

## Brain Death and Posthumous Harm

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The dead donor rule (DDR) stipulates that donors must be pronounced dead before their life-sustaining organs are removed. One reason for the norm is to prevent harm, a tacit assertion that deceased persons are not harmed by the retrieval of vital organs. As the Epicureans wrote, “Where she was, death was not, and where death was, she was not,” suggesting that after death there is no subject to suffer harm. While commentators such as Franklin Miller and Robert Truog raise criticisms of the DDR’s relationship to the principle of nonmaleficence, they do not contest the Epicurean assertion that certain donors at the end-of-life would suffer no harm from organ removal, provided there is valid consent. According to their account, donors with catastrophic brain injuries who plan to terminate life support have no interests in life and so death through organ removal thwarts no interests (2008, p. 41). This suggests that exceptions to the DDR would not always disrespect the principle of nonmaleficence.

Can harm only affect the conscious? Does medicine’s credo, *primum non nocere*, not extend to patients with catastrophic brain injuries? At the conference, I hope to argue that the answer to both questions is no because the subject problem—that after death there is no longer a living subject to be harmed—does not cohere with Henry K. Beecher’s concept of brain death

For one, the dead can be harmed. A donor declared brain dead can have an interest *in* the fate of her organs, and when these interests are thwarted the donor is subject to morally-relevant harm even though she does not experience it. Thus the subject problem is avoided by defining harms objectively through the interference of a goal and rather than its conscious experience.

Moreover, living persons have a universally-held interest in life which is always thwarted through the removal of life-sustaining organs. “If we are to make sense of the view that to die is bad,” American philosopher Thomas Nagel argues, “it must be on the ground that life is a good and death is the corresponding deprivation or loss, bad not because of any positive features but because of the desirability of what it removes” (1979, p. 64). A living donor with brain damage does not jettison her interests in life merely because the burdens of therapy have come to outweigh the benefits from being alive. Exceptions to the DDR are therefore necessarily harmful.

However, this does not mean that all things considered the harm of an exception to the DDR is always ethically indefensible. The conclusion I will draw is that organ donation should only ever precede death when the retrieval of vital organs would do no *wrongful* harm

### Work Cited

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