314–315.

77. Muḥammad ibn Aḥmad ibn Rushd, *Al-Bayān wa al-Taḥṣīl* (Beirut: Dār al-Gharb al-Islāmī, 1988), 9:383–384; Qāsim ibn ʿĪsā ibn Nājī al-Tanūkhī, *Sharḥ Ibn Nājī al-Tanūkhī ʿala Matn al-Risāla* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 2:461; Aḥmad Zarrūq, *Shārḥ Zarrūq ʿala Matn al-Risāla*, 1055; al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib*, 11:145; al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 1:305; al-Nafrāwī, *Al-Fawākih al-Dawānī ʿalā Risāla Ibn Abī Zaid al-Qairawānī*, 2:508; and ʿAlī al-Saʿīdī al-ʿAdawī, *Ḥāshiya al-ʿAdawī ʿalā Sharḥ Kifāya al-Ṭālib al-Rabbānī* (Cairo: Maṭbaʿa al-Madani, 1987), 4:361.

78. Muḥyī al-Dīn al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim* (Karachi: Qadīmī Kutub Khāna, 1956), 2:204; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:147–148; Muḥammad al-Ghazālī, *Al-Wajīz fī Fiqh a-Imām al-Shāfiʿī* (Beirut, Dār al-Arqam, 1997), 1:170; and al-Rāfiʿī, *Al-ʿAzīz Sharḥ al-Wajīz*, 2:14–15.

79. Ibn Mufliḥ, *Kitāb al-Furūʿ*, 1:158–161; al-Mardāwī, *Taṣḥīḥ al-Furūʿ*, 1:158; Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 1:129–131; al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 1:125–126; and Khalid al-Rabbāṭ, Sayyid ʿIzzat ʿĪd et al., *Al-Jāmiʿ li ʿUlūm al-Imām Ahmad* (Faiyum: Dār al-Falāḥ, 2009), 13:352–356.

80. Aḥmad al-Nasaʾī, *Sunan al-Nasaʾī* (Karachi: Qadīmī Kutub Khāna, n.d.), 2:280.
81. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:879.
82. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:879.
83. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:878.
84. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:878; and Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:204.
85. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:879; and Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:204.
86. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:204.
87. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:879.
88. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:784.
89. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:879.
90. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:205.
91. Al-Nasaʾī, *Sunan al-Nasaʾī*, 2:292.
92. Ḥamad ibn Muḥammad al-Khaṭṭābī, *Maʿālim al-Sunan* (Aleppo: Maṭbaʿa Muḥammad Rāghib al-Ṭabbāgh, 1932), 4:209.
93. Ibn Rushd, *Al-Muqaddamāt al-Mumahhadāt*, 3:458–459; al-Qarāfī, *Al-Dhakhīra*, 1:314–315; al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib*, 11:145; and Zarrūq, *Shārḥ Zarrūq ʿala Matn al-Risāla*, 1055.
94. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:725.
95. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:205.
96. ʿAbd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf*, 3:65.
97. Muḥammad ibn Yazīd ibn Māja al-Qazwīnī, *Sunan Ibn Māja* (Karachi: Qadīmī Kutub Khāna, n.d.), 143.
98. Al-Nasaʾī, *Sunan al-Nasaʾī*, 2:280.
99. Al-Amīr ʿAlāʾ al-Dīn ʿAlī ibn Balbān al-Fārisī, *Al-Iḥsān fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān* (Oman: Bait al-Afkār al-Duwaliyya, n.d.), 950.
100. Al-Nasaʾī, *Sunan al-Nasaʾī*, 2:281.
101. Al-Sajistānī, *Sunan Abī Dāwūd*, 2:221.
102. Muḥammad ibn Mukarram al-Khazrajī, *Lisān al-ʿArab* (Beirut: Dār Ṣādir, 1994), 11:615; and Aḥmad al-Shalabī, *Ḥāshiya al-Shalabī ʿalā Tabyīn al-Ḥaqāʾiq* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 4:89.
103. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:602; and Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 2:82.
104. Al-Yaḥṣabī, *Ikmāl al-Muʿlim bi Fawāʾid Muslim*, 5:463–464.
105. Al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim*, 2:57.
106. Al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim*, 2:82.
107. ʿAlī al-Farghānī al-Marghīnānī, *Al-Hidāya* (Quetta: Maktaba Rashīdiyya, n.d.), 5:201.
108. Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 1:79.
109. ʿAbdullāh ibn Maḥmūd al-Mawṣilī, *Al-Ikhtiyār li Taʿlīl al-Mukhtār* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 4:127.
110. Al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 4:89.

111. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 4:131.

112. Ibn al-Humām, *Fatḥ al-Qadīr*, 5:201; ʿUmar ibn Ibrāhīm, *Al-Nahr al-Fāʾiq*, 3:205; and Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 4:131.

113. Al-Mawwāq, *Al-Tāj wa al-Iklīl li Mukhtaṣar Khalīl*, 4:458; al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 4:547–548; al-Kharashī, *Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 3:115; and al-ʿAdawī, *Ḥāshiya al-ʿāshiy ʿalā Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 3:115.

114. Muḥammad ibn Idrīs al-Shāfiʿī, *Al-Umm* (Al-Manṣūra: Dār al-Wafāʾ, 2001), 5:597; al-Shīrāzī, *al-Muhadhdhab*, 21:180; al-Nawawī, *Rawḍa al-Ṭālibīn*, 7:450; and ʿAlī ibn Muḥammad al-Māwardī, *Al-Ḥāwī al-Kabīr* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 14:175.

115. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 13:199; Ibn Mufliḥ, *Kitāb al-Furūʿ*, 10:265–266; ʿAbdullāh ibn Aḥmad ibn Muḥammad ibn Qudāma al-Maqdisī, *Al-Kāfī fi Fiqh al-Imām Aḥmad* (Cairo: Dār Hijr li al-Ṭibāʿa wa al-Nashr wa al-Tawzīʿ wa al-Iʿlān, 1997), 5:485; al-Ḥijāzī, *Al-Iqnāʿ fī Fiqh al-Imām Aḥmād ibn Ḥanbal*, 2:11; and Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 2:380.

116. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir*, 1:102; Haider, *Durar al-Ḥukkām Sharḥ Majalla al-Aḥkām*, 1:19; and al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir*, 16.

117. Ibn al-Humām, *Fatḥ al-Qadīr*, 5:201.

118. Muḥammad ibn Muḥammad ibn Muḥammad ibn Sayyid al-Nās al-Yaʿmurī, *ʿUyūn al-Athar fī Funūn al-Maghāzī wa al-Shamāʾil wa al-Siyar* (Medina: Maktaba Dā al-Turāth, n.d.), 2:133.

119. Ibn Balbān al-Fārisī, *Al-Iḥsān fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān*, 10:325.

120. ʿAlī ibn Ahmad ibn Saʿīd ibn Ḥazm, *Al-Muḥallā* (Damascus: Idāra al-Ṭibāʿa al-Munīriyya, 1928), 11:311.

121. Muḥammad ibn Jarīr al-Ṭabarī, *Jamiʿ al-Bayān ʿan Taʾwīl Āyī al-Qurʾān* (Beirut: Dār al-Fikr, 1998), 5:381–386.

122. Ibn Kathīr al-Dimashqī, *Tafsīr al-Qurʾān al-ʿAẓīm*, 1:739.

123. Ibn Kathīr al-Dimashqī, *Tafsīr al-Qurʾān al-ʿAẓīm*, 1:739.

124. Muḥammad ibn ʿUmar Fakhr al-Dīn al-Rāzī, *Mafātīh al-Ghaib* (Multan: Dār al-Ḥadīth, n.d.), 4:223.

125. Fakhr al-Dīn al-Rāzī, *Mafātīh al-Ghaib*, 4:223.

126. Aḥmad ibn ʿAlī Abū Bakr al-Rāzī al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* (Mecca: Al-Maktaba al-Tijāriyya, 1993), 2:397.

127. Al-Ṭabarī, *Jamiʿ al-Bayān ʿan Taʾwīl Āyī al-Qurʾān*, 5:386.

128. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6:388 and 420; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:388 and 420; and al-Awzjandī al-Farghānī, *Fatāwā Qāḍī Khān*, 3:410–411.

129. ʿAbd al-Bāqī al-Zarqānī, *Sharḥ al-Zarqānī ʿalā Sayyidī Mukhtaṣar Khalīl*, 4:374; and ʿIllīsh, *Sharḥ Minaḥ al-Jalīl ʿalā Mukhtaṣar al-ʿAllāma al-Khalīl*, 2:80.

130. Al-Qarāfī, *Al-Dhakhīra*, 13:286.

131. Abū Bakr Muḥammad ibn ʿAbdullāh, *Aḥkām al-Qurʾān* (Beirut: Dār al-Jīl, 1972).

132. Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 6:154–155.

133. Sulaimān ibn Muḥammad al-Bujairamī, *Tuḥfa al-Ḥabīb ʿalā Sharḥ al-Khaṭīb* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1996), 5:262.

134. Ibn Mufliḥ, *Kitāb al-Furūʿ*, 9:331; and Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 4:431.

135. Al-Ḥijāzī, *Al-Iqnāʿ fī Fiqh al-Imām Aḥmād ibn Ḥanbal*, 1:22; Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 1:75; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 1:125.

136. Al-Ṭībī, *Al-Kāshif ʿan Ḥaqāʾiq al-Sunan*, 9:2928.

137. ʿAlī ibn Sulṭān Muḥammad al-Qārī, *Mirqāt al-Mafātīḥ* (Multan: Maktaba Imdādiyya, n.d.), 8:295.

138. Sharaf al-Ḥaq al-ʿAzīmʾābādī, *ʿAwn al-Maʿbūd ʿalā Sunan Abī Dāwūd*, 1783.

139. Muḥammad ibn ʿAbd al-Laṭīf al-Karmānī al-Rūmī, *Sharḥ Maṣābīḥ al-Sunna* (Kuwait: Idāra al-Thaqāfa al-Islāmiyya, 2012), 5:57.

140. Badr al-Dīn Abū Muḥammad Maḥmūd al-ʿAynī, *ʿUmda al-Qārī* (Quetta: Maktaba Rashīdiyya, n.d.), 19:225.

141. ʿAbd al-Ḥaq al-Dehlawī, *Lamaʿāt al-Tanqīḥ fi Sharḥ Mishkāt al-Maṣābīḥ* (Damascus: Dār al-Nawādir, 2014), 7:412.

142. Muḥammad ibn ʿAbd al-Hādī al-Sindī, *Ḥashiya al-Sindī ʿalā Sunan al-Nasaʾī* (Beirut: Dār al-Maʿrifa, 1991), 8:523.

143. Al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim*, 2:205; and al-Sindī, *Ḥashiya al-Sindī ʿalā Sunan al-Nasaʾī*, 8:523.

144. Al-Ṭībī, *Al-Kāshif ʿan Ḥaqāʾiq al-Sunan*, 9:2928.

145. Al-ʿAsqalānī, *Fatḥ al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī* , 13:446.

146. Al-ʿAynī, *ʿUmda al-Qārī*, 19:225.

147. Muḥammad ibn Muḥammad al-Sanūsī al-Ḥasanī, *Mukammil Ikmāl al-Ikmāl* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 5:408.

148. Al-Qārī, *Mirqāt al-Mafātīḥ*, 8:295.

149. Al-Dehlawī, *Lamaʿāt al-Tanqīḥ fi Sharḥ Mishkāt al-Maṣābīḥ*, 7:412.

150. Aḥmad ibn ʿAlī ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī* (Riyadh: Dār Ṭaiba, 2005), 13:446.

151. Al-Qārī, *Mirqāt al-Mafātīḥ*, 8:295.

152. Al-ʿAzīmʾābādī, *ʿAwn al-Maʿbūd ʿalā Sunan Abī Dāwūd*, 1783.

153. Al-ʿAynī, *ʿUmda al-Qārī*, 19:225.

154. Al-Bājī, *Kitāb al-Muntaqā Sharḥ al-Muwaṭṭaʾ*, 7:267.

155. Al-Yaḥṣabī, *Ikmāl al-Muʿlim bi Fawāʾid Muslim*, 6:655.

156. Aḥmad ibn Ḥussain ibn ʿAlī ibn Raslān al-Ramalī, *Sharḥ Sunan Abī Dāwūd li Ibn Raslān* (Faiyum: Dār al-Falāḥ, 2016), 16:497.

157. Khalīl Aḥmad Sahāranpūrī, *Bathl al-Majhūd fi Ḥall Sunan Abī Dāwūd* (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2006), 12:196–197.

158. ʿAlī ibn Khalaf al-Balansī, *Sharḥ Ṣaḥīḥ al-Bukhārī li Ibn Baṭṭāl* (Riyadh: Maktaba al-Rushd, n.d.), 9:167–168; and Muḥammad ibn Ismāʿīl al-Amīr al-Ṣanʿānī, *Al-Tanwīr Sharḥ al-Jāmiʿ al-Ṣaghīr* (Riyadh: Maktaba Dār al-Salām, 2011), 9:56.

159. ʿUmar ibn ʿAlī ibn Aḥmad al-Anṣārī, *Al-Tawḍīḥ li Sharḥ al-Jāmiʿ al-Ṣaḥīḥ* (Qatar: Ministry of Endowments and Islamic Affairs, 2008), 28:17.

160. Al-Yaḥṣabī, *Ikmāl al-Muʿlim bi Fawāʾid Muslim*, 6:655–656; and Aḥmad Ibn Raslān al-Ramalī, *Sharḥ Sunan Abī Dāwūd li Ibn Raslān*, 16:497.

161. Al-Dehlawī, *Lamaʿāt al-Tanqīḥ fi Sharḥ Mishkāt al-Maṣābīḥ*, 7:412.

162. Sahāranpūrī, *Bathl al-Majhūd fi Ḥall Sunan Abī Dāwūd*, 12:197.

163. Al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān*, 5:252; al-Wansharīsī, *Al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wa al-Undalus wa al-Maghrib*, 11147; and ʿIllīsh, *Sharḥ Minaḥ al-Jalīl ʿalā Mukhtaṣar al-ʿAllāma al-Khalīl*, 3:776–777.

164. Al-Shirbīnī, *Mughnī al-Muḥtāj*, 2:433–434; and al-Ramalī, *Nihāya al-Muḥtāj ʾilā Sharḥ al-Mihāj*, 5:272–273.

165. Abū al-Faḍl Ṣāliḥ, *Masāʾil al-Imām Aḥmad ibn Ḥanbal – Riwāya Ibn Abī Faḍl Ṣāliḥ* (Delhi: Al-Dār al-ʿIlmiyya, 1988), 2:102; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 1:125.

166. Al-Awzjandī al-Farghānī, *Fatāwā Qāḍī Khān*, 3:410–411; and Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 5:360.

167. Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:373; and Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 5:358.

168. Al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 1:314; ʿIllīsh, *Sharḥ Minaḥ al-Jalīl ʿalā Mukhtaṣar al-ʿAllāma al-Khalīl*, 1:48; ʿAbd al-Bāqī al-Zarqānī, *Sharḥ al-Zarqānī ʿalā Sayyidī Mukhtaṣar Khalīl*, 1:103; and al-Nafrāwī, *Al-Fawākih al-Dawānī ʿalā Risāla Ibn Abī Zaid al-Qairawānī*, 9:496.

169. Al-Nawawī, *Sharḥ al-Nawawī ʿalā Ṣaḥīḥ Muslim*, 2:205; and al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:343 and 413.

170. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 1:131; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 1:126.

171. Mental suffering and pain should, arguably, hold the same ruling.

172. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6:420; Aḥmad al-Ṭaḥṭāwī, *Ḥāshiya al-Ṭaḥṭāwī ʿalā al-Durr al-Mukhtār* (Beirut: Dār al-Maʿrifa, 1975), 4:209; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:420.

173. Al-Jamal, *Ḥāshiya al-Jamal ʿalā Sharḥ al-Manhaj*, 5:176; Ibn Ḥajar al-Haitamī, *Tuḥfa al-Muḥtāj bi Sharḥ al-Mihāj*, 9:195–196; al-Shirwānī, *Ḥāshiya al-Shirwānī ʿalā Tuḥfa al-Muḥtāj*, 9:195–196; and Abū Bakr ibn Muḥammad al-Dimyāṭī, *Iʿāna al-Ṭālibīn* (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, n.d.), 4:175.

174. ʿAlī al-Farghānī al-Marghīnānī, *Al-Hidāya* (Multan: Maktaba Shirka ʿIlmiyya, n.d.), 2:55; Ibn al-Humām, *Fatḥ al-Qadīr*, 6:63; al-Babartī, *Sharḥ al-ʿInāya ʿalā al-Hidāya*, 6:63; Zain al-Dīn, *Al-Baḥr al-Rāʾiq*, 6:81; Muḥammad ʿAlāʾ al-Dīn al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 5:58; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 5:58; Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 3:116; al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 6:67; al-Shīrāzī, *al-Muhadhdhab*, 9:289; and Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 6:359.

175. Muḥāmmad ibn Bahādur al-Zarkashī, *al-Manthūr fī al-Qawāʿid* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 2:243; and al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir*, 576.

176. Al-Zarkashī, *al-Manthūr fī al-Qawāʿid*, 2:302.

177. Al-Ḥamawī, *Ghamz ʿUyūn al-Baṣāʾir*, 1:63.

178. Al-Zarkashī, *al-Manthūr fī al-Qawāʿid*, 2:243.

179. Al-Zarkashī, *al-Manthūr fī al-Qawāʿid*, 2:243.

180. Al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir*, 576–577.

181. Ibn Mufliḥ, *Kitāb al-Furūʿ*, 7:408.

182. Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 6:119.

183. Al-Zarkashī, *al-Manthūr fī al-Qawāʿid*, 2:302.

184. Al-Sarakhsī, *Kitāb al-Mabsūṭ*, 15:108–109; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 5:145; ʿAlī al-Farghānī al-Marghīnānī, *Al-Hidāya* (Multan: Maktaba Shirka ʿIlmiyya, n.d.), 2:55; Ibn al-Humām, *Fatḥ al-Qadīr*, 6:61–62; and al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 4:375–376.

185. Muḥammad ibn Aḥmad ibn Rushd, *Bidāya al-Mujtahid wa Nihāya al-Muqtaṣid* (Beirut: Dār al-Maʿrifa, 1982), 2:128; and al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 6:66.

186. Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:304–305.

187. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 6:2363–64; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 4:277–278.

188. Muḥammad al-Sarakhsī, *Uṣūl al-Sarakhsī* (Beirut: Dār al-Kutub alʿIlmiyya, 1993), 2:289–297.

189. ʿAlī ibn Muḥammad al-Bazdawī, *Kanz al-Wuṣūl ilā Maʿrifa al-Uṣūl* (Karachi: Mīr Muḥammad Kutub Khāna, n.d.), 304–305.

190. ʿAbdullāh ibn Aḥmad al-Nasafī, *Kashf al-Asrār Sharḥ al-Muṣannif ʿalā al-Manār* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 2:390–391.

191. Saʿd al-Dīn al-Taftāzānī, *Al-Talwīḥ* (Karachi: Nūr Muḥammad, n.d.), 729.

192. Al-Mawlā ʿAbd al-Laṭīf, *Sharḥ Manār al-Anwār fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 313.

193. Ibn al-Humām, *Al-Taḥrīr fī Uṣūl al-Fiqh* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1932), 236–238.

194. Qasim ibn Quṭlūbughā, *Khulāṣa al-Afkār Sharḥ Mukhtaṣar al-Manār* (Beirut: Dār Ibn Ḥazm, 2003), 167–168.

195. Zain al-Dīn, *Fatḥ al-Ghaffār bi Sharḥ al-Manār* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1936), 3:66.

196. Aḥmad ibn Abī Saʿīd, *Sharḥ Nūr al-Anwār* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 2:390.

197. Al-Bukhārī, *Kashf al-Asrār Sharḥ Uṣūl al-Bazdawī*, 4:230; and Ibn Abī Saʿīd, *Sharḥ Nūr al-Anwār*, 2:390–391.

198. Ibn Abī Saʿīd, *Sharḥ Nūr al-Anwār*, 2:390.

Al-Bukhārī, *Kashf al-Asrār Sharḥ Uṣūl al-Bazdawī*, 4:230–231; and Ibn Abī Saʿīd, *Sharḥ Nūr al-Anwār*, 2:390.

199. Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2:297.

200. Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2:297; and Ibn Quṭlūbughā, *Khulāṣa al-Afkār Sharḥ Mukhtaṣar al-Manār*, 167.

201. Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2:297.

202. Al-Qarāfī, *Anwār al-Burūq fī Anwāʾ al-Furūq*, 1:256–257.

203. Muḥammad ʿAlī ibn Ḥussain, *Tahdhīb al-Furūq* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 1:256–257.

204. Aḥmad al-Ramalī, *Ḥāshiya al-Ramalī ʿalā Asnā al-Maṭālib Sharḥ Rawḍ al-Ṭālib* (Cairo: Al-Maṭbaʿā al-Maimana, 1896), 3:375.

205. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 12:386.

206. Ibn Rushd, *Bidāya al-Mujtahid wa Nihāya al-Muqtaṣid*, 2:442–443.

207. Taqī al-Dīn Abū Bakr ibn Muḥammad al-Ḥiṣnī, *Kitāb al-Qawāʿid* (Riyadh: Maktaba al-Rushd, 1997), 3:391–394.

208. Ibn ʿAbd al-Salām al-Sulamī, *Qawāʿid al-Aḥkām fī Maṣāliḥ al-Anām*, 1:130; and al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿā*, 2:376–377.

209. I had wrestled with the decision to include this discussion in this chapter, as, although I recognize it to be a legitimate concern for particularly countries within the developing world, it is not as relevant to the UK context and, as such, was not a concern for me. However, I have opted to include a brief discussion after a suggestion from a peer reviewer.

210. Muḥammad Shafīʾ, *Aʿḍaʾ Insānī kī Paywandkārī*, in *Jawāhir al-Fiqh* (Karachi: Maktaba Dārul ʿUlūm Karachi, n.d.), 7:56–59.

211. Sayyid Abū al-Aʿlā Maudūdī, *Rasāʾil wa Masāʾil* (Lahore: Islamic Publications, 1967), 3:294.

212. Al-Qarāfī, *Anwār al-Burūq fī Anwāʾ al-Furūq*, 1:60.

213. Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām* (Dār Ibn ʿAffān edn), 5:185.

214. Muḥāmmad ibn Bahādur al-Zarkashī, *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 4:382.

215. Muḥāmmad Abū Zahra, *Uṣūl al-Fiqh* (Beirut: Dār al-Fikr al-ʿArabī, 1958), 293.

216. Al-Zarkashī, *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 4:382.

217. Al-Qarāfī, *Al-Dhakhīra*, 1:152; Al-Qarāfī, *Anwār al-Burūq fī Anwāʾ al-Furūq*, 1:59–60; Ibn Ḥussain, *Tahdhīb al-Furūq*, 1:59–60; and al-Zarkashī, *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 4:382–383.

218. Abū Zahra, *Uṣūl al-Fiqh*, 290.

219. Abū Zahra, *Uṣūl al-Fiqh*, 290.

220. Abū Zahra, *Uṣūl al-Fiqh*, 290–291.

221. Abū Zahra, *Uṣūl al-Fiqh*, 291.

222. Abū Zahra, *Uṣūl al-Fiqh*, 291–292.

223. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6:391; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:391; and al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 7:64.

224. Muḥammad ibn ʿAlāʾ al-Dīn al-Dimashqī, *Sharḥ al-ʿAqīda al-Ṭaḥāwiyya* (Beirut: Al-Maktab al-Islāmī, 1988), 395; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 5:96; Al-ʿAsqalānī, *Fatḥ al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī*, 14:681; and Muḥammad ibn Abī Bakr ibn Ayyūb ibn Qayyim al-Jawziyya, *Kitāb al-Rūḥ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1999), 84.

225. "Say, '[One day,] the angel of death, who has been given charge of you, will cause you to die, and then to your Lord Sustainer you will be returned'" (Q.32:11).

"Those whom the angels cause to die whilst they are in a state of purity, saying, 'Peace be upon you! Enter the Garden on account of what you used to do'" (Q.16:32).

"Verily, those whom the angels cause to die whilst they wrong themselves, they say, 'In what [state] were you?'" (Q.4:97).

"If you could see when the angels were causing to die those who disbelieved. They were smiting their faces and their backs. 'And taste the torment of the burning'" (Q.8:50).

226. Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, 30:499–503.

227. Al-Hussain ibn Masʿūd al-Baghawī, *Maʿālim al-Tanzil* (Riyadh: Dār Ṭaiba, 1989), 5:126; Fakhr al-Dīn al-Rāzī, *Mafātīh al-Ghaib*, 21:392–393; al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān*, 10:210; and al-Alūsī, *Rūḥ al-Maʿānī fī Tafsīr al-Qurʾān al-ʿAẓīm wa al-Sabʿ al-Mathānī*, 9:219.

228. Ibn Masʿūd al-Baghawī, *Maʿālim al-Tanzil*, 5:126; Fakhr al-Dīn al-Rāzī, *Mafātīh al-Ghaib*, 21:392; al-Qurṭubī, *Al-Jāmiʿ li Aḥkām al-Qurʾān*, 10:210; Ibn Kathīr al-Dimashqī, *Tafsīr al-Qurʾān al-ʿAẓīm*, 3:86; and al-Alūsī, *Rūḥ al-Maʿānī fī Tafsīr al-Qurʾān al-ʿAẓīm wa al-Sabʿ al-Mathānī*, 9:221.

229. Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn*, 1:68.

230. Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn*, 4:525.

231. Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ li Muslim*, 1:300–301; and Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, 28:360.

232. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 2:189; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 2:189; al-Zaylaʿī, *Tabyīn al-Ḥaqāʾiq*, 1:560; Zain al-Dīn, *Al-Baḥr al-Rāʾiq*, 2:170; Aḥmad al-Ṭaḥṭāwī, *Ḥāshiya al-Ṭaḥṭāwī ʿalā Marāqī al-Falāḥ* (Karachi: Nūr Muḥāmmad, n.d.), 458–459; and Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 1:157.

233. Al-Kharashī, *Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 2:122; al-Dusūqī, *Ḥāshiya al-Dusūqī ʿalā al-Sharḥ al-Kabīr* (Dār Iḥyāʾ al-Kutub al-ʿArabiyya, edn), 1:414; Aḥmad ibn Muḥāmmad al-Ṣāwī, *Ḥāshiyā al-Ṣāwī ʿalā al-Sharḥ al-Ṣaghīr* (Cairo: Dār al-Maʿārif, n.d.), 1:256; and al-Nafrāwī, *Al-Fawākih al-Dawānī ʿalā Risāla Ibn Abī Zaid al-Qairawānī*, 1:435.

234. Ibn Idrīs al-Shāfiʿī, *Al-Umm*, 2:645; al-Nawawī, *Rawḍa al-Ṭālibīn*, 1:612; and al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 5:110.

235. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 3:367; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 2:467–468.

236. Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 2:193; and Ālamghīr et al., *Al-Fatāwā al-ʿĀlamghīriyya*, 1:157.

237. Al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl*, 3:26; al-Kharashī, *Sharḥ Mukhtaṣar al-Khalīl li al-Kharashī*, 2:123; and ʿIllīsh, *Sharḥ Minaḥ al-Jalīl ʿalā Mukhtaṣar al-ʿAllāma al-Khalīl*, 1:295–296.

238. Ibn Idrīs al-Shāfiʿī, *Al-Umm*, 2:645; al-Nawawī, *Rawḍa al-Ṭālibīn*, 1:612; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, 5:110; Muḥyī al-Dīn al-Nawawī, *Mihāj al-Ṭālibīn*, (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1956), 1:322; and Aḥmad ibn Aḥmad al-Qalyūbī, *Ḥāshiya Qalyūbī ʿalā Minhāj al-Ṭālibīn* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1956), 1:322.

239. Ibn Qudāma al-Maqdisī, *Al-Mughnī*, 3:367; and Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 1:560.

240. Al-Ḥamawī, *Ghamz ʿUyūn al-Baṣāʾir*, 1:63; Haider, *Durar al-Ḥukkām Sharḥ Majalla al-Aḥkām*, 1:22; and al-Zarqā, *Sharḥ al-Qawāʿid al-Fiqhiyya*, 1:79–80.

241. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1988), 1:509.

242. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1988), 1:509.

243. ʿUmar Sulaimān al-Ashqar, *Dirāsāt Fiqhiyya, fī Qaḍāyā Ṭibbiyyah Muʿaṣara, Badʾ al-Ḥayāt wa Nihāyatuhā* (Amman: Dār al-Nafāʾis, 2001), 1:105.

244. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:657.

245. Aḥmad Sharaf al-Dīn, *Al-Aḥkām al-Sharʿiyya li al-Aʿmāl al-Ṭibbiyya*, 2nd ed. (n.p.: no. pub., 1987), 174–177.

246. Qarārāt Majmaʿ al-Fiqh al-Islāmī bi Makkah al-Mukarrama (Mecca: Muslim World League, n.d.), 215.

247. Bakr ibn ʿAbdullāh Abū Zaid, *Fiqh al-Nawāzil* (Beirut: Muʾassasa al-Risāla, 1996), 1:233–234.

248. Muḥammad Saʿīd Ramaḍān al-Būṭī, *Qaḍāyā Fiqhiyya Muʿāṣara* (Damascus: Maktaba al-Fārābī, 1991), 1:127.

249. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:682.

250. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:687.

251. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:718.

252. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:720.

253. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:786.

254. Muḥammad ibn Muḥammad al-Mukhtār al-Shinqīṭī, *Aḥkām al-Jarāḥa al-Ṭibbiyya* (UAE: Maktaba al-Ṣaḥāba, 2004), 235.

255. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:732.

256. *Qatl ba Jadhbah Raḥm awr Dimāghī Mawt* (Karachi: Dār al-Ishāʿat, 2008), 349.

257. *Juristic Decisions on Some Contemporary Issues* (New Delhi: IFA Publications, 2007), 268.

258. "Do you think that the People of the Cave and al-raqīm [dog/inscribed tablet/mountain] were a wonder from among Our signs? When the youths took refuge in the cave, and said, 'Our Lord! Grant us mercy from Yourself and guide us rightly through our ordeal.' So We sealed up their hearing in the Cave for a number of years. Then We raised them so We may know which of the two groups would make a better estimation of the length of their stay" (Q.18:9–12).

259. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir*, 1:183; and al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir*, 71.

260. Zain al-Dīn, *Al-Ashbāh wa al-Naẓāʾir*, 1:187; and al-Suyūṭī, *Al-Ashbāh wa al-Naẓāʾir*, 72.

261. ʿAlī ibn ʿUmar, *Muqaddima fī Uṣūl al-Fiqh* (Riyadh: Dār al-Maʿlama li al-Nashr wa al-Tawzīʿ, 1999), 315; and Sulaimān ibn Khalaf al-Bājī, *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl*, (Beirut: Muʾassasa al-Risāla, 1989), 613.

262. ʿAbd al-Malik al-Juwainī, *Al-Burhān fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 171; and Muḥammad ibn ʿUmar al-Rāzī, *Al-Maḥṣūl fī ʿIlm al-Uṣūl* (Beirut: Muʾassasa al-Risāla, n.d.), 6:109.

263. Muḥammad ibn Aḥmad, *Mukhtaṣr al-Taḥrīr fī Uṣūl al-Fiqh* (Riyadh: Dar al-Arqam, 2000), 235; and Muḥammad ibn Aḥmad, *Sharḥ al-Kawkab al-Munīr* (Riyadh: Ministry of Islamic Affairs, Endowments, Dawah and Guidance, 1993), 4:403.

264. Controversies about the diagnosis and meaning of brain death have existed as long as the concept itself. Robert D. Truog and Franklin G. Miller, 'Brain Death:

Justifications and Critiques', *Clinical Ethics* 7, no. 3 (2012): 128–132, https://doi.org/10.1258/ce.2012.012m09.

265. Pallis and Harley, *ABC of Brainstem Death*, 2.

266. Robert Marlin Veach, *Transplantation Ethics* (Washington, DC: Georgetown University Press, 2000), 46.

267. Veach, *Transplantation Ethics*, 45.

268. Yousef Boobes and Nada Al Daker, 'What it Means to Die in Islam and Modern Medicine', *Saudi Journal of Kidney Diseases and Transplantation*, 7, no. 2 (1996): 121–127, https://www.sjkdt.org/text.asp?1996/7/2/121/39511.

269. Boobes and Al Daker, 'What it Means to Die in Islam and Modern Medicine'.

270. Harvard criteria (1968): unreceptive and unresponsive, no movements (observe for 1 hour), apnea (3 minutes off respirator), absence of elicitable reflexes, and isoelectric electroencephalogram "of great confirmatory value" (at 5 μv/mm). All of the above test should be repeated at least 24 hours later and there should be no change. Pallis and Harley, *ABC of Brainstem Death*, 9.

271. Minnesota criteria (1971): known and irreparable intracranial lesion, no spontaneous movement, apnea (4 minutes), absent brainstem reflexes, and all findings unchanged for at least 12 hours. Electroencephalography *not* mandatory. Pallis and Harley, *ABC of Brainstem Death*, 9.

272. Boobes and Al Daker, 'What it Means to Die in Islam and Modern Medicine'.

273. Alan Shewmon, 'The Brain and Somatic Integration: Insights Into the Standard Biological Rationale for Equating "Brain Death" With Death', *Journal of Medicine and Philosophy*, 26, no. 5 (2001): 457–478.

274. Seema K. Shah and Franklin G. Miller, 'Can We Handle the Truth? Legal Fictions in the Determination of Death', *American Journal of Law & Medicine* 36, no. 4 (2010): 540–585, https://doi.org/10.1177/009885881003600402.

275. Robert D. Truog and James C. Fackler, 'Rethinking Brain Death'. *Critical Care Medicine* 20, no. 12 (1992): 1705–13, https://doi.org/10.1097/00003246-199212000-00018; and Truog and Miller, 'Brain Death'.

276. 'Controversies in the Determination of Death: A White Paper by the President's Council on Bioethics', Washington, DC, December 2008, 57, http://hdl.handle.net/10822/559343.

277. Pallis and Harley, *ABC of Brainstem Death*, 3.

278. Pallis and Harley, *ABC of Brainstem Death*, 5.

279. The current position in law is that there is no statutory definition of death in the United Kingdom. Subsequent to the proposal of the "brain death criteria" by the Conference of Medical Royal Colleges in 1976, the courts in England and Northern Ireland have adopted these criteria as part of the law for the diagnosis of death. Academy of Medical Royal Colleges, 'A Code of Practice for the Diagnosis and Confirmation of Death', 2008, 11, https://aomrc.org.uk/wp-content/uploads/2016/04/Code_Practice_Confirmation_Diagnosis_Death_1008-4.pdf.

280. Truog and Miller, 'Brain Death'.

281. Truog and Miller, 'Brain Death'.

282. Truog and Miller, 'Brain Death'; and Christopher A. Pallis, 'On the Brainstem Criteria of Death', in *The Definition of Death: Contemporary Controversies*,

ed. Stuart J. Youngner, Robert M. Arnold and Renie Shapiro (Baltimore, MD: Johns Hopkins University Press, 1999), 96.

283. Truog and Miller, 'Brain Death'.

284. Truog and Miller, 'Brain Death'.

285. M. Potts and D.W. Evans, 'Does it Matter That Organ Donors are Not Dead? Ethical and Policy Implications', *Journal of Medical Ethics* 31, no. 7 (2005): 406–409, https://doi.org/10.1136/jme.2004.010298.

286. Veach, *Transplantation Ethics*, 45.

287. Pallis and Harley, *ABC of Brainstem Death*, 2.

288. Pope Pius XII, Address to an International Congress of Anaesthesiologists, 24 November 1957.

289. Academy of Medical Royal Colleges, 'A Code of Practice for the Diagnosis and Confirmation of Death', 12.

290. Franklin G. Miller and Robert D. Truog, *Death, Dying, and Organ Transplantation: Reconstructing Medical Ethics at End of Life* (Oxford: Oxford University Press, 2012), 102.

291. James L. Bernat et al., 'The Circulatory-Respiratory Determination of Death in Organ Donation', *Critical Care Medicine* 38, no. 3 (2010): 972–979, https://doi.org/10.1097/CCM.0b013e3181c58916.

292. Miller and Truog, *Death, Dying, and Organ Transplantation*, 106–107.

293. Miller and Truog, *Death, Dying, and Organ Transplantation*, 106–107.

294. Miller and Truog, *Death, Dying, and Organ Transplantation*, 114.

295. Ari R. Joffe et al., 'Donation After Cardiocirculatory Death: A Call for a Moratorium Pending Full Public Disclosure and Dully Informed Consent', *Philosophy, Ethics and Humanities in Medicine* 6 (2011): 1–20, https://doi.org/10.1186/1747-5341-6-17.

296. Andrew McGee and Dale Gardiner, 'Permanence Can Be Defended', *Bioethics* 31, no. 3 (2017): 220–230, https://doi.org/10.1111/bioe.12317.

297. McGee and Gardiner, 'Permanence Can Be Defended'.

298. McGee and Gardiner, 'Permanence Can Be Defended'.

299. Academy of Medical Royal Colleges, 'A Code of Practice for the Diagnosis and Confirmation of Death', 14–16.

300. Dale Gardiner and Alex Manara, 'Form for the Diagnosis of Death Using Neurological Criteria {Abbreviated Guidance Version}', September 2015, https://www.ccs-sth.org/resources/Documents/Documentation/Diagnosis%20of%20Death%20using%20Neurological%20Criteria%202015.pdf.

301. Academy of Medical Royal Colleges, 'A Code of Practice for the Diagnosis and Confirmation of Death', 18.

302. Academy of Medical Royal Colleges, 'A Code of Practice for the Diagnosis and Confirmation of Death', 19.

303. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:809.

304. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1988), 1:89.

305. *Qarārāt al-Majmaʿ al-Fiqhī al-Islāmī bi Makka al-Mukarrama*, 2nd Resolution regarding the subject of establishing the incidence of death and the removal of life sport apparatus from the human body, Rābiṭa al-ʿĀlam al-Islāmī, Mecca, 215.

306. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:732.

307. *Qatl ba Jadhbah Raḥm awr Dimāghī Mawt* (Karachi: Dār al-Ishāʿat, 2008), 349.

308. Bakr ibn ʿAbdullāh Abū Zaid, *Fiqh al-Nawāzil*, 1:233–234.

309. Al-Būṭī, *Qaḍāyā Fiqhiyya Muʿāṣara*, 1:127.

310. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:682.

311. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:687.

312. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:718.

313. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:720.

314. *Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwalī* (1986), 2:786.

315. Al-Shinqīṭī, *Aḥkām al-Jarāḥa al-Ṭibbiyya*, 235.

316. Caroline Robinson, 'POLICY POL200/4.1: Introduction to Patient Selection and Organ Allocation Policies', Appendix 1, 18, https://nhsbtdbe.blob.core.windows.net/umbraco-assets-corp/12777/introduction-to-selection-and-allocation-policies-pol200.pdf.

317. All patients with similar clinical characteristics on the National Transplant Waiting list shall have equal probability of receiving a graft from a deceased donor. Robinson, 'POLICY POL200/4.1', 3.

318. Allocation of an organ to the individual with the greatest number of life-years following the transplant. Robinson, 'POLICY POL200/4.1'.

319. Allocation of an organ to the individual who is clinically assessed as having the greatest increase in life-years gained (comparing survival with and without transplantation). Robinson, 'POLICY POL200/4.1'.

320. There is a valid discussion to be had as to whether Islam favors a personal autonomy model of distributary justice, an obligation model, or a combination of both. However, I feel that this discussion is beyond the scope of this chapter.

321. Al-Ḥaṣkafī, *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 6:649; Amīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 6:649; al-Ṭūrī, *Takmila al-Baḥr al-Rāʾiq*, 8:403; al-Babartī, *Sharḥ al-ʿInāya ʿalā al-Hidāya*, 9:342; and Aḥmad ibn Qawdar, *Natāʾij al-Afkār fi Kashf al-Rumūz wa al-Asrār* (Quetta: Maktaba Rashīdiyya, n.d.), 9:341.

322. ʿAbdullāh ibn Najm ibn Shās, *ʿIqd al-Jawāhir al-Thamīna fī Mathhab ʿAlim al-Madīna* (Beirut: Dār al-Gharb al-Islāmī, 1995), 3:403; al-Qarāfī, *Al-Dhakhīra*, 7:29; ʿAlī ibn Khalaf, *Kifāya al-Ṭālib al-Rabbānī* (Cairo: Maṭbaʿa al-Madani, 1989), 3:456–457; and Zarrūq, *Shārḥ Zarrūq ʿala Matn al-Risāla*, 2:171–172.

323. Al-Nawawī, *Rawḍa al-Ṭālibīn*, 5:111; al-Shirbīnī, *Mughnī al-Muḥtāj*, 3:159; al-Ramalī, *Nihāya al-Muḥtāj ʾilā Sharḥ al-Mihāj*, 6:50; Ibn Ḥajar al-Haitamī, *Tuḥfa al-Muḥtāj bi Sharḥ al-Mihāj*, 7:17; al-Bujairamī, *Tuḥfa al-Ḥabīb ʿalā Sharḥ al-Khaṭīb*, 4:50; and Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 3:558.

324. Ibn Mufliḥ, *Kitāb al-Furūʿ*, 7:464; Ibn Qudāma al-Maqdisī, *Al-Kāfī fi Fiqh al-Imām Aḥmad*, 4:17; Ibn Yūnus al-Bahūṭī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 3:558; and al-Mardāwī, *Al-Inṣāf fī Maʿrifa al-Rājiḥ min al-Khilāf*, 7:252.

325. Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2:297.

326. Al-Nawawī, *Rawḍa al-Ṭālibīn*, 5:111; al-Shirbīnī, *Mughnī al-Muḥtāj*, 3:159; al-Ramalī, *Nihāya al-Muḥtāj ʾilā Sharḥ al-Mihāj*, 6:50; Ibn Ḥajar al-Haitamī, *Tuḥfa*

al-Muḥtāj bi Sharḥ al-Mihāj, 7:17; and al-Bujairamī, *Tuḥfa al-Ḥabīb ʿalā Sharḥ al-Khaṭīb*, 4:50.

327. Muḥammad ʿAbduh et al., *Al-Fatāwā al-Islāmiyya min Dār al-Iftāʿ al-Miṣriyya* (Cairo: Ministry of Endowments, 1980), 10:3802.

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