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WHEN IS THE DEAD DONOR RULE VIOLATED?

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One challenging issue about postmortem organ donations concerns the conditions under which the Dead Donor Rule (DDR), which serves as the legal and ethical guideline for this procedure, is violated or upheld. This issue stems mainly from two related ongoing disputes. One concerns the precise definition of death or its scientific determination. The other is about the specific action that the DDR seeks to prohibit. Regarding the latter, it is said that the DDR seeks to prohibit organ procurement practices that involve organ donors who are not yet dead or that kill, disrespect, or harm these donors. This essay argues that the action that the DDR primarily intends to prohibit is the killing of organ donors in the course of procuring their organs. The other prohibited actions are ways of ensuring that the DDR is complied with or that its ethics is well grounded. Furthermore, given that law and morality operate under different standards and conditions, it is essential not to confuse the ethics of the DDR with its legality.

Keywords: cadaveric organ donation, dead donor rule, organ donation

INTRODUCTION

The expression "Death Donor Rule" (DDR), coined by John Robertson in 1999, refers to a legal and ethical principle implicitly held by present organ donation policies in various countries (Truog 2015, 1885; Rodriquez-Arias et al. 2011, 36). There are at least two accounts of how the principle was formed. Truog (2015, 1887) traces it from the legal and ethical issues sparked by the first heart transplant performed by Christiaan Barnard on December 3, 1967. One central question, accordingly, was "whether the donor was dead at the time his heart was removed for transplantation" (ibid.). Rodriguez-Arias (2018), on the other hand, traces it to the legal concerns brought about by the declaration of a Belgian surgeon, Guy Alexandre, in 1996 that he successfully procured kidneys for transplantation from nine patients in the state of irreversible

coma. While it was acknowledged that procuring organs before patients have stopped breathing would preserve the organs' optimal state for transplantation, the procedure could be regarded as an act of killing. For if patients in irreversible coma were not yet legally dead prior to their biological death after their organs were procured, then what presumably killed them was the procedure of procuring their organs. Consequently, the doctors who performed the procedure could be charged with homicide.

As a way out of the legal issue, three medical organizations embraced a policy that declares irreversibly unconscious patients, though still being artificially maintained in life, as already dead. This concept of death, now known as *brain death*, has been added to the standard definition of death as the irreversible cessation of cardio-pulmonary functions. The French National Council of the Order of Physicians was the first to do it in 1966, followed two years later by the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death and the World Medical Assembly (Rodriquez-Arias 2018, 37-38). Consequently, procuring organs from such patients would not be tantamount to killing them, as they were considered already dead. While this policy was intended to protect doctors from possible legal issues in organ procurements, the DDR is also a way of ensuring that such procedures are done in ethically acceptable ways, both in consideration of the interests and rights of donors and the perception of the public.

While Robertson (1999, 6) formulates the principle of the DDR as, "the ethical and legal rule that requires that donors not be killed in order to obtain their organs," some other formulations of the DDR have been advanced. This is mainly motivated to increase the rate of organ donations since more and more people are dying every day as a result of a shortage of organs for transplantation. As the DDR constrains organ donations (Chen and Entwistle 2024, 458), it has to be construed in ways that will allow for more organ donations. This, however, has resulted in controversy regarding the conditions under which the DDR can be deemed to have been violated. Various efforts to deal with this controversy have made the DDR a topic that has been discussed for at least three decades now (Veach and Ross 2016, 17).

It can be gleaned from the current literature on the subject matter that there are two closely related points of disagreement that have contributed significantly to this controversy. The first concerns the definition of death (Rodriguez-Arias 2011, 36). While many countries have accepted brain death (understood as whole brain death) as part of the legal definition of death, in addition to the standard cardio-pulmonary definition of death, there are still questions about whether it (brain death) really constitutes death in the scientific sense. Truog (2015, 1886), for instance, claims that "many patients currently deemed to be legally dead for purposes of organ donation are not in fact dead by any scientific or biological standard. If this claim is correct, then it follows that our current practices of organ procurement do not conform with the DDR."

The second point of disagreement concerns the specific type of action that the DDR primarily prohibits. As can be gleaned from current discussions on the matter, there are four kinds of action that the DDR can be said to prohibit. They refer to those acts prohibited by rules that can be framed as follows: first, the *death rule*, which prohibits procuring organs from donors who are not yet truly dead; second, the *no-killing rule*, which prohibits procuring organs in ways that will kill the donors; third,

the *no-harm rule*, which prohibits procuring organs in ways that will harm the donors; and fourth, the *respect rule*, which prohibits procuring organs in ways that will use the donors merely as means. These rules can stand independently of one another, such that it is possible to violate one rule without necessarily violating any of the others. Consequently, it can be argued, among others, that the organ procurement that led to a donor's death might not be what really killed the donor, or that already dead patients and dying ones with irreversible loss of consciousness, having no interests anymore, can no longer be harmed or disrespected. Identifying the DDR with any of these rules will yield a specific type of violation condition.

This essay deals with the controversy in two steps. It first argues for the view that the DDR's primary intent is to prohibit organ procurement that kills donors. On this view, the issue regarding what counts as a dead person can be sidestepped. The other prohibited actions are taken as supplementary to the no-killing rule: the death rule ensures compliance with the DDR (understood as corresponding to the no-killing rule), whereas the no-harm and respect rules provide moral grounding to the DDR. Then it distinguishes the ethical question from the legal one with regard to the DDR's violation condition. As these two types of questions are settled differently, their conflation adds to the complexity of the issue. For while we can situate the legal question within the legal framework of a given nation and thus settle it objectively, we cannot do so with the ethical question owing to the intended universal application of contrasting ethical frameworks. After examining these two points of disagreement, the paper looks into the violation conditions of the DDR as a legal and ethical guideline.

WHAT THE DDR PROHIBITS

Death and No-killing Rules

The DDR has two widely acknowledged formulations, referring to what Omelianchuk (2018) calls the "Death Requirement" and "Don't kill Rule." These two formulations correspond, respectively, to what we have earlier referred to as the *death rule* and *no-killing rule*. Omelianchuk (2018, 2-3) lists several pronouncements from scholars showing these two formulations. Below are some further ones:

DDR as the Death Rule	DDR as the No-killing Rule
"[T]he dead donor rule: persons must be dead before their organs are taken." (Arnold and Youngner 2019, 263)	"The dead donor rule fundamentally reflects the application of the norm that doctors must not kill." (Armstrong and Miller 2013, 5)
"The dead donor rule states that organ donors must be declared dead before any vital organs are removed." (Lyon 2018, 165)	"I contend that the moral core of the rule is the Don't Kill rule, not the Death Requirement." (Omelianchuk 2018, 1)
"Donation of vital organs is currently governed by the dead donor rule (DDR). Donors must be determined	"The dead donor rule (DDR)—*that individuals must not be killed by organ retrieval*—describes a moral

to be dead according to established legal criteria and medical standards before procurement of vital organs for transplantation." (Miller 2014, 1133)	standard implicitly guiding organ procurement legislations around the world." (Rodriquez-Arias et al. 2011, 36)
"The "dead-donor rule" requires patients to be declared dead before the removal of life-sustaining organs for transplantation." (Truog and Robinson 2003, 2391)	"One factor among many that limits the availability of cadaveric organs is the dead donor rule—the ethical and legal rule that requires that donors not be killed in order to obtain their organs." (Robertson 1999, 6)
"[T]he "dead donor rule" (DDR)... holds that one cannot licitly procure life-prolonging organs from a donor until that donor is dead." (Veatch 2004, 262)	"The dead donor rule limits only organ retrieval that causes death. It says nothing about situations in which organ retrieval itself would not cause death." (Busch and Mjalaand 2023b, 2)

From a legal perspective, the DDR is a general guideline for organ procurement that ensures that one does not violate the law on homicide while maximizing organ procurement. In as much as the law forbids killing, the DDR can be formulated as the prohibition of killing in the course of organ procurement—thus, its equation with the no-killing rule. But in as much as this prohibition can only be clearly satisfied if the person is already dead, the DDR can also be formulated as the prohibition of organ procurement from persons who are not yet legally dead—thus, its equation with the death rule. It may seem that these two formulations basically come down to the same thing: either they are just two different ways of saying the same thing, or they are necessarily interconnected (Bernat 2024, 4). This explains why there are some who accept both formulations as appropriate to express what the DDR means. Some, however, see a significant difference between these two formulations, such that equating the DDR with one of these two rules will yield a different set of conditions as to when the DDR is complied with or violated.

While acknowledging the close relationship between these two formulations, there is, however, some disagreement on what constitutes the core of the DDR. Some prefer to understand the DDR as basically corresponding to the death rule. Again, if donors are already dead at the time their organs are being procured, then the procedure of procuring their organs is clearly not what killed them. Legally, this ensures that the physicians performing the procedure cannot be charged with homicide. Ethically, this ensures that the donors are not harmed and/or their interests disrespected by the procedure. Consequently, as people are assured that they will not be killed if they decide to donate their organs, this will most likely increase public trust in the organ donation system, which will then increase the rate of organ donations and the number of lives that will be saved.

One problem with procuring organs from already dead persons in the standard cardio-pulmonary sense is that these organs may no longer be optimal for transplantation (Busch 2024, 27-33). Thus, this way of procuring organs, though

legally safe, will not save more lives. There are at least three ways to handle this problem. The first is simply to lobby for the modification of the homicide law, which will then legally allow the killing of organ donors, or which will protect physicians who will cause the death of their patients in the course of procuring their organs from charges of homicide. The problem here is that it does not erase the stigma of being regarded as the one who killed the patients. Even if physicians would be legally justified in killing a patient for organ transplantation and would be free of legal issues, they, nonetheless, would be labeled as killers of organ donors.

The second is to find ways of preserving the quality of the organs of donors pronounced dead based on circulatory standards. This paves the way for the introduction of the procedure called NRP (normothermic regional perfusion), which resumes blood circulation in certain parts of the body (excluding the brain) after the determination of death based on said standards (Manzati et al. 2024). This process is done after the "no-touch period" has lapsed, usually after five minutes following the declaration of death, when it is presumed that auto-resuscitation is already impossible (which in turn allegedly guarantees permanent cessation of circulatory and respiratory functions). This procedure, however, is ethically controversial. Some argue that this procedure violates the DDR understood as the death rule (Omelianchuk 2024), while some contend that it does not (Busch 2024). A point of contention is that with the resumption of blood flow, it is alleged that the dead patient is said to have been somehow brought back to life. Getting their organs would then be a case of procuring organs from patients who are still alive.

The third way is to explore ways of procuring organs that are still optimal for transplantation while not violating the homicide law. More specifically, it will not be regarded as an act of killing in the legal sense even if the donors will die of cardiac arrest after the procedure. This led to the introduction of another definition of death, namely, the irreversible cessation of all brain functions, which we now know as *brain death*. As brain-dead patients can still have their cardio-pulmonary functions maintained by ventilators, their organs, once procured, are still optimal for transplantation. After being endorsed by some prominent medical and legal organizations as an additional "medical" definition of death, it was then eventually adopted as an additional legal definition of death by most countries. In the U.S., the inclusion of whole brain death in the definition of death by the President's Commission in 1981 was endorsed by the American Medical Association, the American Bar Association, and the National Conference of Commissioners on Uniform State Laws, leading to its adoption as an additional criterion of death by the 1980 Uniform Determination of Death Act (Lyon 2018, 167).

This implies that causing the irreversible cessation of a brain-dead person's cardio-pulmonary functions by removing their organs does not mean killing the person. If one has caused a person's irreversible cessation either of their brain functions or cardio-pulmonary functions, one surely has killed the person. But if one has caused the irreversible cessation of the cardio-pulmonary functions of a person who was already in the state of irreversible cessation of all brain functions, one has not killed the person. Though this case may give rise to some conceptual issues, one simply cannot kill a person who is already considered dead. As it is the addition of brain death to the standard cardio-pulmonary definition of death that legally enables compliance

with the DDR when procuring organs from brain-dead patients, the practice of the dead donor rule has been tied to brain death (Lyon 2018, 165). Consequently, it is also this association with brain death that, in large part, makes the DDR controversial.

Going back to the case of NRP, it is clear that the main reason why the brain is excluded from the parts of the body of the donor (declared dead under circulatory criteria) whose blood flow is resumed is precisely not to resuscitate brain activity. Without brain activity, the case can be made that the donor has not really been brought back to life. But this only holds under the neurological criteria of death. In this consideration, the procedure of NRP can only be said to have complied with the DDR if, among others, death is construed as brain death. As Lewis and Dale 2023) clarify: "NRP would be consistent with the Dead Donor Rule provided: (i) A unified brain-based determination of death is accepted (as it is in the UK). (ii) The techniques used to isolate (prevent) brain circulation (e.g., cross clamping or balloon occlusion) are safe in theory and clinical practice. (iii) The technical acts required by organ retrieval surgeons to isolate the brain circulation are ethically, legally, and socially acceptable."

Some scholars dispute the appropriateness of brain death as a condition for complying with the DDR (see, for instance, Truog and Miller 2008, and Truog and Robinson 2003). There are two main arguments. The first argument claims that brain death is not an appropriate definition of death. More specifically, it is claimed that such a definition of death is allegedly not scientifically or biologically grounded. Truog and Robertson (2003, 2392), in this regard, allege that brain death is not really a state yet in which a person is no longer functioning as an integrated whole, for such functioning can still be maintained with the aid of a ventilator. It is further claimed that the concept of brain death confuses dying with death and, consequentially, "confuses a prognosis with a diagnosis" (Truog and Robinson 2003, 2392). This will be ethically problematic since a dying person still has all the rights that a living person has.

The second argument claims that, at the moment, there really is no way of determining whether all the brain functions of a person have irreversibly ceased to function. This claim is based on two considerations: first, the impossibility of current technology to determine whether all the functions of the brain are no longer functioning; second, the impossibility of determining the irreversibility of the brain's functions that are not functioning at the moment of diagnosis. There are some, of course, who have defended the appropriateness of brain death as a medical and legal definition of death. Lyon (2018, 168), for instance, counters that in so far as neurologists are concerned, "the process for diagnosing brain death is straightforward when performed under the proper well-defined conditions." Specifically, the process of determining whether the conditions for declaring brain death, which include coma, apnea, and the absence of brainstem reflexes, have been obtained is well established. Furthermore, the Quality of Standards Subcommittee of the American Academy of Neurology "found no reports in peer-reviewed medical journals of recovery of brain function after a determination of brain death using the AAN practice parameters" (cited in Lyon 2018, 168).

However, while Lyon argues and demonstrates that the determination of brain death is well-established medically and scientifically, he, however, admits that there are still pending questions on whether brain death should be considered true death, given that there are competing notions of what counts as true death (Lyon 2018, 168).

Veach and Ross (2016, 19-21), for instance, list the following candidates for a concept of death: the standard views consisting of the religious view in which the soul leaves the body and the medical view of cardio-pulmonary death (irreversible cessation of all cardio-pulmonary functions); and the alternative views of whole brain death (irreversible cessation of all brain functions) and higher brain death (irreversible cessation of brain functions related to consciousness).[1]

Some have argued that the core element of the DDR is not the death rule but the no-killing rule. Those who follow this line of thinking claim that the problems faced by the DDR understood as the death rule regarding the definition of death may be sidestepped by understanding DDR as the no-killing rule. That is, we can still determine whether the DDR is violated or complied with even if the concept of death remains unsettled. It is said that organ procurement can be done in ways in which the procedure is not what really kills a donor who eventually dies (of cardiac arrest) after the procedure. If the donor dies after the procedure of procuring their organ, that procedure may not necessarily be what causes her death (cardiac arrest). If such were the case, then the DDR is not violated even if the donor is still alive when the procedure is done and eventually dies after. Consequently, it is not required for the donor to be dead when their organ is procured to ensure compliance with the DDR.

Most importantly, however, it is not important whether the donor is still alive or already dead when the procedure is done. For if the donor is already dead, then the procedure is certainly not what killed the donor. But if the donor is still alive and it can be shown that this procedure will not kill them, then the DDR is not violated. Consequently, even if there is uncertainty regarding whether the donor is already dead or not, we can still meaningfully determine whether the DDR is complied with or violated.

What, then, are these ways of procuring organs that will not cause the death of donors? Some propose the strategy of likening the situation to euthanasia, in which withdrawing the life support on which a patient is totally dependent for the continuance of their life is not tantamount to killing the patient. Here, it is believed that what kills the patient is their disease, for withdrawing the life support is just a way of letting the patient die. So, assuming that brain-dead patients are not truly dead, if we remove their ventilator and then, immediately after their cardiac arrest, remove their organs for transplantation, we will not be killing these patients. This strategy, however, is controversial. For one, if the person who removes the ventilator from a patient is not a physician but the patient's greedy and hostile son, surely we will not see the action as merely letting the patient die. (See Arnold and Youngner 1993, 268-269.).

Busch and Mjaaland (2023) propose an alternative strategy. They speak of situations in which organs are procured at the time that they are no longer necessary for life. The assumption is that procuring organs will only cause the death of donors if these organs are necessary for their life or for the continuance of it. As Robertson (1996, 6) remarks, “Removal of organs necessary for life prior to demise would violate the dead donor rule regardless of the condition or consent of the donor because removal of those organs would kill the donor.” In this light, Busch and Mjaaland (2023, 3) argue that, "in some cases where patients are close to being dead, the organs are no longer necessary for life, and removal of them will not cause death." If a patient is already in the state of irreversible process of dying, their organs will no longer be

necessary for her life. If these organs are procured in this state, then it is not what causes their death; removing their organs or not, they will eventually die.

As an analogy for the point made by Busch and Mjaaland above, consider the game of Jenga. In this game, players first build a tower of blocks in a specific order. Then, they take turns removing one block at a time and placing it on top of the tower, all while trying to avoid toppling it. The player who causes the tower to collapse loses the game. Now imagine that, while the tower is in the process of collapsing, we manage to remove a block from the falling structure. Clearly, our act of removing the block is not what caused the collapse of the tower, for the collapse had already started and would continue even if we had not removed the block.

No-harm and Respect Rules

Aside from the death and no-killing rules, the DDR is also associated with two further rules: namely, the *no-harm rule* (also referred to as the *principle of non-maleficence)* and the *respect rule.* This association comes in three ways. First, the no-harm rule and the respect rule are referred to as general ethical rules guiding the DDR, which form the moral foundation of the DDR. Second, the respect rule is advanced as a key component of the DDR, which functions independently of the two main formulations of the DDR—the killing rule and death rule. Third, the no-harm rule and respect rule are combined to form an alternative to the DDR as an ethical guideline for organ transplantation.

First, the DDR is said to be grounded in a general ethical rule or principle identified either as the no-harm rule or the respect rule. Omelianchuk (cited in Mjaaland 2023, 2), for instance, regards the DDR as "derived from the moral obligation not to cause harm, also known as the principle of nonmaleficence." Robertson (2019, 184) further remarks that "A major reason for the requirement that the organ donor be dead is to protect the donor from being harmed by organ removal." On the other hand, some scholars like Lyon (2018, 165) contend that "the dead donor rule is based on the principle of respect for persons" expressed in the Kantian ethical principle of not using persons merely as means (Lyon 2018, 169-70).

Second, some scholars consider the respect rule as a key component of the DDR that functions independently of the no-killing rule. This means that even if the no-killing rule is complied with, but the respect rule is not, then the DDR is violated. This point has been raised by Gardiner and Sparrow (2017) when they argued that while organ procurement in controlled NHBD (non-heart-beating donation) or DCD (donation after cardiac arrest) may not violate the no-killing rule, it can still be said to violate the DDR. They explained that "[t]he premortem procedures that are initiated to minimize warm ischemic time in NHBD, such as cannulation, and organizational and attitudinal changes," may involve viewing the patient "primarily as an organ donor rather than an unconscious intensive care patient (Gardiner and Sparrow 2012, 17)." If this happens, the performance of such procedures is tantamount to treating "a living person as a means to the ends of others" (ibid.). It must, however, be qualified that the patient is used merely as a means here if the patient has not consented to such procedures.[2]

Napier (2011) agrees with the point made by Gardiner and Sparrow and further strengthens their argument by supplying a missing premise: "The use of typical premortem procedures on the donor involves using the donor as a means to an end" (Napier 2011, 135). Using this framework, Napier, in a recent article (2023), then disputes the claim of Busch and Mjaaland (2023) that organ procurement done under controlled DCD does not kill the donor given that the organs procured are no longer necessary for life. He (2023, 57) writes: "... cDCD organ extraction procedures risk using the donor merely as a means for the benefit of the recipient. This use plausibly counts as disrespecting the donor." The point of Napier is critical. Even if the patient is already in the irreversible state of dying, procuring their organs during this state may still violate the DDR. The act of procuring her organs may not be what really kills the patient (as argued by Busch and Mjalaand), thereby sidestepping the no-killing rule. However, if the premortem procedures applied to the patient to prepare them for organ procurement treat them merely as a means to an end, then the DDR is nonetheless violated. Napier here, of course, is equating the respect rule with the DDR.

Third, some scholars advance the combination of the no-harm rule and respect rule to serve as an alternative to the DDR as an ethical guideline for organ transplantation. This is a result of the view that the DDR, which is plagued by the unsettled definition of death, is not a viable legal and ethical guide for organ transplantation. Truog and Robinson (2003, 2392), for instance, believe that the issue regarding the meaning of death most likely will not be settled. Consequently, they (2003, 2391) argue that the DDR should be abandoned and be replaced by the combined principles of nonmaleficence and respect for persons: "We believe, however, that the ethical foundations of organ recovery need not rest on the problematic determination of death. We instead propose that the ethics of organ donation be based on the ethical principles of nonmaleficence and respect for persons rather than on brain death and the dead-donor rule."

There are, however, problems with regard to how the no-harm and respect rules should be applied. Regarding the no-harm rule, Pinto (2020, 2) remarks: "In some cases, and specifically for many patients facing imminent death, keeping them alive beyond their wishes is doing harm." What this points out is that the principle of non-maleficence also faces conceptual difficulties. For one, how are we going to weigh which harm should override which? Regarding the respect rule, some claim that informed consent, which embodies the said rule, can justify the morally problematic cases where healthy persons can make suicidal donations of their vital organs and severely sick persons can make euthanasia donations of the same (Lyon 2018, 166). Such donations can be made with informed consent, thereby preventing these persons from being used merely as a means to some end, but this does not make these donations morally permissible.

After examining what it would entail of the DDR if associated with each of the four rules, we think it most plausible to side with the view that identifies the DDR with the no-killing rule. On this view, the death rule is simply a mechanism to ensure compliance with the no-killing rule. This assurance, however, is not perfect or complete because it is still possible for the no-killing rule to be complied with even with the violation of the death rule (such as when procuring the organs of donors deemed to be in the irreversible state of dying). Furthermore, the death rule is totally

dependent on the definition of true death, which is far from being settled, while the no-killing rule is not. The no-harm rule is faced with the difficulty of resolving conflicts of harms, while the respect rule cannot prevent morally problematic organ donations (such as suicidal and euthanasia donations). On the other hand, the proposed combination of no-harm and respect rules as a replacement for the DDR is based on questionable grounds since it is premised on the questionable equation of the DDR with the death rule.

LEGALITY AND ETHICS OF THE DDR

After examining the kind of action that the DDR primarily prohibits, let us further probe into what kind of rule it is. Some scholars present the DDR as an ethical rule (Schweikart 2020, 1019; Truog and Miller 2008, 674; Busch and Mjalaand 2023, 1; and Rodriquez-Arias et al. 2011, 36), while some present it both as an ethical and a legal rule (Robertson (1999, 6; Truog 2015, 1886). As an ethical standard, it is supposed to guide practices and legislation on organ procurement (Rodriquez-Arias et al. 2011, 36). But though presented merely as an ethical rule, the DDR is nonetheless widely regarded as based on or justified by both ethical and legal standards. Schweikart (2020, 1019), for instance, writes: "The weakness of the DDR stems from its presumed ethical and legal justifications and the key problems they attempt to solve" (see also Miller 2014, 1133). This raises the question of how legal standards can justify ethical norms. Aside from the fact that morality is not a matter of legislation, the question leads to a vicious circle in which legislation itself justifies a rule meant to direct legislation. To make sense of the fact that the DDR has both ethical and legal justifications, we shall then follow Robertson (1999) in regarding the DDR both as a legal and ethical rule.

Legal DDR and Ethical DDR

As an ethical rule, DDR has ethical justifications (the moral standards), whereas as a legal rule, it has legal justifications (the legal standards or simply the laws). Consequently, we need to distinguish between the DDR regarded as an ethical guideline, which we shall refer to as "Ethical DDR," and the DDR regarded as a legal guideline, which we shall refer to as "Legal DDR." Conflating these two will lead to unnecessary complications, given the significant difference between the ethical and the legal with regard to standards, sanctions, validity, scope, and ways of settling disputes or disagreements. Though laws should ideally embody ethical principles, in reality, what is legal is sometimes, if not often, not moral. The question of when DDR is violated, in this regard, needs to be qualified—whether one is referring to Ethical DDR or Legal DDR.

Let us examine the difference between Ethical DDR and Legal DDR using the viewpoint of Rudolf Carnap's (1950) distinction between internal questions and external questions regarding frameworks (worldviews, conceptual schemes, or belief systems). Internal questions are questions arising from the application of the rules of a given framework. As such, they are answerable using the concepts and rules of the

framework. In contrast, external questions are questions arising from evaluating the strengths and weaknesses of the framework (in terms of coherence, comprehensiveness, predictive and explanatory power, among others). As such, they are not answerable using the concepts and rules of the framework. They require standards and methods outside the framework.

Take questions involving the mathematical framework. Internal questions would include questions about mathematical calculations (e.g., What is 2 and 2?), which are answerable using the concepts and rules of the framework. On the other hand, external questions would refer to questions about the bases of mathematical concepts and rules, such as, "What is a number?" and, "Are mathematical rules based on some aspects of reality, human conventions, or the structure of the human mind?" In the scientific framework, the question "What causes physical event X?" is internal, while the question "What is the nature of causation?" is external.

Carnap (1950, 31) regarded internal questions as scientific because they can be settled objectively by methods that are either empirical (such as observation) or logical (analysis of relations of concepts). The rules of the framework specify these methods for verifying the truth or falsity of empirical and logical claims made within the framework. External questions, on the other hand, are regarded by Carnap as philosophical mainly because they are framework or foundational questions. As such, external questions require the use of philosophical methods and approaches. Though Carnap (1950, 40) endorses the pragmatic method in this regard, where the acceptance or rejection of a framework is based on its efficiency to accomplish the intended tasks, other philosophical methods may prove to be equally useful.

Thus, in dealing with a legal question, we only need to look at the legal framework in which the question is being asked. This means, among others, that we need to look at the laws of the country in which the question is being asked. Assuming that the laws of the country are clearly formulated, we can be objective in dealing with the legal question. The legal question may be empirical, in which a law is being applied to a concrete case, or it may be logical, in which the relation of a law to other laws (like what other laws or precedent cases can support a law) is what is being examined. If we raise the question within a certain country, then we are dealing with only one legal framework or one set of laws. There may, of course, be aspects of the law that are open to interpretation, but usually, the law itself specifies how such interpretational disagreements would be settled—like through the decisions of a Supreme Court.

While dealing with internal questions can be straightforward, dealing with external ones can be very challenging, given the variety of philosophical methods and approaches. This is especially true with ethical questions (as a form of external questions), for ethical frameworks, such as deontology, consequentialism, and virtue ethics (and their variants), are intended to be universal in application. This implies that, unlike the legal question, we cannot situate an ethical question to an ethical framework adopted by a nation.[3] Consequently, we will be dealing with several ethical frameworks, and the question of which of these frameworks should be preferred cannot be settled by mere consensus or legislation.

Dealing now with the legal question of when is the Legal DDR (understood as the no-killing rule) violated, we need to situate the question in the legal framework of a given country. Thus, we should look into when it is violated in Country X. This will

require looking into the laws of such country relevant to organ transplantation, such as its legal definition of death and how death is ascertained. In this connection, if brain death is already part of the legal definition of death in a country and there are legal guidelines on how to ascertain it (like the legal provision regarding the number of physicians who should certify its occurrence), then we only need to resort to these legal provisions in a country to determine whether an organ procurement involving brain-dead donors violates the DDR or not.

Ethical DDR and Deontology

With regard to the violation of the Ethical DDR, the crucial question is: under what ethical theory is the DDR operating? It is obviously not on consequentialist grounds, since killing may be justified on a utilitarian principle. Although the inclusion of brain death in the legal definition of death is arguably done on some utilitarian considerations (to protect physicians from charges of homicide and to increase public trust in the organ donation system, and eventually to increase the rate of organ donation), it is widely acknowledged that the Ethical DDR is grounded in deontological ethics. "The DDR is a deontological rule," as Busch and Mjalaand (2023, 2) categorically state. Omelianchuk (2018, 1-2) elaborates:

On the other hand, it is interpreted as a norm against intentionally killing the innocent via transplant surgery, a norm that is historically rooted in the absolutist ethical systems of Kantian deontology, natural law theory, and religious ideas embedded in Judaism and Christianity—not in principles of utility. Hence, it is insufficient to argue from the premise that the DDR has negative effects on donor trust (assuming this is the case) to the conclusion that it should be rejected (e.g. [2]), since the validity of the norm against killing individuals for their organs need not depend on whether the killing produces good consequences.

In addition to the absolutist deontological systems advanced by Kant and proponents of natural theory and divine command theory, we can also include here the conditional/pluralist deontological system advanced by Ross (see Evangelista and Mabaquiao 2020; Ross 2007). The critical difference is that while the absolutist deontological theories would not admit of exceptions to the application of Ethical DDR, Rossian deontology would (when the *prima facie* duty of not killing a willing donor is overridden by a greater *prima facie* duty, say of saving more innocent lives), making it more flexible and practical in some situations.

Regardless of how the deontological nature of the Ethical DDR is taken, one critical point to consider concerns the significant role deontological ethics gives to the intentions (or motivations) of agents in determining the morality of their actions. In the Kantian framework, what ultimately matters is whether an action is done with the intention of following a moral rule that is universalizable (that is, can be made as a law for everyone, under similar conditions, without contradiction) and respectful of persons (that is, never using them merely as means to ends). Whether the action successfully carries out the intention or not or, generally, whether the action leads to desirable outcomes or not, the morality of the action remains. As Kant (1965) qualifies, the success of the action does not augment the moral goodness of the action, nor does its failure diminish it.

Recalling an earlier example about the act of withdrawing a patient's life support, it is alleged that such an act does not amount to killing the patient but just letting the patient die. One objection to this view cites an instance wherein the person who withdraws the life support is not a physician but a son of the patient known to be greedy and harboring malicious feelings towards the patient. Intuitively, the son's act of removing his father's life support would constitute an act of killing. But this intuition is based on the most likely intention of the son based on the given background of the narrative. If the son intends to kill his father, his action to carry out his intention (by withdrawing his father's life support) is morally wrong, regardless of whether he has a correct or mistaken definition of death and whether or not his father actually dies in the end.

Thus, if the Ethical DDR utilizes a deontological framework, its violation will have to be determined by examining the intentions and motivations in performing the medical procedure of organ procurement. Regardless of how death is defined or whether the patient is already dead prior to the procedure or passes away during the procedure, if the procedure or the way it is performed is morally wrong, it is morally wrong.

CONCLUSION

Among the different rules equated with the DDR, we have argued that the DDR corresponds to the no-killing rule. The other rules are mechanisms to guarantee the effectivity and ethical soundness of this rule as an ethical guide in cadaveric organ transplantation. Specifically, the death rule ensures that the no-killing rule is complied with, while the no-harm and respect rules ensure its ethical soundness. Unlike the death rule, the implementation of the no-killing rule is not dependent on the definition of death, which is still controversial. On the other hand, the no-harm and respect rules are problematic when equated with the no-killing rule. They, however, justify the ethical soundness of the no-killing rule—they explain why it is morally wrong to kill an organ donor in the course of procuring her organs for transplantation.

Disagreements over whether an organ procurement practice violates the DDR are also attributable to confusion between the Ethical DDR (the DDR taken as an ethical guideline) and the Legal DDR (the DDR taken as a legal guideline). As legal standards differ significantly from moral ones, what complies with the Legal DDR may violate the Ethical DDR. Consequently, the legality of a medical practice will not guarantee its moral correctness. Moral principles relevant to the Ethical DDR, understood as the no-killing rule, are deontological ones whose application to postmortem organ donation does not require a specific definition of death. The key consideration is whether the intentions and motivations behind organ procurement follow appropriate moral principles, such as the principle of respect for persons. And this is regardless of whether donors are already dead or still in the state of dying, according to circulatory or neurological criteria, at the time of procuring their organs. The goal, however, is for the Legal DDR to align with and embody the Ethical DDR, whose realization we must all strive for.[4]

NOTES

1. It is interesting to note that Pope John Paul II has also addressed this issue of what counts as true death in relation to organ transplantation. In his address to the XVII International Congress of the Transplantation Society (2000), Pope John Paul II defines death as "consisting in the total disintegration of that unitary and integrated whole that is the personal self. It results from the separation of the life-principle (or soul) from the corporeal reality of the person" (Paul II 2000, 2). But while death as the separation of the soul from the body cannot be scientifically ascertained, the Pope claims that there are scientifically secure means of knowing the biological signs of death using both circulatory and neurological criteria. For the Pope, this is guaranteed by the "clearly determined parameters commonly held by the international community" (ibid.). According to Bishop Bruskewitz et al. (2001, 5-6), in their commentary on the Pope's address, the Pope, unfortunately, has been misinformed about such parameters, since "[i]n fact, no such clearly determined parameters exist." There is no consensus yet among scientists, including those in the medical field, on what counts as a scientific definition and determination of human death (see Truog and Robinson 2003).

2. Such consent, Gardiner and Sparrow (2012) further clarified, cannot be presumed from the patient's enlistment in the Organ Donation Registry. This point, however, depends on a country's organ donation system (see Mabaquiao and De Loyola 2024).

3. This will lead to the equation of culture with morality or cultural standards with moral standards, which in turn will lead to (cultural) moral relativism.

4. In preparing the final revision of the paper, the grammar checker function of the application QuillBot was used to supplement the spelling and grammar tool of MS Word.

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