

Mohamed Y. Rady, "Letter: Can Islamic Jurisprudence Justify Procurement of Transplantable Vital Organs in Brain Death?" *The Journal of Clinical Ethics* 29, no. 2 (Summer 2018): 162-3.

Letter

Can Islamic Jurisprudence Justify Procurement of Transplantable Vital Organs in Brain Death?

To the Editor:

Aramesh, Arima, Gardiner, and Shah reported on diverse international legislative approaches for justifying procurement of transplantable vital organs in brain death. They stated, "In Islamic traditions in particular, the notion of unstable life is a way to justify organ donation from brain-dead patients that we believe has not been fully described previously in the literature."¹ This commentary queries the extent to which this concept is valid in accordance with the primary source of Islamic law, that is, the Quran.

Firstly, contrary to the claim of Aramesh and colleagues, the Quran has established the biological criteria of death 14 centuries ago.² The required tests for death determination in the Islamic tradition should fulfill these criteria (see table 1). The experts or physicians are required to apply a medical standard that establishes the fulfillment of the death criteria with absolute certainty (*yaqin*). A case in point, Aramesh and colleagues pointed out that the Islamic Organization of Medical Sciences, consisting of medical scientists and scholars, concluded that the medical standard based on brainstem criteria equated with unstable life and not legal death within the Islamic law.³

Secondly, the secondary sources of Islamic law such as *ijma* (consensus of Islamic scholars), *aghl* (reason) in Shiite, or *qiyas* (analogical deductions) in Sunni are not intended to override or clash with the two primary sources (that is, the Quran and the Sunnah). The majority of practicing Muslims would consider *fatwas* (legal opinions) or governmental legislations invalid if these *fatwas* are likely to clash with the Quran and the Sunnah.⁴ Therefore, it is arguable that legislations permitting the procurement of transplantable vital organs based on death determination with neurological instead of biological criteria should not be enforceable in Muslim communities.⁵ Aramesh and colleagues did not mention that the Islamic Fiqh Council of Islamic World League (in Makkah, Saudi Arabia) issued a resolution in

1987 stating that "a person is not declared legally dead unless heart and breathing fully stop working."⁶ This resolution voided the earlier resolution of the Third International Conference of Islamic Jurists (in Amman/Jordan) that equated brain death with legal death in Islam.⁷ Therefore, it is surprising that Islamic organizations in the United States and United Kingdom issued contradicting *fatwas* that equated brain death with human death after the 1987 resolution.⁸ These *fatwas* clashed with the requirement of death determination by biological criteria in accordance with the primary Islamic sources.

Thirdly, conflating the dying with the truly dead is not permissible in the Quran.⁹ Aramesh and colleagues postulated that brain death, from a Shiite perspective, can be considered an unstable intermediate state between life and death.¹⁰ They elaborated on the justification of procurement of vital organs in brain death by drawing the analogy with stable and unstable states of life described in hunted or decapitated animals. Islamic jurists advanced this

TABLE 1. Description of the phenomenon of death in the Quran

The characteristics of the phenomenon of death

- God created the phenomenon of death
- The phenomenon of death is universal and singular
- The definition of death is uniform and constant across generations and geography
- The determination of death requires absolute certainty (*yaqin*)
- The process of dying must be distinguished from the state of death

The criteria in the determination of death

- The soul (*ruh*) has separated irreversibly from the body
- The *ruh* is present in the body as long as the brain and the heart retain capacity for recovery of function
- The *ruh* has departed when ceased vital functions can no longer be reversed regardless of any external intervention (absolute irreversibility)
- The biological criterion (disintegration) confirms death

Adapted from M. Y. Rady and J. L. Verheijde, "Legislative Enforcement of Nonconsensual Determination of Neurological (Brain) Death in Muslim Patients: A Violation of Religious Rights," *Journal of Religion and Health* 57, no. 2 (2018): 650.

two-state of life as an argument for justifying the permissibility of consuming these animals legally without violating the Quranic rules. This proposal would permit the consumption of hunted or decapitated animals, if a human life is threatened by harm or death from starvation. Extrapolating the analogy of unstable states of life in animals to legitimize the procurement of transplantable vital organs from brain-dead patients is problematic. The argument for stable and unstable states of life is restricted to animals in the Quran. Elsewhere, the equivalence of brain death to physiological decapitation has been refuted.¹¹ Therefore, brain-dead patients are not equivalent to decapitated animals. Assigning an unstable state of life to brain-dead patients would also imply that they are not truly dead. Indeed, some brain-dead patients may be considered in a stable state of life based on the proposed criteria of an unstable state of life: (1) imminent cessation of cardiac and respiratory functions, and/or (2) irreversible cessation of capacity for consciousness.¹² Brain-dead patients continue to retain autonomous capacity for integration of biological functions and homeostasis and are unlikely to sustain imminent cessation of spontaneous cardiac activity.¹³ There are no scientifically validated and reliable tests that can directly ascertain the irreversible absence of capacity for consciousness in these patients.¹⁴ If brain-dead patients are not truly dead, then the procurement of vital organs would be the proximate causation of death. In these circumstances, applying the principle of public good (*maslaha*) to justify the procurement of transplantable vital organs from these patients would clash with the Quranic absolute prohibition of assisted suicide and euthanasia.¹⁵ The Quran prioritizes the prevention of harm over the promotion of good.

In conclusion, the equation of brain death with legal death or an unstable state of life for the procurement of vital organs would still clash with the Quran and Islamic law.

Mohamed Y. Rady, BChir, MB (Cantab), MA,
MD (Cantab), FRCS, FRCP (UK), FCCM
Mayo Clinic College of Medicine and Science,
Department of Critical Care Medicine, Mayo Clinic
Hospital, Phoenix, Arizona
rady.mohamed@mayo.edu

NOTES

1. K. Aramesh, H. Arima, D. Gardiner, and S.K. Shah, "An International Legal Review of the Relationship between Brain Death and Organ Transplantation," *The Journal of Clinical Ethics* 29, no. 1 (Spring 2018): 31-42.

2. M.Y. Rady and J.L. Verheijde, "Legislative Enforcement of Nonconsensual Determination of Neurological (Brain) Death in Muslim Patients: A Violation of Religious Rights," *Journal of Religion and Health* 57, no. 2 (2018): 649-61.

3. Aramesh, Arima, Gardiner, and Shah, "An International Legal Review," see note 1 above, p. 36.

4. M.Y. Rady and J.L. Verheijde. "A response to the legitimacy of brain death in Islam," *Journal of Religion and Health* 55, no. 4 (2016): 1198-2205.

5. Rady and Verheijde, "Legislative Enforcement," see note 2 above, p. 656.

6. Islamic Fiqh Council of Muslim World League, "Resolutions of the Islamic Fiqh Council during Its Tenth Session Held between 24-28 Safar 1408H (17-21 October 1987): The Second Resolution on Death Report and Removal of Life-Support Instruments from Human Body," 1987, <http://en.themwl.org/content/resolutions-islamic-fiqh-council-1st-18th-sessions-book-12>, p. 269.

7. Aramesh, Arima, Gardiner, and Shah, "An International Legal Review," see note 1 above, p. 36.

8. Ibid.

9. Rady and Verheijde, "Legislative Enforcement," see note 2 above, p. 651.

10. Aramesh, Arima, Gardiner, and Shah, "An International Legal Review," see note 1 above, p. 36.

11. D.A. Shewmon, "Mental disconnect: 'Physiological decapitation' as a heuristic for understanding 'brain death,'" in *The Signs of Life*, ed. M.S. Sorondo (Vatican City: Pontifical Academy of Sciences, 2007), 292-333.

12. Aramesh, Arima, Gardiner, and Shah, "An International Legal Review," see note 1 above, p. 36.

13. M.Y. Rady and J.L. Verheijde, "Brain-dead patients are not cadavers: The need to revise the definition of death in Muslim communities," *HEC Forum* 25, no. 1 (2013): 25-45.

14. Rady and Verheijde, "Legislative Enforcement," see note 2 above, p. 656.

15. M.Y. Rady and J.L. Verheijde, "The moral code in Islam and organ donation in Western countries: Reinterpreting religious scriptures to meet utilitarian medical objectives," *Philosophy, Ethics, and Humanities in Medicine* 9, no. 1 (2014): 11.