

# Between Life and Death? Islamic Biomedical Perspective on the Question of Brain Death

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## I . Introduction

The conception of brain death presents a real challenge to clinicians and medical experts when required to take into account cultural and religious dimensions. Islamic scholars have been tackling the sensitive issue of brain death in the last few decades from the ethic-legal opinions. The issue at stake is whether brain death is accepted as true death according to Islamic law. Both the medical experts and Islamic scholars have been exerting efforts in using the tools of jurisprudence in order to formulate an ethic-legal opinion on brain death. The Organization of Islamic Conferences' Islamic Fiqh Academy (OIC-IFA), considers brain death similar to cardiopulmonary death. In the meanwhile, the Islamic Organization of Medical Science (IOMS), takes brain death as an intermediate state between life and death. The assessment is not entirely uniform. So far, the issue has not received enough attention or inefficiently dealt within the medical and *fiqh* literature. Thus, this study proposes to find out how Islamic perspective understand brain death as a clinical phenomenon? Or, how Islamic ethics treat such medical uncertainty? In other words, what are the Islamic ethics that should apply to the field of biomedical issues about life and death. Such questions are vital as certain ethical principles become ever more important for clinicians when treating patients with a different religious belief, thus, influencing the course of medical care and practice as well as the interface with local laws governing the determination of death.

The definition of death itself proves to be as complex as life itself according to varying cultural perspectives. Death is a mysterious moment of all human transitions. Individuals and communities view death in different ways whether looking at spiritually, ethically, legally, medically, etc. One can imagine the kind of challenge facing medical doctors or clinicians on closing the gap between

medicine and related ethical, cultural, religious and legal aspects. And in the case of “brain death,” it poses even greater challenge to all stakeholders, be it patients, clinicians, family members, because of its seriousness and emotional potential. In non-Muslim societies, death is governed by state law. In global society, the interface of secular laws and definitions have been witnessing more attention and scrutiny as to adapt to the needs of religious and cultural sensitivities of people with different religions and cultures. What is being witnessed, though, is an evolutionary process of the means of determining brain death and how such concepts and notions are being interacted and debated within Islamic societies and communities. In other words, how Islamic jurists and medical professional try to answer the ethical question on brain death from an Islamic perspective. This paper is going to show that two scholarly schools of thoughts have shaped the debate within the Islamic biomedical ethics discourse to treat complex questions of brain death. Contemporary Muslim scholars have devised a renewed methodology within Islamic jurisprudence, known as *ilm al-maqasid* (the higher objectives of Islamic sharia) which aims at renewing Islamic law and rulings. This methodology examines the entire field of biomedical ethics, including brain death, from a holistic approach. Utilized as a check list, the methodology of higher objectives requires the collaboration between Muslim scholars and biomedical professional so that scholars become well informed of the necessary medical and scientific knowledge of brain death. Such collaboration is deemed highly crucial for contemporary scholars in order to come up with the appropriate ethical rulings and scholarly opinions from and Islamic perspective.

In investigating the interface between brain death and related Islamic ethical principles, we can show further understanding of Islamic ethical perspective in dealing with commonly shared issues like wellbeing and health, caring of old-aged people, dementia, smoking, etc.

## II . The Concept of Islamic Biomedical Ethics

In order to facilitate an understanding of the issue of brain death, ethically and legally, it is crucial to illustrate the debate around the definition of “biomedical ethics.” Later, we shall investigate the definition of death, brain death as a necessary prelude to the discussion of the issue of brain death

according to Islamic ethical understanding or more specifically the perspective of Islamic biomedical ethics.

There are various contested definitions which are related to the field of ethics in medicine and bioresearch.<sup>1</sup> At the present time, scholars often use the terms “medical ethics,” “bioethics,” and “biomedical ethics.”<sup>2</sup> The debate among scholars continues in attempting to provide a more agreeable definition of the phenomenon. What specific term is most widely used? What does each one of the three terms inform us? And finally, what do Muslim scholars prefer to use?<sup>3</sup>

Perhaps one of the mostly common known definition is “medical ethics” which is more of a traditional field describing the relationship between a physician and patient.<sup>4</sup> As the focus is limited to a physician-patient relationship, the term “medical field” does not imply the larger realm of medical sciences and bio research such as stem cells and technology. At the present time, medical and related scientific research and technical breakthroughs points towards a larger horizon beyond the strictly traditional physician-patient relationship. Thus, the term “medical ethics” remains limited in the face of immense advancement and progress in the medical sciences and technologies. It becomes necessary to seek other definitions to describe the phenomenon in question.

Another term known as “bioethics” is used widely.<sup>5</sup> Bioethics consists of the two words; “bio” and “ethics.” The origin of the word “bio” is Greek, meaning “living things.”<sup>6</sup> The definition implies a vast meaning that there are possibilities of including various types of living things such as animals, food, agricultural products. In addition, the term can be perceived to cover public health and healthcare ethics. The wide and vast implication of the term “bioethics” pauses a challenge to ethicists as to where does it end? Shall the term “bioethics” include animals for example? It appears that the term “bioethics” does not do much justice in its description as a definition. It is too broad with no limit or end.<sup>7</sup> This necessitates a more suitable definition of the phenomena of medicine and bio research on one hand and related ethics on the other.

It is of a high priority to come up with a definition that does answer to the modern rise of medicine and related science and technology.<sup>8</sup> The term “biomedical ethics” appears to answer the need for a more precise definition which does not restricts itself to the traditional medical field but also covers issues such as genetics, reproductive health, cell research, research ethics and

experimenting with human beings. This definition pertains a broader term than “medical ethics” as it includes the practice of medicine related to human beings but also deals with related medical science and technological advances. Biomedical ethics as a definition seems to be the most appropriate when connecting ethics with the “biomedical field.” For Muslim scholars, especially, in the Arab world, have tried to come up with the most suitable equivalent translation in Arabic language. The understanding of Arabic language is important to all Muslims because the Quran (the Holy book of Islam) is in Arabic. Muslims do differ linguistically and racially, but every Muslim must learn some Arabic in order to perform the daily prayer as an example. For any Muslim scholar, anywhere, particularly the field of *fiqh* (jurisprudence), knowledge of Arabic is essential as *usul al fiqh* (the fundamentals of jurisprudence) requires a good command of Arabic when referring to the verses of the Quran and Hadith (the holy book and the prophetic traditions) which are considered the two basic sources of Islamic legislation and ethics.

A discussion has ensued on what would be an appropriate translation of the term “biomedical ethics” in Arabic. Certainly, the majority of Muslims worldwide are not Arabic speaking, but Arabic language is the language of the Quran (the holy book of Islam) and Sunna (the prophetic sayings and actions). Muslim scholars and jurists rely mainly on Arabic sources in order to produce rulings and scholarly opinions (fatwas). The effort to bring an Arabic translation would be helpful in general to facilitate a better understanding of the biomedical ethics from an Islamic perspective. The Arabic equivalent for the Greek word “bio” is *haya*.<sup>9</sup> From the word “*haya*,” more suitable vocabularies are derived in order to produce exact words for the definition in Arabic. Two words are derived, *ahyayah*, and *hawiyah* for the word bio.<sup>10</sup> A prominent Muslim scholar named Raysouni pointed out the word *hawiyah* seems to provide a wider meaning than the specific medical field. The word *hawiyah* implies both the medical and bio research for example. It implies the meaning of “lively” or “active.” As for “medical,” it is “*tibbiyah*” in Arabic. Combined together, the Arabic term for “biomedical” becomes “*hayawiyah tibbiyah*.” The combination contains *hawiyah* for biology and *tibbiyah* for medical.<sup>11</sup>

How is the term “ethics” perceived among Muslim scholars particularly in its Arabic language context? The literal translation of the word “ethics” in Arabic is *akhlaq or adab*. For the word *akhlaq*, it comes from the Arabic root verb *kh-*

*la-qa*. The verb means “to from” or to “create” as it implies completing something.<sup>12</sup> There is a knowledge of discipline known in Islam as *ilm al akhlaq* which means the science of morality. The name of the discipline is derived from the same root verb kh-la-qa. The other Arabic word for ethics is *adab*. The literal translation of *adab* is “literature.”<sup>13</sup> But its implication goes further as *adab* means the combination of both knowledge and personal conduct. This is considered the basic foundation of a human personality; knowledge and good conduct. The word *adab* pertains towards an action of improving and refining one’s conduct. It is the ethics that defines the character both at individual level as well as professional one. It is no surprise that the word *adab* was used in probably the most important book in Islamic history on medicine and ethics titled, “*Adab al-Tabib*” (The Practical Ethics of a Physician). The work belonged to the prominent ninth century physician Ishaq ibn Ali al-Ruhawi. His book remains relevant to this our present day when it comes to the Islamic code relevant to the medical ethics.<sup>14</sup> The ethical factor played an important role in shaping Islamic philosophy on medical ethics throughout history.

Being considered as a “sub-branch of applied philosophy,”<sup>15</sup> ethics is strongly linked to morality. An ethical application of distinguishing between “right and wrong” or “good and bad” at any given situation or conduct.<sup>16</sup> In the field of medical ethics and bio research, biomedical ethics is the subdivision of ethics that attempts to mitigate the various challenges in the field. Contemporary discourse of ethics in the West was produced as a result of philosophical endeavor which over time, distanced itself from Christian frame of reference. Well known Western philosophers such as Augustine and Kant influenced the new secular discourse in the west by shifting the reference to ethics from religious to philosophical. The notion of “Right and wrong” has become subject to human experience according to the secular discourse. This strict notion of ethical reference does not exist in Islamic intellectual view. Yet, without a doubt, Muslim scholars have always studied and adapted different philosophical tradition throughout history in order to fit such imported intellectual traditions to suit Islamic discourse. But, the teachings of Islamic religion and texts have always proven pivotal in influencing the outcome and shape in the realm of ethics in Islam.<sup>17</sup>

### III. Islamic Sources of Ethics and Law

The main sources of Islamic ethics and law are the Quran (the Holy book of Islam) and Hadith (the prophet's sayings and actions) and there are numerous references to the human body, hygiene and general health. The Islamic notion of *al-tahara* means a ritual purification in which *fuqaha* (Muslim jurists) provided lengthy explanation with details throughout written chapters of jurisprudence in order to maintain human body's cleanliness and caring for health.<sup>18</sup> In some cases, *fuqaha*, themselves, were medical doctors who practiced medicine and were well versed in the science of jurisprudence. The efforts by the jurists in establishing the tradition of ritualistic hygiene can be described as the beginning of what is known to be "medical ethics" in Islam.<sup>19</sup> The jurists' goal was to preserve and protect life, welfare and dignity of human kind and health represent a personal integrity in which every individual has the right to have. In other words, health is connected to a personal integrity and in Islam this is relevant to the larger Islamic notion of life and death and the common good and interest of any given community. Islam's main source, the Quran and Hadith, have ample references to such conception and understanding, pointing towards health and medicine.

One vital aspect of how the Quran looks at health is that the revelation itself is an integral part of health. The Quran says, "a guide to a remedy (a cure that restores health), for those who believe."<sup>20</sup> What is meant here is the wellbeing of the heart and its peacefulness or serenity are vital to the meaning of life which can lead to a healthy one.<sup>21</sup> A healthy heart can lead an individual to live a "a higher quality" of life free from vices such as lying, ego, arrogance, hate, etc. So, in Islam, the idea of returning to God after death is emphasized on the ideal of returning to God with *qalbin salim* (a healthy heart). It points out to the importance of possessing a healthy heart throughout life before death. The Quran highlights this point, "a day when neither wealth nor children will be of any use, but for who return to God with a sound (health, balance, peaceful) *salim* heart."<sup>22</sup> In Arabic, the root verb of *salim* is *sa-la-ma* which means a reference to health and welfare as well as spiritual peace and tranquility.<sup>23</sup>

The idea that revelation is "a remedy" is to motivate the conscience of believers to strive towards inner peace or health which can lead ultimately to general wellbeing and health.<sup>24</sup> The well-known concept of *jihad al nafs*

(exerting one's utmost efforts) is to realize the highest form of wellbeing, including health and human body.<sup>25</sup> Human existence in this life has a purpose, according to Islam and the aim of existence of man/woman is that God has entrusted a human being as vicegerents of life and of earth.<sup>26</sup> That everyone is responsible in this life as guardian on this earth. "Then, we made you vicegerents on Earth."<sup>27</sup> People are not only responsible for themselves only, but also extending to every fellow human being and that saving one life, "as if they had saved all mankind."<sup>28</sup> God gives life and human body and it is the responsibility to take care of the body and its health and maintain its fitness. Prophet Mohammad referred to the right of body when he said, "Your body has rights over you."<sup>29</sup> Here it is vital reference to the Islamic concept of protecting life as one of the main five aims of Islamic Sharia. The human life and the human body are entrusted by God and it is the responsibility of the believe to preserve and protect them. Good health and the efforts to maintain good health as well as finding cure in order to preserve the overall wellbeing is clearly emphasized. "Ask God for health, for no body receives anything better than good health."<sup>30</sup>

In Islam, God gave the body and life and that one day the body returns to Him.<sup>31</sup> As God has entrusted the body, nourishing and taking care of the body becomes necessary to seek the best means of curing any illness. Seeking solutions and medical remedies become a priority as an endeavor to find a cure for the illness in addition to ease the pain. This is emphasized by the prophet saying, "There is no disease for which has not provided a cure."<sup>32</sup> It is vital to highlight the confidence in seeking medical solutions through new discoveries, science and bio research. In addition to the efforts in finding cure for illnesses, the sound heart and spiritual wellbeing make a big difference in the overall health of an individual as the notion of health and sound heart can become a source of remedy and hope in the long run. Explaining here the Islamic philosophical perspective on illness, cure and wellbeing is not to highlight how different it is from Western medicine, but rather to facilitate further the connection with questions of ethics and how it is relevant to the life and death in the long run.

It is crucial to point out the essential link between ethics on one hand and health of body and heart as well as the overall notion of life and death, according to Islamic teachings. In daily life, people face diseases, epidemics,

accidents and health challenges in general. Medicine and bio research attempt to respond to such challenges in the pursuit of finding solutions, cure, easing pain, etc. However, such new methods and discoveries do not come in vacuum.<sup>33</sup> Challenges do arise when experimenting on human beings for example or deciding on ending a patient's life due to pain and certain circumstances. To meet up to such challenges and rising ethical concerns in the medical and bio research areas, the Islamic perspective becomes the more necessary to understand well its dynamics and concepts. That even becomes the more urgent since in principle, there is no distinct branch of knowledge or discipline known in Islamic history as "Islamic Biomedical Ethics." The word "ethics" itself can actually be found in Islamic sciences and material such as *fiqh* (Jurisprudence), *kalam* (scholastic theology) and *tafsir* (Quranic exogenesis.)<sup>34</sup> Thus, despite the long existence of the "Science of Morality" (*Ilm Al-akhlak*), there never existed a separate branch of biomedical ethics in Islamic history. In all, the term biomedical ethics is more of a contemporary discipline which has gradually witnessed its own formation to become a credible and recognized branch of knowledge. A fact that has been aptly infused with the acceleration of globalization and technical medical advancement, the discipline of biomedical ethics has become the more relevant in the multi-cultural societies with diverse religions, set of values and cultural norms. In the case of Islamic culture, this is certainly the case as many Muslim communities live in different parts of the world in which Sharia, as a collective moral and legal reference, play a crucial role in applying ethics on issues of health, wellbeing, life and death.<sup>35</sup>

### 3-1. The meaning of Sharia and its centrality to Islamic Biomedical ethics

For Islamic ethics in general, the basic principle is the faith in Allah for both the individual and society in seeking to approach Allah as much as possible.<sup>36</sup> Sharia is the method to approach Allah. In the contemporary Muslim world, no Muslim country applies Sharia as a legal frame of reference to the government or the state. However, at individual level, Sharia is quite relevant and remains functional for Muslims no matter where they are.<sup>37</sup> Sharia can simply be described as the "collective ethical subconscious of the Muslim Community."<sup>38</sup> In real life, this means when a Muslim is challenged with an ethical issue or a question, he/she would seek the opinion of a scholar or an expert in Islamic law. Every Muslim knows what are the goals of Sharia which comprise five basic

necessities of life; the protection of life, religion, intellect, integrity and property. Thus, when a Muslim seeks an advice, those five necessities represent the overall frame of reference. The aim becomes to find the most suitable divine law for a certain issue and biomedical issues are very relevant and important. Therefore, for the case of brain death, as an example, it is vital to understand that only God defines what is right and what is wrong. That means good deed are good because God instructs them and evil deeds are evil because God forbids them.<sup>39</sup> The concept here points towards an understanding of dependency on revelation. Furthermore, there is a purpose that God, the will of God, is meant and enhanced through human reason. Relying on revelation, human reason can distinguish and make rules to apply in different aspects of day-to-day life. Through such notions and concepts, a rich ethical tradition with a culture of legal thought, such as jurisprudence, experienced flourishing and progress in Islam. The most obvious result was the formation of the discipline of *usul ul-fiqh* (Principles of Islamic Jurisprudence) which is about studying the sources of *fiqh* laws and produce rules. When examining an issue in the field of biomedical ethics, scholars and jurists put efforts to return back to the root (*usul*) of revelation. Thus, *usul ul-fiqh* can mean the science of Jurisprudence. Once the root is examined, a rule is derived and the actual law or rule is applied on a specific case concerning biomedical ethics. That is why it is highly crucial to understand what is meant by Islamic Sharia? In the contemporary time of internet and the barrage of media outlets, the word sharia has been often taken out of context, stripped of its real meaning, and falsely politicized. So, it would be worthwhile to provide a concise and brief definition and understanding for the word Sharia and its purpose in Islam.

The understanding of the term sharia as a word and context is certainly crucial in grasping the Islamic perspective on biomedical ethics in general and the issue of brain death in particular. The root verb of the word sharia is *sh ra aa* (to command, to make lawful, to prevent to designate). It also means “flat and clear landscape” and “clear straight road.”<sup>40</sup> Another meaning includes to “be free from ambiguity and vagueness.” The contextual definition of sharia is known as “the complete guide of *al-din* (religion), pertaining to rules, commands and prohibitions that God revealed upon believers. The great Andalusian scholar, Ibn Hazm, referred to the matter of sharia in illustrating that Islamic belief brings Muslims together where sharia organizes their lives in order to

bring people from darkness to light.<sup>41</sup> He added that Sharia is about principles and rules that Allah has commanded upon believers in order to organize both religious and earthly lives. In other words, sharia takes care of *ibadat* (acts of devotion) as well as *muamalat* (dealings and transactions) for the happiness of all human beings, stability, justice and wellbeing.<sup>42</sup>

From sharia, principles are derived from the Quran, Hadith and *ijmmaa* (consensus of scholars). The principles depend on two pillars, complete faith in Allah and it is God that created sharia. That means sharia cannot be changed, however, sharia is relevant, realistic, moderate when taking into consideration the realistic conditions and circumstances of people. The rights of every man and woman is guaranteed under sharia and the application of sharia is suitable to every place and time for all people in the pursuit of individual's happiness in this life and after. The five necessities of sharia are well known to every Muslim and they constitute the following basic five necessities; protection of life, religion, intellect, progeny and property. The scholarship of the study of sharia developed over the course of Islamic intellectual history. With the advent of the twentieth century, a prominent Muslim scholar from Tunisia introduced a new discourse on the study of Islamic Sharia. Ibn Ashur wrote a book, *The Science of the Higher Objectives of Sharia ilm al -maqasid*. The Arabic word *ilm* stands for science or knowledge while *al-maqasid* means higher objectives. The book is about focusing on renewing and reinvigorating the science of jurisprudence which has not undergone any significant change since the 9<sup>th</sup> century. Different schools of jurisprudence developed over time where many scholars became entangled in arguing, defending each one's school instead of resolving a given issue or challenge. Thus, *ilm al-maqasid* was proposed as a renewed methodology for the renewal of Islamic law. The basic tenet of the argument of *ilm al-maqasid* is that the text of sharia is infinite, however issues and incidents are not infinite. Certainly, biomedical ethics, including the question of brain death, is one of those issues and challenges that are not infinite. An additional purpose of *ilm al-maqasid* is to minimize disputes as some scholars, instead of focusing on the issue in question, become biased to own *mathhab* (school of thought). In short, *ilm al-maqasid* is a methodology to address current issues as the fast pace of change in sciences and technologies is moving forward on an unprecedented fashion.

One of the most concise definition of *al-maqasid* has been introduced by the

scholar Al-Najjar. His definition of *al-maqasid* is summarized in the following; “The ultimate objective of sharia (*al-maqasid*) is to empower the human being to realize what is good for him and his wellbeing through the realizing the reason for his/her existence that a human being is the khailfa, vicegerent, on this earth. And that by developing of individual self and social organization, community, for the purpose of facilitating happiness of human being in this life and hereafter.” Thus, contemporary Muslim scholars have opted to apply the methodology of *al-maqasid* in the field of biomedical ethics.

One view considers *al-maqasid* as a holistic approach in dealing with the preservation of personal integrity (*nafs*). In other words, a person’s health and life are based on higher objectives. The health of a person is not about a technically medical and chemical quest, rather it is about a more comprehensive approach and concerned not only to health itself medically but also to the overall sound and spiritual context. The approach of *al-maqasid* requires further examination and study in terms of refinement and clarification.<sup>43</sup> From an Islamic point of view, practical application of ethics needs careful consideration in a holistic manner; connected as much as possible to the knowledge of biomedical field. It would be feasible, then, to say that Islamic biomedical ethics are applied. The structure of such approach must be clear for the scholar and those concerned. Three steps can summarize the applicability of biomedical ethics; defending the fundamental conception, determining the higher objective particular to the field of biomedical ethics and finally bringing about a terminology of both the conception and ultimate goal.<sup>44</sup> In other words, *al-maqasid* can function as “a checklist that can be utilized in tackling bioethical issues and dilemmas.”<sup>45</sup> Thus, *al-maqasid* is designed as a simplified version of sharia by simply understanding what does sharia ultimately want? The answer to the question aims at examining the entire field of biomedical ethics, including the issue of brain death. It is about a renewal and reinvigorating the approach in order to deal effectively with important issues such as biomedical ethics. In all, the Muslims’ approach to sharia and its higher objectives is about an effective way of mitigating the contemporary ethical and legal issues of biomedical ethics, including brain death.

## IV. Islamic Perspective on Brain Death

### 4-1. The Evolving Definition of Death

In medical practice, death has been defined traditionally as “the irreversible cessation of cardiac and respiratory activity.”<sup>46</sup> This definition is mostly used in emergency medicine settings. Yet, technically speaking, how would it be possible to know the duration of cessation of the cardiopulmonary. This particular point is further complicated with the newly introduced advanced technologies such as extracorporeal membrane oxygenation, mechanical ventilation as well as cardiac bypass. In such instances, the function of cardiopulmonary may temporarily cease, however the period of the function of the brain may become extended in time. Clinicians and medical institutions may differ in deciding the actual time point where the cessation of cardiopulmonary of a patient occurs. Also, the patient’s health condition does represent a concern because of possibilities of comorbidities where a patient may suffer additional illnesses throughout such a process.

### 4-2. Definition of Brain Death

In 1959, the concept of “brain death” was introduced through studies conducted by Mollaret and Ghuon<sup>47</sup> when they referred to patients with irreversible coma. By the mid-1960s, additional medical terms surfaced, namely “cerebral death syndrome” and “electro cerebral silence,” designated to describe patients with brain death.<sup>48</sup> A well-known report, The Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, was published in 1968. The report described irreversible coma as brain death. It stated, “an organ, brain, or other, that no longer functions and has no possibility of functioning again is for all practical purposes dead.”<sup>49</sup> Moreover, the report based the diagnosis of brain death on the total unawareness of externally applied stimuli with no evidence of spontaneous breathing, no brainstem reflexes and a flat EEG.<sup>50</sup> Many counties, during the time of publishing the report, passed a law recognizing brain death.<sup>51</sup> Perhaps in one of the first conferences to be held, representatives of the three Abrahamic religions met to discuss ethical issues, focusing mainly on defining death. The outcome of the conference described cerebral death as “a reasonable concept fully within the province of the physician to identify.”<sup>52</sup> By 1980, the Uniform Determination of Death Act

produced a definition of brain death. It was sanctioned by the National Conference of Commissioners on uniform State Laws.<sup>53</sup> The act says, “An individual who has sustained either: (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.”<sup>54</sup>

Yet, the methodology and guideline used at the present time to identify the case of presence of brain death may differ according to a definition, legal precedent, compliance based on law or the policy of an individual policy.<sup>55</sup> Confusion is likely to occur among observers even after determination of brain death particularly with non-brain mediated spontaneous movements as they falsely tell of retaining brain function. For example, ventilator autocycling could be falsely understood as a breathing initiated by the patient. Another contentious difference is the period acceptable as a determination of irreversible cessation of neurologic functions. In order to assess this condition sufficiently, there is no proof to determine the “optimal time period” for such an extremely delicate condition.<sup>56</sup> The limit of available data to know if the ancillary test is enough to determine irreversible cessation of brain function is a problematic factor.<sup>57</sup>

The Western definition of brain death was borrowed by Muslim scholars about twenty-five years ago along with the complicated attempts of defining brain death. This created a challenge to Islamic bioethics. The traditional Western definitions of brain death have been transplanted in the Islamic discourse and related biomedical ethics. Complexity of the issue is manifested by the traditional definition of brain death as cardiopulmonary. Or, brain death is a state between life and death. Also, the debate on the formulation of brain death is whether it is whole-brain death or brain-stem death. Clinicians do face a challenging task when considering the above-mentioned issues.

In the Muslim World, the issue of brain death is still debated widely on whether it is true death.<sup>58</sup> Such debate is not only restricted to religious aspect but also to include different judgments, rulings, diverge opinions on ethical and legal issues. The same would apply to secular laws that may be deemed contradictory from one another. For example, in the United States laws are legislated and enacted at the federal and state levels, taking into consideration “the constitution, statutes, regulations, and common law or case law.”<sup>59</sup> Thus,

assessment of the ethic-legality of brain death from an Islamic perspective can be varied and controversial. This fact can add a considerable strain upon clinicians, hospitals and medical institution in taking the religious belief of a patient as well as the local governing laws enacted to determine brain death. The entire medical care can be influenced by the religious aspect and local rules within a given culturally- diverse society. Muslim scholars have been working in the issue of brain death for decades.

Since the 1980s, Islamic scholars have collaborated with medical professional in order to come up with ethical and legal opinions on brain death using the necessary tools of Islamic sharia and laws. These opinions and assessments, however, maintained its controversy as determination of brain death varied from one another. The Quran and Islamic tradition do not contain a specific and direct reference to brain death. The notion of brain death was brought to the forefront of the medical and intellectual discourse in the Muslim world about fifty years ago, mainly because of organ transplantation and its link to brain death. This started debate and discussions between Islamic jurists and clinicians.<sup>60</sup> The Quran does emphasize the universality of death.<sup>61</sup> The Islamic view, according to the Quran, is the moment of death (*al-mawt*) is the time when the soul (*al-ruh*) leaves or separates the soulless body (*al-mawt*). There is not precise description of how the soul departs the body. Before death, however, the Islamic principle of “no harm” (*la darer wa la dirar fi il islam*) is clear and present in the mind of a Muslim doctor when facing a situation of determining death. In other words, “no harm shall be inflicted or reciprocated in Islam.”<sup>62</sup> The Islamic principle of “no harm” can be described to resemble the Western principle of nonmaleficence.<sup>63</sup> Reflecting on this significant Islamic biomedical ethical position on death, a number of highly influential Islamic conferences further explained this crucial principle, pointing out a position on determining brain death. In his/her defense of life, however, the doctor is well advised to realize his limit and not transgress it. If it is scientifically certain that life cannot be restored, then it is futile to diligently keep the patient in a vegetative state by heroic means or to preserve the patient by deep freezing or other artificial methods. It is the process of life that the doctor aims to maintain and not the process of dying. In any case, “the doctor shall not take a positive measure to terminate the patient’s life.”<sup>64</sup> As a well-known contemporary Muslim scholar elaborated, “life is given by God and cannot be taken away

except by Him or with his permission and that preservation of life is one of the five fundamental objectives of Islamic sharia.”<sup>65</sup> Some Islamic juridical councils have attempted to come up with certain definitions and opinions.

A number of scholar Islamic councils and conferences have attempted to settle the controversy. The Organization of Islamic Conferences' Islamic Fiqh Academy (OIC-IFA) put forward a clear assessment by equating brain death with cardiopulmonary death. However, the Islamic Organization of Medical Science (IOMS) placed brain death between life and death. Other councils have denied and dismissed the whole notion of brain death. The result there is no consistent position on the ethical and legal aspect which reflects the lack of consensus on the entire concept of brain death.

However, the Islamic institutions' role is crucial for the understanding of brain death and its relation to Islamic biomedical ethical stand. The Organization of the Islamic Conference-Islamic Fiqh Academy, OIC-IFA, in 1986, and the Muslim World League, MWL, in 1987, produced decisions (*qarart*), concerned with legitimizing a criterion of brain death. In 1986, at the third annual conference in Amman, Jordan, the OIC-IFA produced resolution number Five.<sup>66</sup> The decision declared that a person is considered legally dead and sharia principles can be applied when one of the following signs is confirmed; “ 1. complete stoppage of the heart and breathing, and the doctors decide that it is irreversible, 2. complete stoppage of all vital functions of the brain, and the doctors decide that it is irreversible, and the brain has started to degenerate.” Under these circumstances, it is justified to disconnect life supporting systems even though some organs continue to function automatically (e.g. the heart) under the effect of the supporting devices.”<sup>67</sup> In 2003, the ethics committee of the Islamic Medical Association of North America (IMANA) introduced and developed a document titled, “Medical Ethics: the IMANA Perspective.”<sup>68</sup> The document agrees, in general, with the assessment of the diagnosis of death. However, it provides more details, demanding attention on the need of training of a physician in diagnosing brain death. Despite the fact that the medical community refer most often to the resolution of OIC-IFA and IMANA, as an accepted notion of brain death within the Islamic law and Muslim Community, there are still remaining clinical and conceptual ambiguities.<sup>69</sup> The debate continues, whether whole-brain death or brain stem or the higher brain functions are most likely and fitting for the purpose of conceptualizing and

diagnosis of brain death.<sup>70</sup>

## V. Conclusion

The definition of death varies. However, clinicians and the medical community recognize that the patient's cultural norms and religious teachings directly influence the medical care particularly when it encounters the question of brain death and its related interface with local laws governing the determination of death. Thus, the challenge becomes how to bridge the gap between the concept of brain death and cultural/religious norms. Through the science of Jurisprudence, Islamic scholars have been working on the issue of brain death and its link to the Islamic perspective of biomedical ethics for the past decades. And the issue of brain death poses a considerable challenge because the main Islamic sources, Quran and Sunna, do not specifically address brain death.

This explains the current controversy among Muslim jurists on the Islamic discourse concerning brain death. Yet, brain death has been recognized by many Muslim scholars and related medical Islamic organization. The Organization for Islamic Conference-Islamic Fiqh Academies and the Muslim World League, the Islamic Medical Association of North America and other religious-based medical organizations have in principle agreed that brain death represents true death. Yet, the Muslim World does not unanimously agree on the above definition. As shown throughout the paper, and despite the complexity of this subject, Islamic scholars have basically created two main interpretations. One considers brain death equal to cardiopulmonary death. The other considers it as an intermediate state between life and death as brain death does not prescribe to the standard of legal death. Thus, the application of the Islamic biomedical ethics on brain death varies.

This paper, then, examines how the two scholarly schools have shaped the debate within the Islamic biomedical ethics discourse to treat complex questions of brain death. As explained in the discussion above, a renewed methodology has been devised which basically aims at a renewal of Islamic law and rulings. Contemporary Muslim scholars have opted to apply the methodology of *ilm al maqasid* (the higher objectives of Islamic sharia) in the field of biomedical ethics. It is a method aims at addressing current issues of science and technologies which are moving in a fast pace in an unprecedented level. The

renewed methodology avoids the tedious entanglements of past disputes among various schools of thought within Islamic jurisprudence. It is a simplified version of sharia to reinvigorate the understanding of what does sharia want ultimately. This renewed methodology of *ilm al-maqasid* functions as a checklist which to be utilized in tackling bioethical issues and dilemmas. It examines the entire field of biomedical ethics, including brain death, in a holistic manner. Islamically, practical application of ethics requires careful consideration holistically. The structure of such approach needs to be clear for the both the scholar and the medical professional. The collaboration between the scholars and practitioners cannot be overemphasized. For scholars to apply ethics, knowledge of biomedical field is crucially necessary to be informed by the collaboration of professionals in order to formulate an educated opinion and thus an ethical ruling without losing sight of the higher objectives of sharia. The introspection of the spiritual and intellectual is far more demanding. Therefore, it is possible, then, to say that Islamic biomedical ethics are applied. Since the 1980s, there has been an encouraging progress by the increasing collaboration between Islamic scholars and medical professionals in order to come up with the ethical and legal opinions on various biomedical issues, including brain death, using the tools of Islamic sharia and its higher objectives.

Endnotes

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- 2 *Ibid.*
- 3 *Ibid.*
- 4 *Ibid.*
- 5 *Ibid.*
- 6 Dictionary, T. (n.d.). bio. Retrieved September 3, 2017, from Dictionary.com: <http://www.dictionary.com/browse/bio?s=t>
- 7 This point was published in a conference proceeding that took place in the city of Doha, Qatar, 5-7 January 2013 at the Center for Islamic Legislation and Ethics (CILE), Hamad Bin Khalifa University.
- 8 Ghaly, op.cit., 408
- 9 *Ibid.*, 410.
- 10 *Ibid.*
- 11 *Ibid.*
- 12 *Ibid.*, 170.
- 13 *Ibid.*
- 14 *Ibid.*
- 15 Aasif I. Padela, "Islamic Medical Ethics: A Primer," *Bioethics*, 21, No. 3 (2007): P.170.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 Tareq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 159.
- 19 *Ibid.*
- 20 Ramadan, *Radical Reform*, 41-44.
- 21 Ramadan, *Radical reform*, 160.
- 22 Quran 26:88; 26:89
- 23 *Ramadan, Radical Reform*, 160.
- 24 *Ibid.*
- 25 *Ibid.*
- 26 *Ibid.*
- 27 Quran 10:44
- 28 Quran 5:32
- 29 *Hadith* reported by Bukhari.
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- 32 *Hadith* reported by Bukhari and Muslim.
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- 47 Ibid., 1094
- 48 Ibid., 1095
- 49 Miller, "Brain Death and Islam," *CHEST*, 146(4), 1092-1101, 1093
- 50 *Ibid.*
- 51 *Ibid.*
- 52 Miller, "Brain Death and Islam," *CHEST*, 146(4), 1092-1101, 1094
- 53 Ibid., 1098.
- 54 Miller, "Brain Death and Islam," *CHEST*, 146(4), 1092-1101, 1904
- 55 *Ibid.*
- 56 *Ibid*
- 57 *Ibid.*
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- 62 Miller, "Brain Death and Islam," *CHEST*, 146(4), 1092-1101,1099
- 63 *Ibid*
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**Abstract**

# Between Life and Death? Islamic Biomedical Perspective on the Question of Brain Death

Rehab Abuhajiar

The conception of brain death presents a real challenge to clinicians and medical experts when required to take into account cultural and religious dimensions. Islamic scholars have been tackling the sensitive issue of brain death in the last few decades from the ethic-legal opinions. The issue at stake is whether brain death is accepted as true death according to Islamic law. Both the medical experts and Islamic scholars have been exerting efforts in using the tools of jurisprudence in order to formulate an ethic-legal opinion on brain death. The Organization of Islamic Conferences' Islamic Fiqh Academy (OIC-IFA), considers brain death similar to cardiopulmonary death. In the meanwhile, the Islamic Organization of Medical Science (IOMS), takes brain death as an intermediate state between life and death. The assessment is not entirely uniform. So far, the issue has not received enough attention or inefficiently dealt within the medical and fiqh (jurisprudence) literature. Thus, this study proposes to find out how Islamic perspective understand brain death as a clinical phenomenon? Or, how Islamic ethics treat such a medical uncertainty? In other words, what are the Islamic ethics ought to be applied to the field of biomedical issues related to life and death. Such questions are vital as certain ethical principles become ever more important for clinicians when treating patients with a different religious belief, thus, influencing the course of medical care and practice. In investigating the interface between brain death and related Islamic ethical principles, we can show further understanding of Islamic ethical perspective in dealing with commonly shared challenges such as wellbeing and health, caring of old-aged people, dementia, smoking, etc.