Prof. Edmund Pellegrino on brain death: a personal statement from the 2008 White Paper of the President's Council on Bioethics

articolo

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Dated December 2008, the White Paper of the former President's Council on Bioethics, "Controversies in the determination of death"[1] is a valuable and commendable document that interested readers can access on line. The "brain death issue" has been, from the introduction of the first requirements by the "Harvard ad Hoc Committee on Brain Death" in 1968 [2] to the subsequent implementation by individual nations that revised their statutory definition of death, in the midst of long lasting debate and controversy generated by conflicting views. However, it appears that most Western countries have since adopted the definition of "brain death", in the clinical context where it is applicable, notwithstanding the lack of uniformity or consensus on the criteria used. In the above mentioned White Paper, the President's Council on Bioethics, appointed by the former US President George W. Bush, the Council summarizes the issues and the various positions that have been advanced over the years, in a very articulate and concise manner. Towards the end of the document, a personal statement by the Council's Chair, Prof. Edmund Pellegrino, the topic of my *quasi* two hour conversation with him, in his office of Professor Emeritus of Medicine and Medical Ethics at the Kennedy Institute of Ethics, Georgetown University, a day of October 2009, deserves special attention. In his personal statement Prof. Pellegrino, after an initial claim to his obligation in assessing the faithfulness of the opinions reflected in the document, the reliability of the research and the evidence supporting the same opinions, having all conditions been satisfied, illustrates his own position on the contended issue, in ten pages. Beginning from the three final recommendations made by the Council: «1) To reaffirm the ethical propriety of the "dead donor rule" (DDR); 2) To reaffirm the ethical acceptability of the neurological standard (total brain failure, including the brain stem) as well as the cardiopulmonary standard (irreversible cessation of both cardiac and respiratory functions); and 3) To reject the use of patients in permanent vegetative states as organ donors»[3], Prof. Pellegrino explains the reasons why, although in general agreement with the recommendations, he feels the necessity to contribute further to the reflection due to differences on some of the arguments provided by the Council's members. His personal view, that forms the basis of this short contribution, reflects preoccupation on four main issues: 1) The Philosophical "Definitions"; 2) The meaning attributed to the "Dead Donor Rule" (DDR); 3) The benefits and limitations of the neurological and cardiopulmonary standards and, finally, what he defines 4) «The places of prudential reasoning and futility in remedying some of the problems with both standards»[4].

Philosophical "Definitions"

Prof. Pellegrino is rather skeptical about the use of a philosophical definition of death. He quotes Aristotle's concern on the use of any definition, due to intrinsic limitations; also, he refers to Hans Jonas's view on our imprecision of reality that, as such, cannot give rise to precision in our concept, being

life and death among such realities. In addition, Prof. Pellegrino evaluates different criteria used in the clinical definition of death and criticizes: 1) The criterion of somatic integration, because of the counter evidence of many clinical observations; 2) The argument of the loss of the function of breathing of the apneic patient as one of the signs of death, since several clinical conditions result in the deprivation of the same capacity (poliomyelitis, for example), but these same patients are kept artificially ventilated for years; 3) The assumption that the death of a whole organism can be indentified with the death of an organ, the brain; 4) The acknowledgment of death as the separation of the body from its vital principle that, although the most authoritative worldwide, lacks of agreeable and empirically observable phenomena. Prof. Pellegrino concludes that «until an empirically sound criterion for death is found, the lack of a conjunction between concept and reality remains a problem»[5]. Therefore, he states that the «only indisputable signs of death are those we have known since antiquity, i.e., loss of sentience, heartbeat, and breathing; mottling and coldness of the skin; muscular rigidity; and eventual putrefaction as the result of generalized autolysis of body cells»[6].

The Dead Donor Rule or DDR

A pillar of ethical acceptability in any transplant protocol, the "Dead Donor Rule" mandates that the death of the donor be ascertained as the first step in the organ harvesting process (except, obviously, when the voluntary donor is living and healthy). In addition, the rule establishes an obligation to continue the end of life care and forbids anyone from hastening the death of the donor, by any means. Because of recent controversies and uncertainties on the brain death and cardiac death criteria some bioethicists like Robert Truog and Franklin Miller, for example, have advocated the rejection of the DDR to implement the donor's or his/her surrogates' consent while others, like Robert Veach, have claimed that a definition of death be chosen arbitrarily by the donor or his/her family based on personal values. In his personal statement, Prof. Pellegrino expresses his most profound concern about such drifts that are, to his opinion, the consequence of any abolition or relaxation of the "Dead Donor Rule" and, as such, bear the potential danger of abuse. For Prof. Pellegrino the DDR, despite its limitations due to the uncertainties of the criteria used to determine the death of the donor, still under debate, represents the only possible avenue to avoid the use of assisted suicide to facilitate organ donation and to prohibit that patients in permanent vegetative state or severely compromised infants are by no means used as donors. Moreover, a proper use of the DDR does prevent "undeclared" patients from being unjustly "presumed" agreeable to donation, avoiding that individuals in situations of vulnerability are, in fact, exposed to the risk of exploitation.

The neurological and cardiopulmonary standards

In reference to the criteria used to declare the death of a donor and on the premises that the opinion expressed by the majority of the Council's members on the neurological and the cardiopulmonary standards is one of ethically acceptability, and with the reservations made by some members on the protocols known as "controlled Donation after Cardiac Death" (or controlled DCD), Prof. Pellegrino's personal claims are the following: 1) There are no compelling reasons to favor the neurological standards over the cardiopulmonary ones, since the clinical tests and signs and the philosophical arguments provide a similar, until now unsatisfactory evidence in either case; 2) It is important to consider that, when the cardiopulmonary standards are applied to a donor, the heart transplanted before cell autolysis has occurred to a significant degree, can still regain its normal function in the new, physiological environment of the re-

cipient. As such, the opposition made by some to the controlled DCD does not have sufficient grounds; 3) If we consider moral assurance, when we are called upon to determine the death of a patient, the cardiopulmonary standards would appear more adequate. In fact, Prof. Pellegrino's argument is that, in the latter case, «there is a higher degree of certainty of death than there is with a heart-beating donor, because heart, lung, and brain have all ceased functioning»[7].

Prudential reasoning and futility on organ transplantation from a dead donor

Are the clinical doubts about the neurological and cardiopulmonary standards as severe as to make their application unethical? This is the dilemma that Prof. Pellegrino posits. For the Council's Chair, the answer to this question requires a pledge to a prudent decision making process. After having explained some of the difficulties in the practice of medicine, defined as «a science of uncertainty and an art of probability»[8], Prof. Pellegrino introduces the virtue of prudence, that he describes as the first rule of all ethics. In medicine, he argues, prudence attends to promoting both the avoidance of the most severe dangers and the balancing of the benefits and risks of any form of therapy. In a situation where the death of a donor has to be determined, it is important to avoid both the error of premature action and the one of inaction; therefore, a prudent decision making process is necessary and should always be implemented. Finally, for Prof. Pellegrino prudence is «the decision to act for a good end in the morally optimal way despite persistent uncertainty about the outcome» [9]. Regarding the futility issue, although the care of the patient is never to be considered futile for Prof. Pellegrino, especially the relief of pain and suffering or palliative care, the same cannot be said for medical interventions. There are, in fact, clinical circumstances, assessed by the attending physician together with the family, when the removal of the life-support is necessary. Where this occurs, a "controlled Donation after Cardiac Death" (controlled DCD) protocol can be adopted. For Prof. Pellegrino this procedure, when the prospective donor and the prospective recipient are treated equally as patients, is more ethically sensitive to the rights of both as compared to the determination of brain death made by the conventional neurological standards.

To conclude my short contribution: ethical uncertainties on the determination on death still remain and a prudent approach seems both appropriate and necessary, especially in our world of increasing medical complexity and technological development. Ultimately, the recognition of the dignity of every human person depends on us, like Prof. Pellegrino succinctly explains : «I have chosen to give priority to the welfare of the patient before he or she becomes a donor on grounds that harm must not be done even if good comes from it. No person should be sacrificed as a means for the good of another. This is a moral precept that recognizes the intrinsic worth of every human being»[10].

NOTE

[1] *Controversies in the Determination of Death*, The White Paper of the President's Council on Bioethics, December 2008, in http://bioethics.georgetown.edu/pcbe/reports/death/

[2] «A definition of irreversible coma. Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death», in *JAMA*, 5; 205(6) (1968), 337-40.

[3] *Controversies…, op.cit.,* 107.

[4] *Controversies…, op.cit.,* 107.

[5] *Controversies…, op.cit.,* 110.

[6] *Controversies…, op.cit.,* 111.

[7] *Controversies…, op.cit.*, 114.

[8] W. Osler, *Sir William Osler Aphorisms; From His Bedside Teachings and Writings*, William Bennett Bean, Springfield, 1968, 129.

[9] *Controversies…, op.cit.*, 116.

[10] *Controversies…, op.cit.*, 119.