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ARTICLE

# Losing Faith in the Dead Donor Rule

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## Abstract

*According to the Dead Donor Rule (DDR), vital organs can only be removed from donors who are already dead. Organ procurement, in other words, must not be the cause of their deaths. The rule purports to protect dying and vulnerable individuals from being sacrificed for the benefit of other people who are in need of those organs. This notion that innocent human beings should not be used as means to an end is undoubtedly a concern that is unequivocally shared by Abrahamic faith communities. In this regard, the philosophy and rationale of the DDR fully cohere with their religious teachings. However, the method by which death is officially diagnosed to determine when an individual qualifies as a dead donor is not one that they necessarily share. Whilst English law recognises death as having occurred when the brainstem is dead, these faith communities ordinarily associate death with the departure of the soul. The latter is signified by the cessation of breathing and heartbeat. From this perspective, a person is still alive as long as they are still breathing even if this function is rendered possible only through artificial ventilation. Since it is currently lawful to remove the vital organs of mechanically-ventilated brainstem dead persons without contravening the DDR, it will be argued that the rule does not adequately protect the welfare of Christians, Muslims and Jews in the UK. The article ends by making recommendations on how their faith in the DDR could be restored.*

## 1. Introduction

Organ transplants have been hailed by the NHS as one of the most miraculous achievements of modern medicine.[1] Every year in the UK, they help enhance and/or save the lives of around 2,700 people, nearly half of

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I am grateful to the participants of the David Price Memorial Seminar at De Montfort University and Dr Mahmood Chandia for their insightful questions and comments.

1 NHS Blood and Transplant (NHSBT), 'About Transplants', www.organdonation.nhs.uk/about_transplants/index.asp.

whom were recipients of vital organs like hearts, lungs, livers and pancreas.[2] Unlike other medical advances, the continued success and contribution of the organ transplantation enterprise is dependent on the generosity of individuals who are outside the doctor-patient matrix: organ donors.[3] As the removal of vital organs from these individuals will certainly bring their lives to an end, the Dead Donor Rule (DDR) was established, purportedly to safeguard their welfare. This ethical and legal rule specifies that organ donors must first be declared dead before the removal of any organs which are necessary to sustain life. The donors, in other words, must not be killed in order to obtain their vital organs.[4]

As for how and when death is declared, these are in accordance with the definition of death espoused by the medical profession, namely brainstem death. Upon this clinical diagnosis of death, vital organs can legitimately be removed from the donor who is now recognised as dead and whose body is treated as a cadaver.[5] In view of how brainstem death is the only definition of death endorsed by English law, this paper seeks to draw attention to the fact that the requirement for death to precede the removal of vital organs is not necessarily honoured in relation to faith communities. Given how they normally reject a brain-based definition of death in favour of the traditional cardiopulmonary standard, it will be argued that the rule fails to protect their welfare.

Part two of the work will outline the rationale underpinning the DDR. It then identifies how the tension between this rule and medical science's need for 'dead persons with living bodies' is resolved through the adoption of brainstem death as the method by which death is defined. In Part three, the discussion will highlight how this conception of death might prove problematic for the adherents of the Abrahamic faith traditions. It will firstly explore the permissibility of organ transplantation from the perspective of these faith communities. It then highlights the extent to which the official definition of death may actually weaken the protection which the DDR can provide them. Part four concludes

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2 *Ibid.*; NHSBT, 'Statistics', www.organdonation.nhs.uk/statistics/.

3 A.R. Jonsen, 'The Ethics of Organ Transplantation: A Brief History', *Virtual Mentor* 14 (2012): 264 at 267; A.L. Simpkin, et. al., 'Modifiable Factors Influencing Relatives' Decision to Offer Organ Donation: Systematic Review', *British Medical Journal* 339 (2009): b991; S. Bramhall, 'Presumed Consent for Organ Donation: A Case Against', *Annals of the Royal College of Surgeons of England* 93 (2011): 268.

4 J.A. Robertson, 'The Dead Donor Rule', *Hastings Center Report* 29(6) (1999): 6; G. Khushf, 'A Matter Of Respect: A Defense of the Dead Donor Rule and of a 'Whole-Brain' Criterion for Determination of Death', *Journal of Medicine and Philosophy* 35 (2010): 330 at 331; R.M. Veatch, 'Transplanting Hearts After Death Measured by Cardiac Criteria: The Challenge to the Dead Donor Rule', *Journal of Medicine and Philosophy* 35 (2010): 313.

5 E.F.M. Wijdicks, 'Brain Death Worldwide: Accepted Fact but no Global Consensus in Diagnostic Criteria', *Neurology* 58 (2002): 20.

the discussion by making recommendations as to how their faith in the DDR can be revived.

## 2. The Dead Donor Rule

Ever since organ failure began to be treated by transplantation, medical science has had to surmount various challenges. Whilst it has striven and managed to overcome numerous technical limitations associated with removing and relocating solid organs from one human body to another, one difficulty that has remained from the outset is the shortage of suitable donor organs.[6] This problem is particularly acute in relation to vital organs. This part of the discussion explores the ethico-legal concerns which prompted the launch of the DDR as a means of protecting potential donors of those organs. From there, it takes a close look at how the tension between the need to retrieve these organs when they are still in fully-functioning and optimum condition and the DDR's prohibition against removing vital organs from persons who are still alive is mediated. The impact which the ensuing resolution has on faith communities will be assessed in Part three.

### 2.1 Rationale

The DDR was introduced in the 1960s, around the time when the first heart transplant was pioneered,[7] to ensure that the procurement of vital organs is not the cause of a person's death. Its underlying justifications are as follows. Firstly, it is important that innocent people are not killed for their vital organs even if the aim is to save the lives of others.[8] This is especially relevant for vulnerable groups like Alzheimer's sufferers and the mentally ill who may otherwise easily be exploited as organ mines. Also protected are patients in a persistent vegetative state (PVS) whose lack of sentience, rationality and ability to engage with their surroundings make them otherwise vulnerable to being thought of as no longer having rights or interests worthy of protection.[9] Equally at risk are anencephalic neonates. Given that many young children and infants die every year because of a severe shortage of paediatric organ donors, commen-

6 C.J.E. Watson & J.H. Dark, 'Organ Transplantation: Historical Perspective and Current Practice', *British Journal of Anaesthesia* 108(S1) (2012): 29.

7 O. Rukovets, 'A Matter Of Debate: Is it Time to Revisit the Dead Donor Rule?', *Neurology Today* (2013): 44.

8 C. Coulter, 'Moral Squeamishness or Moral Superiority? Should We Abandon the Dead Donor Rule?', *Princeton Journal of Bioethics* XII (2011): 6.

9 R. Sparrow, 'Right of the Living Dead? Consent to Experimental Surgery in the Event of Cortical Death', *Journal of Medical Ethics* 32 (2006): 601 at 603.

tators have increasingly drawn attention to the possibility of using them as a viable source of transplantable vital organs.[10] However, although these neonates never experience any degree of consciousness and face a certain and usually imminent death, the DDR staunchly asserts that their vital organs cannot be retrieved while they are alive.

Secondly, the DDR also aims to protect the image and reputation of doctors. Ever since Hippocratic times, doctors have been forbidden from killing their patients. Rather, they should only use their knowledge and skills to heal, not kill.[11] This explains the strong condemnation levelled at doctors who participated in the mass killings during Nazi Germany, and why reservations have also been expressed over doctors' involvement in physician-assisted death and the administration of lethal injection to prisoners in countries which still have the death penalty.[12] The DDR therefore prohibits doctors from removing vital organs from still-living donors since this involves a dangerous use of medical power.[13] Thirdly, because the rule is governed by respect in human life, it offers assurance to those who opt to donate organs after their deaths, that their lives would not be brought to a premature end for the sake of others who are in desperate need of those organs. The rule therefore seeks to generate and maintain public trust in the organ procurement system.[14]

The DDR has thus far remained exceptionless and is near sacrosanct.[15] It is vigorously maintained even if the prospective donor himself has consented to or requested for the removal of his vital organs to help others.[16] It stands firm irrespective of the donor's condition be it robust or debilitated, conscious or

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10 E.g. A. Moss, 'Manners Maketh Man: A Comparison of the Ethics Of Anenchephalic and Baboon Organ Donation', *UCL Journal of Law and Jurisprudence* (2012): 44; D.K. Van Bogaert, 'Anencephalic Neonates as Organ Donors', *South African Family Practice* 45(3) (2003): 51; P. Byrne, 'Use of Anencephalic Newborns as Organ Donors', *Paediatric Child Health* 10(6) (2005): 335.

11 L.R. Kass, 'Neither for Love nor Money: Why Doctors Must not Kill', *Public Interest* 94 (1989): 25.

12 M. Grodin & G. Annas, 'Physicians and Torture: Lessons from the Nazi Doctors', *International Review of the Red Cross* 89(867) (2007): 635; D.C. Heimburger, 'Physician-Assisted Death Should Remain Illegal: A Debate', *Journal of Biblical Ethics in Medicine* 8(3) www.bmei.org/jbem/volume8/num3/heimburger_physician-assisted_death_should_remain_illegal.php; L. Black, 'Lethal Injection and Physicians: State Law vs Medical Ethics', *Journal of the American Medical Association* 298(23) (2007): 2779.

13 M. Potts & D.W. Evans, 'Does it Matter that Organ Donors are not Dead? Ethical and Policy Implications', *Journal of Medical Ethics* 31 (2005): 406 at 407–408; W. Sinnott-Armstrong & F.G. Miller, 'What Makes Killing Wrong?', *Journal of Medical Ethics* 39 (2013): 3 at 6.

14 J.A. Robertson, 'The Dead Donor Rule' (note 4), 7.

15 R.M. Veatch, 'The Dead Donor Rule: True by Definition', *American Journal of Bioethics* 3(1) (2003): 11; C. Coons & N. Levin, 'The Dead Donor Rule, Voluntary Active Euthanasia, and Capital Punishment', *Bioethics* 25(5) (2011): 236.

16 J.A. Robertson, 'The Dead Donor Rule' (note 4), 6; J. Menikoff, 'The Importance of Being Dead: Non-Heart-Beating Organ Donation', *Issues in Law and Medicine* 18(1) (2002): 4 at 19.

unconscious, and healthy or near death.[17] In not allowing anyone to be sacrificed, even if by doing so several other lives can be saved, the rule is therefore deontological rather than utilitarian.[18] This not only makes the DDR consistent with homicide law, it reflects respect for persons and human life and the importance of not using people as means to an end.

### 2.2 Dead Persons, Living Bodies

If donors must be dead before their vital organs are removed, it is clearly important to determine when death occurs. This question could traditionally be satisfied with a simple answer – a person was dead when he has stopped breathing and when his body no longer registered a pulse or heartbeat. But vital organs from these traditional cadavers were not always suitable for transplantation as they would have experienced some degree of oxygen deprivation which restricted their lifesaving potential.[19] Thus when those long-established demarcators of death could subsequently be reversed by artificial ventilation and intensive care technology, a dilemma and an opportunity simultaneously emerged.[20] The dilemma was how to respond appropriately to mechanically ventilated patients who no longer have any activity in their brainstem i.e. those who are today said to have suffered 'irreversible loss of the capacity for consciousness, combined with irreversible loss of the capacity to breathe.'[21] The opportunity arises from a realisation that those patients, believed to have no prospect of returning to a meaningful existence, were ideal donors since their vital organs are still perfused by a beating heart. However, removal of their vital organs would lead to murder and a violation of the DDR, unless they are no longer alive.

To take advantage of this invaluable source of transplantable vital organs, a decision was taken by the medical profession to classify the medical condition that these patients were suffering from, as constituting their death.[22] When

17 J.A. Robertson, 'The Dead Donor Rule' (note 4), 6.

18 *Ibid.*, 7.

19 R.D. Truog & F.G. Miller, 'The Dead Donor Rule and Organ Transplantation', *New England Journal of Medicine* 359 (2008): 674; S.L. Soller, '"Give me a Few More Minutes!" How Virginia Violates Due Process by Hitting the Snooze Button on a Timely Declaration of Death', *William & Mary Bill of Rights Journal* 20(3) (2012): 981 at 984.

20 F.G. Miller, 'Death and Organ Donation: Back to the Future', *Journal of Medical Ethics* 35 (2009): 616.

21 Academy of Medical Royal Colleges, *Code of Practice for the Diagnosis and Confirmation of Death* (2008), 11.

22 'Diagnosis Of Death: Statement Issued by the Honorary Secretary of the Conference of Medical Royal Colleges and their Faculties in the United Kingdom on 11 October 1976', *Annals of the Royal College of Surgeons of England* 59(2) (1977); 'Diagnosis of Death: Memorandum Issued by the Honorary Secretary of the Conference of Medical Royal Colleges and their Faculties in the United Kingdom on 15 January 1979', *British Medical Journal* 1(1979): 332.

this revised definition which equates brainstem death with death of the human being was also endorsed by the courts,[23] the impact was nothing short of monumental. As brainstem dead persons are legally dead, their vital organs could be removed without, technically, contravening the DDR or homicide law. This is because, their bodies can legally and morally be treated as cadavers or corpses even when their heart and lungs continue to function, albeit with the technological assistance of ventilators. Indeed it was this prospect of having heart-beating donors which made the shift from the traditional cardiopulmonary standard to the neurological standard for determining death an attractive and irresistible proposition in the first place.

Uniquely, not only are all the vital organs of such individuals still perfused with oxygenated blood, their bodies as a whole too, are still living in the biological sense.[24] They are warm to the touch and maintain homeostasis; can digest and metabolise food; are able to excrete waste, fight infections and heal wounds; would develop fever in response to infection; can even successfully gestate a foetus; and in the case of children, sexual maturation and proportional growth.[25] Those individuals therefore assumed a hybrid status – that of dead persons in living bodies.[26] In fact, so alive are these 'living cadavers'[27] or 'breathing corpses'[28] that they were reported to have produced cardiovascular and hormonal stress responses to incision for organ removal.[29] This, as Rodríguez-Arias et. al. poignantly remarked, 'makes it clear that calling a donor 'dead', by itself, does not prevent that individual from suffering'.[30] It is thereby not unknown for donors to be administered with anaesthetic, analgesia and muscle relaxants before those vital organs were removed.[31]

What these developments illustrate is that while the DDR itself is underpinned by the deontological concern about respect for persons, the revised definition of death aims to attain the utilitarian goal of increasing the supply

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23 *R v. Malcherek*; *R v. Steel* [1981] 1 WLR 690, CA; *Re A (A Minor)* [1992] 3 *Med L.R.* 303.

24 R.M. Veatch, 'The Dead Donor Rule' (note 15), 11.

25 R.D. Truog & F.G. Miller, 'The Dead Donor Rule' (note 19), 674; L.J. Riley, 'A Call to Reject the Neurological Standard in the Determination of Death and Abandon the Dead Donor Rule', *Notre Dame Law Review* 87(4) (2013): 1749 at 1795.

26 M. Lock, 'Living Cadavers and the Calculation of Death', *Body and Society* 10 (2004): 135 at 141.

27 *Ibid.*, 135.

28 F.G. Miller, 'Death and Organ Donation' (note 20), 619.

29 E.B. Linde, 'Speaking up for Organ Donors', *Issues in Nursing* (2009): 28 at 29.

30 D. Rodríguez-Arias, et. al., 'Donation After Circulatory Death: Burying the Dead Donor Rule', *American Journal of Bioethics* 11(8) (2011): 36 at 40.

31 A.W. Gelb & K.M. Robertson, 'Anaesthetic Management of the Brain Dead for Organ Donation', *Canadian Journal of Anaesthesia* 37(7) (1990): 806; P.J. Young & B.F. Matta, 'Anaesthesia for Organ Donation in the Brainstem Dead – Why Bother?', *Anaesthesia* 55(2) (2000): 105.

of vital organs.[32] Thus, although the priority of the DDR was the welfare of organ donors, the revised criteria for pronouncing death was primarily driven by the needs of potential recipients.[33] Also, while the DDR admits of no exception, how death is defined is malleable. As alluded to above, the definition was revised to carefully conform to conditions that are most conducive for transplantation.[34] This alleviates the conflict between the need to increase organ supply and the need to ensure that the DDR is not violated. Further, the brainstem death requires only clinical examination, as formulated and prescribed by the medical profession to fulfil the diagnostic criteria.[35] Hence the definition and diagnosis of death become a matter of accepted clinical practice.[36] As this is the only definition of death legally recognised, and brainstem death is essentially a 'soulless death', the discussion will now explore whether the rule, as served by the neurological standard for determining death, adequately protects the welfare of donors from faith communities.

## 3. Faith Communities and the (Clinically) Dead Donor Rule

This part of the work will firstly explore the point of view of the three Abrahamic religions on the acceptability of organ transplantation and donation. It will then evaluate how far the ideals and reality of the DDR are congruent with their worldviews.

### 3.1 Organ Donation: A Religious Perspective

Although the medical community has long been intrigued by the possibilities of transplanting organs and tissues from one human being to another, it was not until the second half of the 20th century that organ transplantation eventually became a viable means of treating organ failure.[37] Given that

32 D.M. Hester, '"Dead Donor" Versus "Respect for Donor" Rule: Putting the Cart Before The Horse', *American Journal of Bioethics* 3(1) (2003): 24.
33 E.B. Linde, 'Speaking up for Organ Donors' (note 29), 28.
34 R.D. Truog & F.G. Miller, 'The Dead Donor Rule' (note 19), 675; Academy of Medical Royal Colleges, 'Code of Practice' (note 21).
35 T. Woodcock & R. Wheeler, 'Law and Medical Ethics in Organ Transplantation Surgery', *Annals of the Royal College of Surgeons of England* 92 (2010): 282 at 283.
36 A. Samuels, 'Organ Donation for Transplantation', *Medico-Legal Journal* 81(1) (2013): 40.
37 J. Karamehic et. al., 'Transplantation of Organs: One of the Greatest Achievements in History of Medicine', *Medical Archives* 62(5-6) (2008): 307; E.L. Rager, 'The Donation of Human Organs and the Evolving Capacity For Transplantation: Exciting Developments and Future Prospects', *North Carolina Medical Journal* 65(1) (2004): 18.

all the religious scriptures predate organ transplantation technology by several centuries, faith-based perspectives on organ transplantation and donation is inevitably the result of scholarly interpretation of those scriptures against the values which the various religions uphold.[38] Unsurprisingly, there is a lack of intra- and inter-religious consensus. Despite this, strong support for the organ transplantation enterprise has been expressed across all three Abrahamic religions.[39]

The following passages from their holy books and scriptures have frequently been invoked to substantiate their construal of the permissibility and commendability of organ donation and transplantation. Christian medical ethicists and scholars, for instance, often refer to this passage from the New Testament for support: 'Greater love has no man than this, that a man lay down his life for his friends' (John 15:13). For Muslims, it is this comparable verse from the Quran that says: 'Whosoever saves a life, it shall be as if he has given life to all mankind' (Surah Al-Maidah verse 32). This is echoed by Jewish scholars who point to this passage from the Mishnah that 'to sustain a single human soul is equivalent to sustaining an entire world' (Sanhedrin 4:5).

However, this support comes with an important proviso: it should not be to the point of self-sacrifice. According to Bishop Fabian Bruskewitz, 'No respectable, learned, and accepted Catholic moral theologian has said that the words of Jesus regarding the laying down of one's life for one's friend (John 15:13) is a command or even a licence for suicidal consent for the benefit of another's continuation of earthly life.'[40] Thus vital organs should not be removed from an individual who is still alive irrespective of his willingness to sacrifice his life for the benefit of others. Doctors who disregard this injunction against using human beings as means to an end, would be committing murder. According to the Quran, 'Whoever killed a human being should be looked upon as though he had killed all mankind' (Surah Al-Maidah, verse 32). It is likewise

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38 G. Randhawa, 'Death and Organ Donation: Meeting the Needs of Multi-Ethnic and Multifaith Populations', *British Journal of Anaesthesia* 108(S1) (2012): 88 at 89; Editorial, 'The Brain Death Controversy', *The Jewish Review* 3(3) (1990).

39 See e.g. Catechism of the Catholic Church (No. 2296); P.J. Cullen, 'Organ Donation: A Catholic Perspective', *Catholic Medical Quarterly* (1998); S. Aksoy, 'A Critical Approach to the Current Understanding of Islamic Scholars on Using Cadaver Organs Without Prior Permission', *Bioethics* 15 (2001): 461; F. Moazam, 'Sharia Law and Organ Transplantation: Through the Lens of Muslim Jurists', *Asian Bioethics Review* 3(4) (2011): 316; J. Sacks, 'Organ Donation In Jewish law', www.thejc.com/comment-and-debate/comment/43932/organ-donation-jewish-law; J.D. Kunin, 'The Search for Organs: Halachic Perspectives on Altruistic Giving and the Selling of Organs', *Journal of Medical Ethics* 31 (2005): 269.

40 Cited in D. Sturm, 'Dealing Death – A Pro-Life Nurse Looks at Dangerous Developments in Organ Procurement, www.cuf.org/2010/01/dealing-death-a-pro-life-nurse-looks-at-dangerous-developments-in-organ-procurement/.

an important principle under Jewish Law that 'one life may not be set aside to ensure another life (*ain dochin nefest mipnei nefesh*).[41] The killing or the deliberate taking of life via the procurement of vital organs is therefore strictly forbidden in all three religions. In this sense, the broad framework and rationale of the DDR undoubtedly cohere with religious law. But does the rule, as it currently operates in the UK, serves the interest of faith communities?

### 3.2 Living Persons, Living Bodies

As discussed in Part two, death for purposes of the DDR is currently pronounced upon the confirmation of brainstem death. Like the issue of the permissibility of organ transplantation and donation, diverging interpretations have surfaced over the acceptability of the neurological standard for determining death. Although some scholars have opined that it is religiously permissible to declare death on the basis of brainstem death, this is still a highly controversial matter for which many others have expressed strong reservations.[42]

In general, the Abrahamic faith communities believe that earthly life terminates with the departure of the soul.[43] Death therefore represents the end of a person's body-soul unity.[44] Although the soul outlives this parting, the body becomes a cadaver without the soul. As the presence of the soul is ordinarily associated with breathing, a person is considered alive if his heart and lungs are still functioning, even if mechanically assisted. It is impossible, Meilaender claimed, for a functioning body to be soulless.[45] Viewed from this perspective, the removal of vital organs from brainstem dead breathing bodies would be tantamount to murder since it would be wrong to equate dead brainstems or

41 Y.A. Breitowitz, 'The Brain Death Controversy in Jewish Law', www.jlaw.com/Articles/brain.html; A. Jotkowitz, 'Theological Reflections on Donation After Circulatory Death: The Wisdom of Paul Ramsey and Moshe Feinstein', *Journal of Medical Ethics* 34 (2008): 706 at 708; J.D. Kunin, 'The Search for Organs' (note 39), 269.

42 For discussion, see e.g. M. Potts et. al. (eds.), *Beyond Brain Death: The Case Against Brain Based Criteria for Human Death* (Berlin: Springer, 2001); M.Y. Rady & J.L. Verheijde, 'Brain-Dead Patients are not Cadavers: The Need to Revise the Definition of Death in Muslim Communities', *HEC Forum* 25 (2013): 25; A.I. Padela et. al., 'Brain Death in Islamic Ethico-legal Deliberation: Challenges for Applied Islamic Bioethics', *Bioethics* 27(3) (2013): 132; E. Shtull-Leber, 'Rethinking the Brain Death Controversy: A History of Scientific Advancement and the Redefinition of Death in Jewish Law', University of Michigan (2010).

43 C. Camosy, *Peter Singer and Christian Ethics* (Cambridge: Cambridge University Press, 2012) 51.

44 J.M. Dubois, 'The Ethics of Creating and Responding to Doubts about Death Criteria', *Journal of Medicine and Philosophy* 35 (2010): 365 at 367.

45 G. Meilaender, 'On Removing Food and Water: Against the Stream', in: D.K. Clark & R.V. Rakestraw (eds.), *Readings in Christian Ethics, Volume 2: Issues and Applications* (Michigan: Baker Academic, 2008) 100.

brainlessness with soullessness.[46] Those organs would, if retrieved, be taken not only from living bodies, but also living persons. This would therefore represent a violation of the philosophy and rationale of the DDR of not causing death via organ procurement. Thus unless the law also recognises the traditional cardiopulmonary criteria of irreversible cessation of breathing and heartbeat as a method for declaring the death of individuals from faith communities, the DDR as it currently functions fails to sufficiently protect their welfare.

## 4. Recommendations and Conclusion

Although solid organs for purposes of transplantation can be obtained from those who are still alive as well as those who are already dead, it is undoubtedly donation from deceased donors which is more important.[47] Apart from the possibility of retrieving a larger number of organs from one single donor, it also allows for the procurement of vital organs. This has had a transformative effect on the value of human cadavers. If such bodies had previously only been useful, and quantitatively very minor at that, for purposes of dissection in medical schools, they have now rapidly and dramatically become an invaluable resource.[48] For people who are suffering from vital organ failure, the organs harvested from these bodies could potentially make the difference between not only existence and life, but also life and death. To ensure that the needs of prospective recipients are not met at the expense of dying or vulnerable people, the DDR was promulgated. According to the rule, vital organs could only be removed after the donors have died rather than for the procurement to be the cause of death. This being so, the DDR fully coheres with homicide law, as well as religious law since Christianity, Islam and Judaism too unequivocally forbid the taking of innocent lives even for the sake of saving another life.

However, while the Abrahamic faith communities fully share the DDR's philosophy and rationale, how death is defined for the operation of the rule is not consistent with how they ordinarily determine its occurrence. Doctors, keen to transplant the vital organs of ventilated brainstem dead patients because of

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46 Y.A. Breitowitz, 'The Brain Death Controversy' (note 41); T. Stammers, 'Brain Death', *Christian Medical Fellowship Files* No. 48 (2012); R.M. Veatch, 'The Impending Collapse of the Whole-Brain Definition of Death', *Hastings Center Report* 23(4) (1993): 18.

47 T. Woodcock & R. Wheeler, 'Law and Medical Ethics' (note 35), 283; K. Zeiler, 'Neither Property Rights nor Heroic Gift, Neither Sacrifice nor Aporia: The Benefit of the Theoretical Lens of Sharing in Donation Ethics', *Medicine, Health Care and Philosophy* 17(2) (2014): 171 at 180; C. Kapoor, 'The Removal of Organs from Cadavers: A Utilitarian Perspective', *UCL Jurisprudence Review* (1994) 104.

48 H.E. Emson, 'It is Immoral to Require Consent for Cadaver Organ Donation', *Journal of Medical Ethics* 29 (2003): 125 at 126.

the promising prospects of success, declared their condition as constituting death in order to facilitate organ procurement without contravening the DDR. The new brain-based standard supplanted the traditional cardiopulmonary standard for determining death, and is the only definition of death currently recognised under English Law. This development led to an unparalleled and extraordinary situation. If death used to be signified by and was associated with paleness, coldness, stiffness, and motionlessness,[49] dead persons can now, among other things, retain their colour, are warm to the touch, can continue to breathe, have a heartbeat, can digest and metabolise food, can feel and react to pain, and can excrete waste.

As discussed, faith communities do not view those 'breathing corpses' as cadavers. So long as breathing and heartbeat are still present, even if mechanically-assisted, it is believed that the soul still inhabits the body. From this perspective, the person is therefore alive. But as it would be legally permissible to remove their vital organs, thereby causing death, this signifies that the DDR, which is wholly reliant on an official definition of death which they do not subscribe to, fails to adequately protect them.

To remedy the situation, at least two steps need to be taken. In the short-run, there would have to be more transparency and honesty in organ donation and transplantation campaigns. These efforts are currently 'tainted with self-interest'.[50] The aim is almost exclusively focused on promoting altruistic organ donation. In view of this, the information provided to the public invariably concentrates on the enormous life-changing benefits to organ recipients as reinforced by inspiring real-life success stories. Alongside these are statistical data on the high number of people on waiting lists as well as the avoidable and tragic number of deaths every year owing to the shortage of donors. These campaigns have often adopted evocative and emotive slogans like 'Give the Gift of Life', 'Be Part of the Solution', 'Can We Count on You?', 'If You Believe in Organ Donation, Prove It', and 'Real People, Real Lives, Real Action'.[51]

However, the method used to declare death does not feature prominently in such campaigns. While people are encouraged to register their names on the NHS Organ Donor Register or to carry cards that affirm that their organs

49 L.S. Geisler, 'The Living and the Dead', www.linus-geisler.de/art2010/20100luniversitas_dead-donor-rule.html.

50 F.C. Chaten, 'The Dead Donor Rule: Effect on the Virtuous Practice of Medicine', *Journal of Medical Ethics* (2013), doi:10.1136/medethics-2013-101333.

51 G. Randhawa, 'Faith Engagement and Organ Donation Action Plan', University of Bedfordshire (December 2013): 1 at 3; NHSBT, 'Organ Donation. The Gift of Life', www.organdonation.nhs.uk/newsroom/fact_sheets/language_leaflets/organ_donation_english.pdf.

can be removed after they die, the phrase 'after my death', is usually not fully explained or clarified.[52] The fact that the 'cadaver' would still be breathing and could still display many other signs of life; and that death for transplant purposes is different from death for purposes of post-mortem examination, burial or cremation; have never been openly or readily conveyed to the public.[53] This state of affairs has been strongly criticised by Hill as 'deception by omission'.[54] Even in religion-specific leaflets produced by the NHS,[55] very few made any mention of how death is defined and diagnosed. Of those which did, attention is drawn to religious bodies which support the notion of brainstem death while downplaying dissenting voices on the matter. However, it is important that consent to the posthumous removal and use of vital organs, whether provided by the decedents during their lifetime, or by their families after their demise, be well-informed.[56] The current standard for determining death should be explained in clear and simple language, and there must also be preparedness to answer questions.[57] This would give the public, especially members of faith communities, the opportunity to properly assess whether the determination of death for organ retrieval purposes is religiously and personally acceptable to them before making a decision on organ donation.

In the long run, there should be wider acknowledgement that how death is defined is not solely a medical question, but also a matter of religious and cultural determination.[58] It is important that the justice of having only one legal definition of death be publicly debated, in the hope that the cardiopulmonary standard for determining death would one day be reinstated as a legal means

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52 'Memorandum by David Wainwright Evans', cited in House of Lords EU Committee 17th Report of Session 2007-08, 'Increasing the Supply of Donor Organs Within the EU: Volume II: Evidence', HL Paper 123-II.

53 'Memorandum by Dr David J. Hill', www.publications.parliament.uk/pa/Id200708/Idselect/Ideucom/123/123we12.htm.

54 *Ibid.*

55 E.g. NHSBT, 'Organ Donation and Religious Beliefs: A Guide to Organ Donation and Christian Beliefs'; NHSBT, 'Christianity and Organ Donation: A Guide to Organ Donation and Christian Beliefs'; NHSBT, 'Organ Donation and Religious Beliefs: A Guide to Organ Donation and Muslim Beliefs', NHSBT, 'Islam and Organ Donation: A Guide to Organ Donation and Muslim Beliefs'; NHSBT, 'Organ Donation and Religious Beliefs: A Guide to Organ Donation and Jewish Beliefs'; NHSBT, 'Judaism and Organ Donation: A Guide to Organ Donation and Jewish Beliefs'. See also NHSBT, 'Religious Perspectives on Organ Donation', www.organdonation.nhs.uk/how_to_become_a_donor/religious_perspectives/index.asp.

56 R. Rieu, 'The Potential Impact of an Opt-Out System for Organ Donation in the UK', *Journal of Medical Ethics* 36 (2010): 534 at 537.

57 G. Randhawa, 'Death and Organ Donation' (note 38), 89; A. Daoust & E. Racine, 'Depictions Of "Brain Death" in the Media: Medical and Ethical Implications', *Journal of Medical Ethics* 40 (2014): 253 at 258; T. Blackwell, '"Dead-Donor" Rule Dangerously Misleading, Experts Say', *National Post*, 27 October 2011.

58 A. Bagheri, 'Individual Choice in the Definition of Death', *Journal of Medical Ethics* 33 (2007): 146.

for defining death – not as a replacement for brainstem death, but as an officially-recognised alternative that could be used by religious communities that do not subscribe to the neurological standard for determining death.[59] Only when death can be declared using a method which resonates with their belief systems would their welfare be properly safeguarded by the DDR, should they decide to become organ donors.

59 For further discussion, see K.A. Choong, 'Organ Procurement: A Case for Pluralism on the Definition of Death', *Journal of Medical Law and Ethics* 1(1) (2013): 5.