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# Islamic Bioethical Positions on Organ Donation and Transplantation: Stressing Rigor and Caution in Fatwa Reviews

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A recent letter “Clarification on Islamic Jurisprudence and Transplantation” by Miller et al adds to discussions over Fiqh Council of North America’s (FCNA) 2018 ruling on organ donation and transplantation. FCNA judged organ donation to be permissible subject to conditions such as first-person authorization and occurring while living or after circulatory declaration of death.<sup>1</sup>

The letter seeks to clarify features of Islamic ethico-legal discourse. It underscores that rulings (*fatāwa*) based on the exercise of independent legal reasoning (*ijtihad*) are nonbinding and contextually bounded. The authors further clarify “Islamic views on toward *transplantation* (emphasis added)” by sharing results from a fatwa review where “thirty-six (86%) of [collected] *fatāwa* permit *organ donation* (emphasis added) conditionally or unconditionally.” An appended table describes *fatāwa* contents and the diversity of views more fully.

With respect to the first point, we fully agree as we explicitly state that “...*ijtihad* results in probable conclusions that are subject to scholarly disagreement and future revision” and also that FCNA’s ruling is “specific to the North American context.”<sup>1</sup> With respect to the authors “conclusions” regarding the dominant view of moral permissibility of organ donation/transplantation, we encourage caution given the methodological limitations of *fatāwa* reviews.<sup>2</sup>

For one, it is impossible to gather all *fatāwa* on any issue as they are rendered verbally or in writing and in various languages and are found in diverse media sources including

radio and television programs, websites, newspapers, book collections, policy reports, and academic papers. Hence, by their nature *fatāwa* reviews are constrained, and just like any other systematic literature review, require a focused search algorithm. Additionally, publication bias must be addressed. All too often fatwas that are issued by prominent scholars, or are controversial, are widely distributed (and thus easily accessed) while others are not. The accessibility of a fatwa does not give it more intrinsic legal standing, though it may be more widely applied by individuals because of its prevalence.

The noncomprehensiveness and publication bias related to fatwa reviews imply that an interpretation based on counts is specious. Much like in qualitative research, counts are supplemental to the thematic content analysis. The rigor of the arguments used, and the precision with which the biomedical contexts are described, are more important to describing the discourse, as well as for judging whether a fatwa is actionable. Hence, the fact that 36 fatwas found by the authors judge organ *donation* to be licit does not advance the position of permissibility nor detract from the view of impermissibility.

Additionally, without a detailed search strategy, it is difficult to evaluate the rigor of data capture. The table presents opinions from both the Muslim world and the diaspora and brings together different sorts of documents (single jurist *fatāwa* as well as juridical council opinions), as well as views from different Islamic sects (both Sunni and Shia). Given that *fatāwa* are nonbinding and context-driven, it is difficult to attach special significance to any ruling therein.

Finally, it is important to recognize that organ donation and organ transplantation, though connected, are separate with differing moral contexts. Islamic scholars judge their permissibility separately, although the acts may be conceptually linked in their writings.<sup>3</sup> A review of *fatāwa* must decouple judgments so that stakeholders can analyze and adopt the most relevant guidance.

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