Defining death in non-heart beating organ donors

N Zamperetti, R Bellomo, C Ronco

Life and death in this context are intended in a strict biological sense (as distinct from anthropological, psychological, and sociological death): the death of a human being is the same as the death of an animal or plant.

The above paradigm might seem ethically, morally, and practically very straightforward. It is not. Actually, NHBD protocols raise major ethical concerns regarding the definition of the donors’ vital status. In this essay, we will argue that clinical criteria can only certify the clinical condition of asystole, whose equivalence to “life” or “death” cannot be defined by medicine alone. This doesn’t mean that NHBD are still alive at the moment of organ retrieval, but simply that medicine alone cannot demonstrate that they are surely dead. In this sense, in our view, NHBD protocols have to be re-established on moral, social, and anthropologic criteria, which must be openly formulated, discussed, and accepted.

We suggest that reformulating the policy of organ retrieval from NHBD, taking these issues into account, is in the best interests of donors, their families, recipients, society as a whole, and the long term future of organ transplantation in general.

CAN MEDICINE DIAGNOSE THE STATUS OF NHBD?

Two NHBD subsets exist: the controlled (organ procurement following a planned withdrawal of futile or excessively burdensome artificial life support) and the uncontrolled (retrieval following unsuccessful cardiopulmonary resuscitation).

The most important difference is how the UDDA term of “irreversible” relates to cardiocirculatory function: in the latter subset, “irreversible” means in spite of any possible intervention (a strong sense), while in the former it means spontaneously irreversible (the weakest possible sense) because, for such patients, forgoing of life support is intended as the most appropriate action:

It is legitimate to declare death when it has been established: (1) that circulation and respiration have ceased; (2) that these functions will not resume spontaneously, and (3) that the physician should not resuscitate. . . . That the physician should not resuscitate—even were this possible—is known by the fact that all the patients in...
The weakest possible interpretation of irreversibility, the functions is the only determinant of death, organ harvesting. Thus, years after claiming that loss of brain (brain death) cannot be considered certain at the time of the brain will resume some functions, if resuscitation is possible given the IOM recommendation and the current practice of critical care medicine.

This conclusion raises some problems. First, it ignores many reports that demonstrate spontaneous restoration of adequate cardiac function after more than five minutes of asystole, a fact that is most probably grossly under reported rather then being remarkably rare. Even disregarding those papers, however, it must be noticed that Youngner's data are seriously flawed from a clinical, methodological, and statistical point of view, so that they provide “the weakest possible evidence for a recommendation”. Because this recommendation concerns the weakest possible interpretation of irreversibility, the strength of the final conclusion can be questioned.

Second, the fact that one is bound to die without active intervention does not mean that one is dead. The paper recognises that circulation can be restored in many cases and that intervention does not mean that one is dead. The paper of the SCCM ethics committee moves apparently at this point, such a consensus is yet to be reached for organ retrieval.

The problems outlined above are the consequence of the fact that medicine alone cannot diagnose death in such a short time: “waiting five minutes—or two or 10 minutes—after the cessation of cardiopulmonary function prior to declaring death is problematic . . . [as] the clinical data do not demonstrate when the criteria for death have been met”.

The paper of the SCCM ethics committee moves apparently within the borders of the dead donor rule. Yet, if all these problems are left unsolved, one could fear that we are just playing with definitions and adapting them to what seems reasonable but not provable.

These questions cannot have escaped the members of the SCCM ethics committee, who are excellent clinicians and bioethicists. Most likely, they are well aware of all the issues and of the difficulty of proposing an alternative solution. This cul de sac is the consequence of the fact that the transplantation policy is based on the assumption that medicine can assuredly certify the biological death of the donors at a time when retrieval of viable vital organs is possible. This assumption is flawed.

ORGAN RETRIEVAL AND THE IMPOSSIBILITY OF DEFINING THE VITAL STATUS OF NHBD

As argued, we have no scientific means of diagnosing the biological death of NHBD.

We are reasonably sure that asystole is spontaneously irreversible after a few minutes. But whether at these moments those patients are really dead is a matter beyond our scientific knowledge and for which medicine has no answer.

The risk is that of creating socially acceptable criteria for transplantation by using “science” and “medicine” to legalise them, justify them, remove fear of abuse, and create widespread acceptance.

Some authors seem to suggest that, in fact, this is what happened with the brain death criteria. This hypothesis is indirectly confirmed by R Cranford, former chairman of the ethics subcommittee of the American Academy of Neurology, who, writing about persistent vegetative state (PVS), stated that:

It seems that permanently unconscious patients have characteristics of both the living and the dead. It would be tempting to call them dead and then retrospectively apply the principles of death, as society has done with brain death.

Even Henry Beecher, chairman of the Harvard committee, mixed up scientific, moral, and operational criteria, when he stated (in 1971):

At whatever level we choose to call death, it is an arbitrary decision. Death of the heart? The hair still grows. Death of the brain? The heart may still beat. The need is to choose an irreversible state where the brain no longer functions. It is best to choose a level where, although the brain is dead, usefulness of other organs is still present. This we have tried to make clear in what we have called the new definition of death.

The discussion of this problem is far beyond the scope of this paper and the disposable space. Nor do we think it is in anybody's interest to call into question the righteousness of the concept of brain death 35 years after the Harvard criteria. Anyway, the mere fact that such issues exist forces us to be beyond reproach in our reasoning, keeping the different levels of discussion clearly separate, avoiding the mixing of what is scientific, what is moral, and what is operational.

A relevant factor is that the cardiorespiratory definition and criteria of death come from centuries of human experience.
when the cardiorespiratory functions were neither restorable nor supported. Furthermore, for the first time in history we have the possibility of interfering in the process of dying with manoeuvres which are of no utility for the patient but which can greatly help others. In this sense, these criteria could be inadequate nowadays.

On the other hand, if death cannot be defined or identified by medicine alone, then medical knowledge and clinical states could become the tools for moral and social decision making. We suggest that we should move away from an unattainable certification of biological death, as the *sine qua non* for organ donation; we should openly admit that NHBD death cannot be defined at a time when organ retrieval is possible and that all we are able to define are socially, morally, and scientifically acceptable criteria for organ donation. Such criteria should be the object of wide debate (social, scientific, moral, ethical, and legal). They should also be the subject of constant review, as scientific progress and changes in moral paradigms are likely to require timely modifications. The only possible alternatives are either to abandon NHBD protocols or to maintain a scientifically untenable approach, pretending that NHBD are biologically dead. In other words, if we want to continue to support organ transplantation from NHBD it’s necessary to acknowledge the purely and typically moral and anthropological nature of the concept of death.

The challenge is to admit that medicine can only identify clinical situations (such as irreversible asystole) and stimulate a social discussion to establish if it is socially acceptable to retrieve vital organs from consenting patients in such a condition.

The real problem, consequently, can be formulated as follow: can we retrieve vital organs from patients if we cannot scientifically demonstrate their vital status, and in this way save other patients’ lives?

The mention of transplant medicine is not inappropriate, even if it might seem better to avoid introducing the interests of a third party in such a discussion. Anyway, the fact that demand for viable organs was a major motivation for the implementation of NHBD protocols is well attested. Thus it might be better not to hide this issue but to clearly include it in the discussion of the problem.

The two relevant factors, therefore, are the interests and dignity of the donors and the vital needs of the recipients. Unfortunately, people in desperate need of vital organ exist. But thankfully there are also people who wish to donate their organs when they are no longer useful to themselves. Matching these two groups in a morally, anthropologically, and socially acceptable way can be an extraordinarily important goal.

**SETTING A CLINICALLY DEFINABLE POINT OF NO RETURN**

The approach we propose is to socially define irreversible (however defined) asystole as a point of no return in the process of dying of NHBD, where organ retrieval can be clinically, ethically, and socially justified.

After asystole, a patient’s situation is quite out of our traditional concept of life and death. At minutes pass, more and more cells die, but still the moment of death is unknown. Most probably, such a moment is simply impossible to determine as an absolute value, because different patients “die” at different times after cardiac arrest. Declaring death in a moment which is consistent with the retrieval of vital organs is much more a moral than a clinical decision. Nevertheless, prolonged asystole is a clinically and scientifically useful point of no return, which can be used to guide moral and social decisions. As the irreversible asystole is the terminal event which precedes the biological death, the status of NHBD could be defined a *post terminal condition*, as it follows the irreversible asystole (but clearly it’s not yet biological death).

The approach outlined above is not absolutely original. Other authors have claimed the inadequacy of the current approach to the definition of NHBD vital status, together with the necessity of reformulating it on more scientifically tenable and morally acceptable criteria. Shewmon, tracing an adequate moral background for the NHBD protocol, clearly admits that the patient is not yet dead at the moment of organ retrieval:

> It is possible to remove vital organs from a patient just disconnected from extraordinary means of support but not yet dead, in such a way that death is neither caused nor even hastened. That is, organs are not touched until after final, though not yet irreversible, cessation of heart-beat and circulation; the heart is still resuscitable, but resuscitation prior to its excision for transplantation would constitute an extraordinary means appropriately forgone along with the ventilator. Excision of what would otherwise be a permanently non-beating heart in no way alters the circulation-less body’s physiology during the remaining few minutes of the dying process. Informed consent is of course assumed.

Other authors are much more radical, deeming it reasonable and feasible to remove organs for transplantation (with the permission of the patient or surrogate) when the patient is either permanently unconscious or when death is imminent. Arnold and Youngner, for instance, wrote:

> What if, instead of continually gerrymandering the line between life and death, we simply ask, “Are there some patients whose quality of life is so unendurable and whose death is so imminent (by fate or their own decision) that we may take their organs before they die?” . . . After all, our society does not require that a patient be dead prior to the removal of life sustaining technology; it requires only that the removal does not violate the patient’s interest (as defined by either the patient or surrogate). From a patient’s perspective, the consequences of organ procurement (death) may not be that different than those of forgoing life support, except that organ procurement may help others.

The difference is that they all move within the strict dichotomy alive/dead, assuming that if a patient is not completely dead, he/she is still alive. Their position can be seen as an implicit violation of the dead donor rule and equated to euthanasia or active killing. Our position is that the traditional concepts of life and death are simply inadequate in the settings in which we have to make decisions, in the face of the continuing progress of resuscitation techniques, and the social needs represented by modern transplant medicine.

In addition to our observations, the theory formulated by Emanuel is very interesting and somewhat similar. Assuming that in the process of dying there is no describable threshold event or state that clearly separates life and death, this author produced an asymptotic model which admits the reality of residual states of life and in which a bounded zone of life cessation can be defined. The persistent vegetative state (upper limit) and the irreversible asystole (lower limit) could bound such a zone. Death could be declared any time within the bounded zone, according to the patient’s informed position:

> A person’s life must be considered ceased for any individual whose cardiorespiratory function has irreversibly...
ceased, and can be considered ceased for any individual having neurological function no more than in persistent vegetative state if he or she or his or her proxy clearly indicate the wish that life be considered ceased in such a state.19

Even this stance admits the current impossibility of medicine to determine reliable clinical signs of instantaneous death, but anticipates a sort of patient based, self tailored definition of death (with all its social, moral, and legal implications).

CONCLUSIONS

We have argued that it is not possible to define exactly at which point death occurs for the purpose of transplantation, because there are no scientifically tenable criteria to do this at the time when organ retrieval is possible. We believe that it is in the best long term interests of donors, recipients, their families, society at large, and transplantation medicine to be honest to ourselves, our patients, and society and admit that the only thing we can do is to openly formulate moral, social, and scientific criteria for organ retrieval.

As other authors have suggested in different ways, such formulation might involve a full reassessment of the organ donation process and of the definition of what society should accept for the process to occur. Our proposal is that, for the time being, it should rest on the currently applied criterion of irreversible (however defined) asystole, with the open admission that it does not define “death” but only a moment in the process of dying where organ retrieval can be allowed.

Authors’ affiliations

N Zamperelli, Department of Anaesthesia and Intensive Care Medicine, San Bartolo Hospital, Via Rodolfi 37, 36100 Vicenza, Italy

R Bellomo, Department of Intensive Care, Austin & Repatriation Medical Center, Heidelberg, Victoria, Australia

C Ronco, Department of Nephrology, San Bartolo Hospital, Via Rodolfi 37, 36100 Vicenza, Italy

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