Stitched Bodies and Spared Lives:
Compromising the Human Rights of Filipino Kidney Sellers in the Biocapitalist Era

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List of Acronyms

AO	Administrative Order
Asia ACTS	Asia Against Child Trafficking
BASECO	Bataan Shipyard and Engineering Company
CORE	Cadaver Organ Retrieval Effort
DOH	Department of Health
ESRD	end-stage renal disease
GATS	General Agreement on Tariffs and Services
HOPE	Human Organ Preservation Effort
IRR	Implementing Rules and Regulations
ISN	International Society of Nephrology
KABALIKAT	Kabalikat sa Pagpapaunlad ng BASECO
LNRD	living, non-related donation
LRD	living, related donation
NKTI	National Kidney and Transplant Institute
PMTP	Philippine Medical Tourism Program
PODP	Philippine Organ Donation Program
PRDR	Philippine Renal Disease Registry
PSN	Philippine Society of Nephrology
RA	Republic Act
UERMMMC	University of the East Ramon Magsaysay Memorial Medical Center, Inc.
WHO	World Health Organization

Abstract

Commodification of body parts, in which kidneys are the most frequently traded, has been a new locus for the co-optation of the human body, bioethics and legal standards on organ donation and transplantation as ascribed in the biocapitalist era. Neoliberal policies operate through new constitutionalism, opening the health care system of developing countries, like the Philippines, for transplant tourism which is one of the many facets of the medical tourism industry, promising huge economic gains. This research explored how the operating notions of responsibility towards the protection of the human rights of poor kidney donors are seriously compromised by the lack of consistency in the rules governing organ donation and transplantation. I employed biographical narrations of kidney donors from BASECO in Manila; key-informant interviews with organizations opposing organ commodification and NGOs working on different facets of poverty in this area; and textual analysis of existing Philippine laws on organ donation and transplantation to explore how poor's bodies are treated as 'organs' bank for the better off' in an era when bioscience promises longer lives through science, technology and politics for those who can afford to pay. As way forward, it attempts to expand the horizon of addressing social injustices associated with these regimes of exploitation through the collective responsibility of the range of actors involved in the organ donation and transplantation process.

Relevance to Development Studies

As biomedicine promises longevity through continuous advances in the technologies of organ transplantation, regimes of exploitation towards the poor are generated within the biocapitalist era treating their bodies as mere suppliers of organs. This research contributes in bringing into discourse the overlooked role of kidney sellers in the organ transplantation process amidst debates in the legalization of commodified donations. It argues that upholding the human rights of people pushed by poverty to enter into commercialized donation entails framing rights in bioethics as collective responsibility to halt the widespread repetition of social injustices associated with such transactions.

Keywords

bioethics, biocapitalism, human rights, kidney donation, new constitutionalism, neoliberalism, Philippines, transplant tourism

Chapter 1

Introduction

1.1 Statement of the Problem

Advances in kidney transplantation in the biocapitalist era has promised longer, quality lives for people suffering from end-stage renal disease (ESRD) through various technologies of donation. The World Health Organization (WHO) reported that organ transplantation is carried out in 91 countries (Shimazono, 2007). However, it also stated that 10% of the 63, 000 kidney transplantations done annually around the world involve payment of non-related donors of different nationalities (Garwood 2007: 5). Though the WHO has declared that selling organs is prohibited, trafficking still continues. One reason it persists is the rise of new constitutionalism in health care (Gill and Bakker 2006), promoting privatization and a market-oriented economy which justifies adjustments in medical ethics and laws prohibiting organ sale through the promises of huge earnings from transplant tourism for developing countries. Organ transplantation then poses unprecedented ethical challenges to debates on human rights. Human rights promoters are faced with the questions of whether and when to endorse individual autonomy and consent as primary loci of commercialized organ transplants.

The long wait to get a donation, expensive treatments, and the urgency to save the patient's life are argued by many economists to push for the legalisation of an 'organs market'. The ethical question has been debated from the following perspectives:

1. The *liberal* view espouses what Radin (1996) calls 'universal commodification' which is built on the idea that everything has a price value. Such view argues that with legalisation and regulation come better social welfare policies for both donors (who might be exploited in the process within the current organ black market) and patients (Becker and Elías 2007). But Radin, herself a liberal, also does not agree with this extreme form of putting kidney selling into the hands of the free market since it misses structural factors such as unequal wealth distribution. However, she does not agree that it should be totally banned as well, since such prohibition to 'desperate exchanges' will not render any justice to poor people needing money to survive (Radin 1996:125). She then argues for an 'incomplete commodification' which she describes as 'an expression of a nonmarket order coexistent with a market order', making it possible to preserve the ideals of personhood and community (Radin 1996: 113). Such view is an extension of the libertarian view of social contract which seeks to secure that organ sale will be beneficial to all parties involved through the bargaining of benefits.

2. The *Marxis*t position would argue that organ selling is exploitative to its core; thus, will never be morally justifiable. It reinforces structural inequality embedded in capitalism as the donor-patient relationship is an

> extension of class oppositions between those who have the capital to pay and those whose bodies have been transformed by poverty to become a commodity for the former to purchase. The poor are treated as a mere 'organs' bank for the better off' (Cohen 2001: 25). They are 'invisible and discredited collection of anonymous suppliers of spare parts' while patients are portrayed as 'moral subjects and as suffering individuals' (Scheper-Hughes 2001a: 4). However, the Marxist view does not provide an indicative path to address the issue of how the lives of the parties involved will be both better off.

Furthermore, both liberal and Marxist views miss out the point that there are profound cultural transformations embedded in biocapitalism that facilitates the acceptance of commercial donations on a wide scale. The tensions between individual autonomy and structural inequality become exacerbated under biocapitalist rules as poor people's bodies procure viable vital organs for this 'market' with the rationale that it helps in saving lives anyway. The rise of new constitutionalism which elicits flexibility in bioethics renders this ideology of individual autonomy over one's body and welfare. Through parallelizing the laws with market objectives, the system itself creates roles for a range of actors to mediate poverty and the money needed for both the ends of the patient and the poor to meet—the broker, the transplant surgeon, the hospital, the internet, the market and ultimately the State. The State argues Michel Foucault, orchestrates the system so these parties in 'different sites, in relation to different objectives' will be coordinated (Rose, et al. 2006: 85).

This research is an attempt to explore the empirical, conceptual, and normative considerations to question the position influenced by the ideology of individual autonomy on the part of the commercial donors, and show how medical ethics and the law on organ transplant in the Philippines fall short of guaranteeing the wellbeing of the commercial donors. This has allowed market-relations and ideologies of individual choices to support biocapitalism in fundamental ways. I attempt to establish a link between this reality and neoliberal reforms in the health sector, which hand-in hand opens up markets for selling body parts and celebrates individual control over their own bodies at the same time. 'Bare lives' who are living outside the law and at the mercy of society reverberate in the lives of the poor which enables their sustenance through providing the organs for those suffering 'qualified lives' (Agamben 1998). My research hopes to contribute to the discourse on how such a specific group are targeted by *thanatopolitics* (politics of death) which is also sustained by the same system of *biopolitics* which promises longevity.

To illustrate these complex issues, this research situates the experiences of poor kidney donors and members of non-government organizations (NGOs) dealing with issues of urban poverty from BASECO in Manila, Philippines in a context where human rights are being undermined due to poverty leading to a commercial contract of kidney donation. The Philippines as one of the top organ-exporting countries alongside Pakistan, India and China (Shimazono, 2007: 957), has laws on organ donation and an anti-trafficking framework which tangentially touches on organ trafficking. I reviewed these regulations here together with the views of groups such as the Philippine Society of Nephrology (PSN) and Asia Against Child Trafficking (Asia ACTS), represent-

ing the medical and civil society perspectives respectively, which are strongly opposing the kidney trade. Through this research, I attempt to demonstrate that conceptualising responsibility and accountability to end social injustices brought by the commercialization of the poor's bodies entail a systematic transformation in biocapitalism through a plurality of norms to anticipate and prevent such exploitation masquerading as gratuity towards these people. As Young (2006: 115) argues, ending such social injustices require an account of how structural processes permit such wrongs, even allowing it repetitions in a wide scale.

1.2 Relevance of the Research

Organ trafficking is the least researched among the different forms of human trafficking and in the case of the Philippines, social policies are absent to protect kidney providers as defined within its anti-trafficking framework (Yea 2010: 359). The sketchy provisions on the rights of living kidney donors in Philippine laws warrants scrutiny since as Scheper-Hughes (2001b: 34) remarked, the kidney sellers' role is diluted in the immanent goodness of transplant medicine. In-depth sociological studies are also missing for those who underwent kidney removal for money and the circumstances which 'frame their decision' (Moazam, et al. 2009: 30). This research then aims to contribute in bringing into discourse the equally important protection of human rights of kidney sellers through policies that include them in the discourse of organ donation and transplantation.

1.3 Research Objectives

The *main objective* of this research is *to discern the shortcomings of the existing human rights framework in protecting and upholding the dignity of kidney sellers within the context of the existing organ donation and transplantation system in the Philippines.*

The *specific objectives* are as follows:

- To criticise the liberal notion of agency as referring to individual and rational choice 'exercised' by kidney sellers from poor communities
- To explore how kidney selling operates as a business trade that involves people from economically marginalised communities as providers of organs for transplantation
- To propose an alternative way of framing human rights as not a mere individual entitlement to choose but emanates from the consideration of the broader socio-economic context by which poor kidney donors are exploited in the biocapitalist system

1.4 Research Questions

The *main research question* which has been explored in this work is:

Even with the 'consent' of economically marginalised people, why can we *not* consider the commodification of human kidneys as 'freedom to choose' but rather as a violation of human rights?

The *sub-questions* are:

- What are the key features of the institutional framework regulating kidney donation in the Philippines today?
- How is the neoliberal framing of individual autonomy waged to exploit poor kidney donors from areas like BASECO within the business venture of transplant tourism?
- Why are the social and economic circumstances of the locality by which kidney donors come from crucial in framing human rights within regulations in the bioethics of kidney donation?

1.5 Research Methodology

I employed *textual analysis, key informant interviews* and *biographical narrations* to criticize the technologies used by the neoliberal regime in justifying the commodification of human kidneys. Below is how I used these methods to situate that poverty, which primarily frames the decision to sell kidneys, is missed out in the bioethical considerations of organ donation.

First, *textual analysis of medical and legal texts concerning organ donation and human trafficking in the Philippines* was used to understand how the institutional framework define the modes of living, non-related donation (LNRD) and the acts which qualify as exploitation in the transplantation process. They facilitate contextualising kidney commodification in the country alongside significant international pronouncements from the World Health Organization (WHO) and the 2008 *Istanbul Declaration on Organ Trafficking and Transplant Tourism*. I particularly focused on *Republic Act (RA) No. 7170* or the *Organ Donation Act of 1991* and the *Republic Act No. 9208* or the *Anti-Trafficking in Persons Act of 2003* and its *2009 Implementing Rules and Regulations (IRR*). Also, I utilised *Administrative Orders (AO)* from the Department of Health (DOH) concerning the execution of the above laws.

Second, I conducted *key informant interviews with representatives from 3 non-government organizations (NGOs) in BASECO* who are dealing with issues of *housing tenur*e (*Laban ng Mamamayan ng BASECO* or LAMBALUPA[1]), *livelihood programs* (*Port Area of Baseco Neighborhood Associations League, Inc.* or PABANAL[2])

[1] Translated as *Struggle of the Residents of BASECO,* LAMBALUPA was organized by the progressive *Kilusan para sa Pambansang Demokrasya* (Movement for National Democracy).

[2] A people's organization established by the Rogationists of the Heart of Jesus, an order of priests, under its Saint Hannibal Empowerment Center, Inc. (SHEC) which aims to help in alleviating people from urban poverty in collaboration with local Churches on issues of housing, livelihood, education, health, environment and sanitation, justice and peace, youth formation and values formation (SHEC, n.d.)

and *reproductive health* (*Likhaan Center for Women's Health* or Likhaan[3]). Except for Likhaan, which is represented by a registered nurse, all NGO reprentatives interviewed here are BASECO residents. I also interviewed a nephrologist, *Dr. Alberto Chua*[4] representing the *Philippine Society of Nephrology* (PSN)[5] and the R*egional Director* of *Asia Against Child Trafficking* (Asia ACTS)[6], *Amihan Abueva*[7]. Their views have aided on how advocacy and struggle in policy-making and policy execution to halt kidney commercialization, lobbying for alternative ways to increase the supply of available kidneys for transplantation and the claiming for rights for the victims of kidney trafficking are being done. I have sought the permission of Chua and Abueva to put their real names in this research. Substantial meetings with *BASECO's Barangay Councilors on Environmental Protection* and on *Health, Women and Family* who helped in my fieldwork in the area were also included.

Lastly, I have utilised *biographical narrations of three (3) kidney donors from BASECO*. BASECO has been particularly chosen since it has been notoriously known for kidney commercialization. It is estimated that approximately 3000 of its 100,000 or so residents have sold a kidney, and that most of these providers are men (Yea, 2010: 362). The interviews revolved around the exploration of the pivotal factors which led to the moment of decision to donate. Through this method, I criticised the tricky and slippery concepts of consent and altruism as expressions of the neoliberal dogma of individual freedom.

1.6 Ethical Considerations

Embedded in bioethics, this research poses questions on how my moral duty as a researcher could contribute in placing weight in the role of poverty in the framework of organ donation in the Philippines. In this age of biocapitalism in which poor people's bodies become a locus for exploitation as em-

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[3] An NGO focusing on women's reproductive health which has a clinic in BASECO providing women with free consultations and contraceptives.

[4] I interviewed Dr. Alberto Chua, a Diplomate/Fellow in Internal Medicine and Kidney Diseases, Associate Professor in the College of Medicine at the University of the East Ramon Magsaysay Memorial Medical Center, Inc. (UERMMMC) and Head of the Section of Nephrology at the Chinese General Hospital on 13 July 2012 at his clinic at the UERMMMC in Quezon City, Philippines. He is a current member of the Advocacy Committee and former President of PSN.

[5] A non-stock, non-profit and non-political organization of physicians caring for both adult and pediatric patients with kidney disease (Bayog, n.d.).

[6] A regional campaign against child-trafficking in Southeast Asia. Reports of children being trafficked for their organs became the reason for its involvement in combatting organ trafficking (Interview with Abueva 2012).

[7] Interviewed at the Asia ACTS office at the Philippine Social Sciences Center in Quezon City, Philippines on 30 July 2012.

bedded in the transformation of the health care system into a business, I aspire that this research could contribute in upholding human rights which require reframing our perspective on individual autonomy and freedom to choose.

Limited time and having carried out the field research during the typhoon season in the Philippines played huge constraints but I hope that the stories from BASECO and from the organizations such as Asia ACTS and PSN could facilitate the inclusion of these overlooked kidney donors in bioethics. The three BASECO kidney donors who participated in my interviews were *pre-selected* by the *BASECO's Barangay Councilor* on *Health, Women and Family*. For purposes of *anonymity*, I changed the names of the kidney donors and other actors they mentioned during the interviews. Also, I translated the interviews from Filipino to English for this work.

Chapter 2

Compromising Human Rights in the Age of Biocapitalism: A Theoretical Perspective

I shall establish here the limitations of framing the issue of kidney commodification within bioethics as the discourse on responsibility in addressing human rights violations and social injustices are caught in a discourse of merely looking for villains and victims. I shall argue that as human beings seek for better and longer lives, it is done at the expense of compromising the human rights of economically marginalised people. The poor constitutes a new race in which *thanatopolitics* or the politics of death is continuously taking ground. They become the embodiment of the *bare lives* who serve as objects for experimentation and whose body parts are treated as commodities governed by the market as legal regulations fail to have the necessary and ethically protective mechanisms in ensuring the dignity of both donors and patients in the organ transplantation process. As the poor are seen as merely treated as 'organs' bank for the better off' (Cohen 2001: 25), the realization of human rights remains highly elusive.

This is why I shall contend that the concept of agency, through consent and altruism, is circumvented to advance the neoliberal agenda as manifested in the rise of new constitutionalism. People are left to care for themselves and their families as inscribed within biocapitalism. I shall provide a critique of the aforementioned concepts designed to bypass bioethical measures for the benefit of an industry within the medical institution, particularly hospitals, to promote market infiltration through the legalization of selling kidneys and the promotion of transplant tourism as illustrated by cases of poor Filipino donors from the informal community of BASECO, Tondo in Manila, Philippines. After this, I shall discuss how reframing the view on human rights as not just about the abstraction of the human person but must first and foremost uphold the dignity of our corporeal existence.

2.2 Body Parts as Commodities in the Biocapitalist Era

The era of biocapitalism which is described by Yu and Liu (2009: 289) as 'a new stage or sub-form of capitalist development' presenting a 'biotechnological "utopia" of promoting and optimizing life' establishes deeper and closer connections between body, technology and society. The continuous development in the field of biotechnology has included capitalistic advances in organ transplantation, among others, through 'technological, industrial and consumptive innovation of capitalism' promising better health and longevity (Ibid). Taking it from Helmreich (2008: 463 as cited in Peters and Venkatesan 2010: 110), biocapitalism is said to represent the organic phase of capitalism where academics locate the 'contemporary unions of biological science with profit-oriented enterprise'.

The human body becomes more subjected to the gaze of capital wherein neoliberal principles of individual rationality and autonomy and the faith to the market as the arbiter of in society is hailed with so much dogmatism by bureaucrats and economists translating into institutions such as health care sector. Peters and Venkatesan (2010: 112) identified that 'governmentality of the state and governance of the self' are what link the promise of biocapital to neoliberalism. This Foucauldian concept of 'governmentality' has been acclaimed by Rose, O'Malley and Valverde (2006: 86) as having 'undermined the conventional view of the state as the origin, animator, beneficiary, or terminal point of power. They rendered power visible, in everyday life as well as in institutions, in a more tangible and material manner than Marxism'. Through the infiltration of the organ transplantation discourse by market forces, Michel Foucault's observation that the State is not anymore the sole entity which could govern people's lives becomes more prominent since there are other authorities at hand operating in 'different sites, in relation to different objectives' (Rose, et al. 2006: 85).

In this era, Foucault argues that modern biopower has its power over life (Cohen 2001: 2) and increasingly, the biovalue of people has been the utilizing aspect of how it is to be human (Yu and Liu 2009: 293). As human beings are aspiring for better quality of life through continuous development in medicine, poor people's bodies are highly subjected to the governing structures of material exchange as the rules and regulations of organ transplantation are easily swayed by the alluring promises of the influx of revenues from the transplantation industry.

Such political rationality is linked on how the neoliberal agenda of biocapitalism operates through the rise of new constitutionalism (Gill and Bakker 2006) wherein laws and regulations on organ donation and transplantation can easily be adjusted to parallel the demand for minimal government intervention and individuals are left to decide for the pursuit of their own betterment. The shift towards a market-oriented economy and privatization of social services, transforming caring institutions from having a universalist framework towards having market values driven by private forces, is based on the assumption that subjection of social services could lead to increased efficiency and growth. This is why the General Agreement on Trade in Services (GATS), for example, has been opening care institutions equally to both foreign and domestic buyers (Gill and Bakker 2006: 37). Combining tourism elements with this trend in privatization of health care both in developed and developing countries, Yea (2010: 362) also adds factors such as the increase in aging populations in developed countries and its accompanying 'rise of disorders and diseases of affluence'; 'the relative abundance of highly qualified medical personnel in developing countries with low employment opportunities/salaries (vulnerable to corruption)'; and developments in transplantation technology, particularly on immunosuppression for the reinforcement of global inequality through the rise of medical tourism.

The rise of new constitutionalism in the past 20 years has enabled the legal foundations 'for an extended market order, to regulate economic policy, and to fully protect private property rights, including intellectual property rights' (Gill and Bakker 2006: 40). It 'locks in' liberal reforms like the right to

capital mobility as a feature making social reproduction dependent on it. This mobile capital could be manifested in opening markets for kidney patients seeking transplantation elsewhere due primarily to the global shortage in cadaveric organs. Here, the issue of how to locate *bioethics* vis-à-vis *thanatopolitics* or the politics of death within *biopolitics* is important to analyse. This is crucial to understand how the life of a particular group of people is co-opted by the government of a world celebrating market-oriented globalization. Human subjectivity is engineered as an enterprise and people are constituted as entrepreneurs (Rose, O'Malley and Valverde 2006: 90).

With this framing of human nature, the prevalent neoliberal ideology of people as rational individuals seeking for maximum benefits within the bounds of minimum capital warrants our radical scrutiny. The notion of agency which builds upon rationality as enabling individuals 'to choose' what is best for them will be criticized as highly embedded in fraud within a system where bioethics is compromised to pave the way for the market to regulate the demand, supply and allocation of human kidneys. The current framing of consent and altruism, which are sought after prerequisites in screening living donors in legal and medical texts, are deeply problematic in ensuring people's motives and are blind towards the social and economic circumstances particularly behind living, non-related living donations (LNRDs). The medical institution itself is caught in crossfire since the actors who are supposed to ensure the sanctity of a donation (transplant surgeons, ethical screening board among others) are ironically involved in the commodification of these organs.

People's subjectivities are then more than ever governed by the rules of exchange and the reinforcement of the illusion that we have a choice and control over our lives, while the State is becoming a mere umpire. The paradox that the aspiration for longevity through various technologies is also a breeding ground for a politics of death, that of *thanatopolitics,* wherein people are symbolically annihilated from the system since their lives are not of the same worth as those in the upper echelon of society. Relating Cooper (2008:60-6) to Lazzarato (2004), Venkatesan and Peters (2010: 108) articulated this paradox wherein '[t]he creation of surplus population, of a life not worth the costs of its own reproduction, is strictly contemporaneous with the capitalist promise of more abundant life… Consequently, biopolitics is the strategic coordination of these power relations in order to extract a surplus of power from living beings' (Venkatesan and Peters 2010: 108).

Furthermore, biocapitalism's capacity to contain both *biopolitics* and *thanatopolitics* within a system reinforces what Giorgio Agamben's calls *bare life* (Agamben 1998). He draws from the Roman legal concept of *Homo Sacer* wherein a person can be put to death without considering the act as murder or sacrifice (Cohen 2001: 22). Through his analysis of the Roman legal framework and the Aristotelian concepts of *bare life* as *zoe* and human and political life as *bios*, Agamben describes these 'bare lives' as not protected by the law since they are outside of it. The lives of kidney sellers reverberate Agamben's analysis in the context of modernity since they are not literally 'taken', as in the case of murder, but what they did could not also be considered as a 'sacrifice' or a 'gift' since they receive remuneration from it. The way the market and the shortcomings of the law treat them could rather be more painful than physical death

since it is a symbolic death of having to resort to one's body parts just to have a temporary relief from the vicious cycles of poverty.

Though I don't want to romanticise that these people are absolutely immaculate about the circumstances by which they entered into a transaction to donate their kidneys, it remains vital how they see their entry into such trade as an act of care for their loved ones. It now warrants our attention how human rights will be rescued from the abyss of the neoliberal co-optation of people's material existence and subjectivities through a notion of collective responsibility.

2.3 Shifting Horizons for Human Rights

Seeking to confront the folly of treating poor people's body parts as commodities, it warrants the question on the necessary action to uphold the human rights of people amidst the co-optation of people's material existence within biocapitalism. Human rights remain to be in feudal status as they are still conferred to people, though not by monarchs nor lords, but by the law which creates a 'state of exception' for those who can't pay. With the poor who have nothing to fall back on to support their families, some economists (See Becker and Elías 2007) are supporting the legalization of selling body parts since it merely involves 'faceless individuals merely exercising their right to sell an organ' (Moazam, et al. 2009: 30).

Raging against the reduction of human kidneys into commodities, it becomes imperative to rethink how the law and bioethics respond to the issue. Section 1 of Article 25 of the Universal Declaration of Human Rights has a provision that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control' (UN 2012). This has been substantiated by Section 1 of Article 11 of the International Covenant on Economic, Social and Cultural Rights which recognizes 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' (OHCHR 1996-2007). At the local level, Section 9, Article II of the 1987 Philippine Constitution defines the State's duty to 'promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all' (Republic of the Philippines 2012).

Through these legal provisions, the current framing of qualifying human rights violations with the individual as its ultimate unit of analysis has its pitfalls. The blindness of the law on the social and economic circumstances by which people are coerced to 'exercise' their choice of selling their kidneys breeds a tragic paradox in the principle in medicine to do no harm to any of the parties involved in its processes. Furthermore, the existing laws on the

commodification of human body parts as just an act of trafficking have its faults too since it frames legislation and execution of the law to merely seek perpetrators.

According to Young, this model of holding people and institutions responsible through blame and liability poses a limit in addressing social injustice (2006: 107). She argues that there is a tendency to look always for somebody to bear the responsibility for the failures of social structures but to her, it is not enough to just identify the wrongdoings of perpetrators. It is necessary to have a supplementary account of 'how macro-social processes encourage such wrongs, and why they are widespread and repeated' (Young 2006: 115). Blaming somebody for the failure of the rules and regulations to serve the purpose of saving lives and for all the shortcomings of ethics and morality in treating the human body warrant the inclusion of *biopolitics*, which highlights the 'deep, close connections between body and politics, between technology and society in the context of modernity' (Yu and Liu 2009: 288).

Structural injustices become the locus by which people are deprived 'to develop and exercise their capacities' (Young 2006: 114) thereby constantly posing a systematic threat to what Scheper-Hughes (2000 as discussed by Cohen 2001: 10) calls the 'ontological security of the poor'. As a way forward, addressing these injustices require a shifting our horizons towards the biopolitical structures which both enable and constrain people's subjectivities to become subjects within the biocapitalist era. As Venkatesan and Peters (2010: 113) said, '[o]ur argument is not so much that biocapital constitutes a new conception of the natural body, but that the growing biotech sector exists at a crucial nexus between government, power and ethics whereby biopolitical strategies, which led to the formation of the biotech industry, are leading to "states of domination." These states of domination are fluid and reversible and serve as a potential focal point whereby ethical action can transform these states into spaces of creativity, resistance and culture'.

Chapter 3

Kidneys without Borders: Contextualizing Kidney Selling in the Philippines

The World Health Organization (WHO) has declared that the global demand for organs for transplantation outstripped the supply from both deceased and altruistic living relatives of patients in need which leads to the pressure for non-altruistic living donations (WHO 2004: 1). Schepher-Hughes (2005: 26) calls the phenomenon of organs being traded across different national boundaries as 'organs without borders' wherein kidneys are the most purchased. But there have been reactions on these issues. I shall then discuss here the various international legal and medical regulations and consensus towards the seemingly unprecedented commodification of kidneys. I shall focus in the case of the Philippines as one of the hotspots in this trade in the first section and analyse the political economy of medical tourism and organ transplantation as influenced by the proliferation of neoliberal reforms in the second part.

In 1991, the WHO Guiding Principles has declared that '[t]he human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited' (as quoted by Garwood 2007: 5). This was reaffirmed in 2004 when it was endorsed in the World Health Assembly that countries are to be held accountable through the member states 'to protect the most vulnerable from transplant tourism and the sale of tissues and organs' (Ibid). Furthermore, during the WHO Consultation on the Ethics, Access and Safety in Tissue and Organ Transplantation held in 2003 at Madrid in Spain, Dr Blanca Miranda of the Spanish Government 'emphasized that the respect of human rights must govern all actions in the field of transplantation medicine and that basic standards need to be established to control research, indications, allocation rules, and any other area where ethical principles can be Violated' (WHO 2004: 5). But despite these international pronouncements, there remains the widespread commodification of the body – in whole or in parts (Scheper-Hughes 2001a) which is linked with the multimillion dollar business venture in transplant tourism.

3.1 Legal and Medical Policies on Organ Donation and Transplantation in the Philippines

Data from the Philippine Renal Disease Registry (PRDR) on kidney transplants showed a continuous upward trend from 276 in 2000 to 1, 046 in 2007 wherein 95% is from living donors (Padilla 2009: 120). A sizable number of recipients of Filipino kidneys are foreigners. Data from the Renal Disease Control Program of the country's Department of Health (DOH) show that 110 patients out of the 468 kidney transplants in 2003 were from abroad (Shimazono, 2007: 957). The latter was still able to push through despite the Ad-

ministrative Order (AO) issued by the DOH in 2002 limiting transplants to foreigners to 10% of available kidneys.

Table 1 shows figures from the Philippine Transplant Registry Data as presented by Dr Alberto Chua during the Philippine Society of Nephrology Advocacy Campaign in 2011. It illustrates the increasing trend of living non-related donations to foreigners from 2006 to 2007 before it was put into stop by the 2008 DOH AO 2008-0004 which revised the national policy on non-related organ donations and transplantation and its implementing structures banning transplantations to foreigners. It is noticeable that after the AO's issuance, there was a steep reduction of living, non-related donations to foreigners from 168 in 2008 to 3 in 2009. The government has admitted that AO 124 issued in 2002, which was used to supplement the Organ Donation Act of 1991 for brain dead donors, 'does not include provisions for the acceptance and management of living donors' making this regulation an imperative to curb cases of 'backdoor operations' (DOH 2008: 2).

Table 1 RP Transplant Registry Data, Number of Recipient and Ethnicity, 2006-2009

	2006 (N =690)	**2007 (N = 1046)**	**2008 (N = 679)**	**2009 (N = 511)**	
FOREIGNER	**282**	**536**	**178**	**34**	REDUCED
LRD*	30	3	9	28	
LNRD**	249	531	168	3	
DECEASED	3	2	1	3	
FILIPINO	**408**	**510**	**501**	**477**	
LRD*	151	170	183	223	INCREASE
LNRD**	224	313	286	192	
DECEASED	33	27	32	62	DOUBLED

Prevalence Dialysis Patients	**6997**	**7472**	**10052**	**11172**
% Filipino Transplanted	**5.83%**	**6.82%**	**4.98%**	**4.27%**

Legend: *Living, Related Donor, **Living Non-Related Donor
Source: Chua, A. (2011). PSN's Advocacy on Kidney Transplant Issues.

The 2008 AO was a government's reaction to the accusations of health activists that it is breeding transplant tourism which will be discussed further in the second part of this chapter. This AO qualifies living related donors as those related to the patient up to fourth degree of consanguinity while living, non-related donors are classified as voluntary donors and commercial donors. Voluntary donors include those not related to the patients by blood 'but bear close emotional ties with him/her (i.e. spouses, relatives by affinity, colleagues, fiancé/fiancée and adoptive parents or children)' while commercial donors are identified as kidney vendors who sell their organs (DOH 2008: 2).

But despite the attempts to regulate donations, the percentage of Filipinos having transplantation is still small as shown in the lower part of Table 1. Even Dr Alberto Chua of PSN, during my interview with him, admitted that demand for kidneys would never equal the supply (2012). Given this scenario, there is now a compromise of what to do to address the shortage in organs and donors as well as the continuous trade in human kidneys.

With this grim situation, the international community, primarily through the World Health Organization (WHO), the Transplantation Society (TTS) and the International Society of Nephrology (ISN) have made parallel calls to act against the rampant commercialization of organs worldwide. These two medical organizations convened government officials, medical doctors, concerned NGOs, social scientists and ethicists in Turkey for a three-day conference from the 30th of April until the 2nd of May in 2008 and produced the *Istanbul Declaration on Organ Trafficking and Transplant Tourism*. The *Istanbul Declaration* reiterated the position that both organ trafficking and transplant tourism are prohibited since they are violations of the principles of equity, justice, and respect for human dignity (American Society of Nephrology 2008: 1228). The reason is obvious, 'the poor who sell their organs are being exploited, whether by richer people within their own countries or by transplant tourists from abroad' (p. 1227).

Furthermore, it had a consensus that there is a necessity for all countries to have a 'legal and professional framework to govern organ donation and transplantation activities, as well as a transparent regulatory oversight system that ensures donor and recipient safety and the enforcement of standards and prohibitions on unethical practices' (Ibid). It reiterates the importance of international cooperation in upholding the highest ethical standards in human transplantation, not forgetting that fundamental principle in medical practice to do no harm to all parties involved.

As kidneys are commodified in both affluent and poor nations (Scheper-Hughes 2001b: 33), the Philippines has policies on organ donation and transplantation but is primarily focused on cadaveric and living, related donations. *Republic Act No. 7170* or the *Organ Donation Act of 1991* contains provisions on how organ donation through the issuance of a legacy or will of a person as well as the permission of the members of the decedent's family in the absence of the former. It also contains a provision in Section 14 allowing an international sharing of human organs or tissues provided that it is done with the approval of the DOHand with the premise that 'foreign organs or tissue bank storage facilities and similar establishments grant reciprocal rights to their Philippine counterparts to draw human organs or tissues at any time' (Republic of the Philippines 1998-2012). Furthermore, its Section 15 has a provision for an *Information Drive*, wherein the National Kidney and Transplant Institute (NKTI) together with civic and non-government health organizations and other health related agencies will be able to undertake a public information program for the donation and transplantation of human organs (Ibid). But despite the presence of this law since 1991, it is a pity that deceased organ donation never really took off. In 2007 for example, Padilla (2009: 120) noted that only 29 kidney transplants using a deceased organ donation were recorded, representing only 0.34 per million population per year!

This happened despite the presence of the Philippine Organ Donation Program (PODP) which governs the policies on organ donation and transplantation. PODP has been established through DOH Administrative Order 124 in 2002 under the Degenerative Disease Office of the National Center for Disease Prevention and Control. According the its Policy and Program Standards, it is 'responsible for formulating policies and program standards towards the development of a rational, ethical, accessible and equitable renal health care program in the country through coordination with other organizations, association and professionals engaged in transplantation and donation programs and activities' (DOH 2003: 3). The PODP is set for the following purposes: for the advocacy and information education campaign to increase public awareness on transplantation and renal diseases; device 'a system for the screening and matching of donors and recipients prior to their inclusion in a registry', promote researches on organ donation and transplantation; involve other stakeholders for the promotion of renal health care and; establish a monitoring and evaluation program through requiring hospitals/ health facilities to pass regular reports and feedbacks (DOH 2003: 3-4).

The 2008 DOH AO mentions several guiding principles for the PODP such as *benevolence* in ensuring 'full informed consent by a competent adult' as a qualifier for voluntary donation; *non-maleficence* so that no harm will occur to both donor and recipient 'in the process of transplantation whether immediate or post transplantation'; *altruism* which highlights organ donation as done out of 'selflessness and philanthropy to save and ensure the quality of life of the beneficiary' and *volunteerism* which again highlights willingness, full consent and fitness to make competent decisions and medical and psychosocial suitability (DOH 2008: 3). Furthermore the AO specified PODP is the protocol by which the NKTI is said to abide in screening living donors since there is a scarcity of diseased donors (NKTI 2012) but ethical issues on donations from living, non-related donors faking their laboratory tests and answers during the screening interviews remain to be rampant. I shall discuss this further in Chapter 4 with the experiences of kidney donors from BASECO wherein I shall question these slippery notions of informed consent and altruism as very difficult to delineate from that of commercial transactions.

Resorting to commodified donations become a choice for many given the very low turnout of diseased donations, the long years of waiting in the list for transplantation and the high cost of dialysis. Even foreigners flock in the country for its cheap package for transplantation thus exploiting people from poor areas. This has then became a ground for organ sale to qualify as trafficking under *Republic Act No. 9208* or the *Anti-Trafficking in Persons Act.*

Included in Section 3(a) of the Act is the prohibition of the 'removal or sale of organs' as one of the grounds of trafficking in persons. 'Trafficking in persons' in this law is defined as the 'recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, *taking advantage of the vulnerability of the person*, or, *the giving or receiving of payments or benefits to achieve the consent of a person having control over another per-*

son for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the *removal or sale of organs'* (Republic of the Philippines 2003, my emphasis). Since this law was primarily enacted to institute policies that would protect and support women and children against trafficking, organ trafficking has then a rather tangential inclusion as one among the many forms of human trafficking (Interview with Abueva 2012).

The organ trafficking aspect was highlighted only until 2009 when its *Implementing Rules and Regulations* (*IRR*) have been finally approved in Congress. Section 4(g) of Republic Act No. 9208 in relation to Section 3(a) of the same act states the strict prohibition of the buying and selling of human organs. It further states in Article 1, Section 2 that its objective is to fully protect the 'poor and the most vulnerable sector of our society from the growing commercial traffic in human organ, eliminate traffic in human organs and establish institutional mechanism for the support and protection of trafficked persons' (Republic of the Philippines 2010). It uses the term 'Non-Related Commercial Organ Provider' to refer to the non-related living donor who have given up their organ in exchange of something.

Furthermore, the IRR specifies the conditions by which voluntary donation of organs is permitted. This is allowed if the person who will donate (whether related or not to the person needing transplantation) is 'at least 18 years of age, of sound mind, and understands the nature and consequences of transplanting organs from his or her body during his or her lifetime may donate, by way of written consent to the removal of organ specified in the consent, for the purpose of implanting the organ in another living human body' (Republic of the Philippines 2010). It also specified that it is prohibited for an alien to receive an organ from a Filipino, non-related donor and if ever a donation is to be done between aliens, there must be Certification from the Embassy/ Consular office proving that they are related by consanguinity and that the act is voluntary as stated in Section 9. It articulated in Article III, Section 4 that trafficking in persons for the removal or sale of organ is committed 'with or without the victim's consent or knowledge, within or across national borders'.

However, the provision on how to include people who gave their consent for the removal of the organ has no concrete grounds discussed since the IRR mainly focuses on the presence of threat and coercion. Like India which has its Transplantation of Human Organ Act (THO) passed in 1994 (Scroff 2009) that did not genuinely made its government tough enough to prevent the increase in 'wealthy domestic and diasporic consumption' (Cohen 2001: 11), there are no cases of conviction for organ trafficking in the Philippines.

It is also noteworthy that the span of years by which legislation has reacted to bridge organ donation and trafficking has long gaps. The Organ Donation Act was in *1991*, the Anti-Trafficking Law in *2006* and the IRR in *2009*. Nobody was paying attention to the 2003 Anti-Trafficking Law prior to the 2009 IRR (Interview with Chua 2012). This is further aggravated by the fact that laws are not retroactive and regulations are inconsistent—from the moment of being open to gratuity packages to regulating transplantation to for-

eigners to a total ban when the country had been branded by the WHO as a hotspot prior to the 2008 *Istanbul Declaration*. These important aspects highlight the gaps by which human rights could easily be compromised. These inconsistencies in policies will be further explored in the next section.

3.2 The Political Economy of Kidney Selling

Despite the widespread phenomenon of organ trafficking, wherein many cases have been documented worldwide, this form of trafficking remains to be the least researched among the different forms of human trafficking (Yea 2010: 359). In-depth sociological studies on the role of kidney vendors and the reasons behind why they sold their organs are also lacking (Moazam, et al. 2009: 30). It is usually the media which deals with the issue as illustrated by the review of existing literature done by Shimazono (2007: 956), showing that from the 309 documents collected in his research, there are overwhelmingly 243 media materials compared to only 51 journal articles and 15 other documents. In the Philippines, for example, a documentary done on kidney trafficking in 1999 at BASECO in Tondo, Manila by the journalist Jessica Soho even won the country's first George Foster Peabody Award the following year.

According to Asia ACTS, Filipino kidneys are the cheapest in the organ black market costing only US$1, 500, which is twenty times cheaper than that of the United States (Uy 2008). A typical Filipino who sold a kidney is male, with an annual average income of US$ 480 and attained an average of seven years education (Schepher-Hughes 2005:27). It was only in 2008 in that the Philippine government reacted to the pressure of the WHO and anticipating the *Istanbul* Declaration, through a DOH Administrative Order which declared that kidney transplantation as not part of medical tourism (DOH 2008: 4).

This has treated with hostility from both the ranks of medical professionals and government institutions since organ transplantation as part of the medical tourism program has been a promising industry in the country—attracting foreigners and Overseas Filipino Workers (OFWs) to spend on medical and dental procedures. Recognizing the potential of medical tourism for the economy since it has been a US$60 billion global business with an average annual growth rate of 20% (MacReady, 2007; 'Medical Tourism, Asia's Growth Industry,' 2006 as cited in Heung et al., 2010: 236), the country's Department of Tourism (DOT) is working closely with the DOH alongside 6 public and private medical service providers for a platform to discuss the medical tourism cluster (Porter, et. al. 2008: 23) and promote the Philippines as a destination for cheaper health care compared to the US, Japan and OECD countries. The Philippine Medical Tourism Program (PMTP)[8] was established by the govern-

[8] The engagement of the Philippine government in global medical tourism is reflected in the Philippine Medical Tourism Program (PMTP). One of its objectives is the attraction of an 'increased numbers of visitors from other countries availing of medical services and at the same time ensure that quality of those currently offering services

ment in 2004 through a Public-Private Partnership with its huge promises to patients, doctors, hospitals, government agencies, tourist resorts, etc. (Porter, et. al. 2008: 12).

In 2006, the Philippines was promoted as a hub for kidney transplant operations when the Philippine Medical Tourism Inc. (PMTI) hosted the Philippines Medical Tourism Congress Expo. There was a headline then at the website Tourism-Review.com that 'A kidney transplant operation in Davao and Cebu is offered at USD 60,000 whereas the procedure could cost USD 140,000 in other countries' (cited by Yea 2010: 361). This was followed in 2009 with the Third World Health Tourism Congress in Manila sponsored again by PMTI together with the DOH and DOT, 'thus situating the Philippines as a lead player in the global health tourism industry' (Ibid).

Despite the enormous revenues promised by medical tourism, many health activists are reluctant about the benefits of the industry especially to the country's poor. According to a 2006 report by the Philippine Center for Investigative Journalism (PCIJ), opening the country's medical facilities to foreigners could lead to the neglect of services to its citizens. There is the paradox that foreigners receive top-quality service while many Filipinos cannot even afford treatment and that tourists seeking transplant operations could lead to an escalation in organ selling by the poor (Olarte 2006).

This is further aggravated when policies change according to who are seating in the government. Rules and regulations banning the exchange of material benefits are always under the threat of being circumvented. For example, the current Secretary of Health who is also the former Executive Director of the NKTI and a transplant surgeon himself, Dr Enrique Ona has a rather vague position in organ commercialization. While he is saying that he is against it, he is quite tolerant on giving a 'gratitudinal gift' to organ donors. This is criticized as just a subtle way of referring to compensation to organ donations (Olarte 2006). Those favouring these 'gratuity packages' argue that the increased revenues from patients, both local and foreign could lead to better facilities and services from the NKTI since this hospital is well-known in Southeast Asia for its expertise in treating renal diseases.

Furthermore, according to a media report, interviews with some recruiters and doctors said that transplant surgeons were also earning from brokerage fees for matching patients with poor kidney donors (Severino 2010). This was supported by Dr Alberto Chua (2012) who said that almost 95% of the 24 transplant surgeons in the Philippines are 'involved in one way or the other' in these commercial transactions, especially prior to the non-inclusion of transplantation in the medical tourism program of the government. This then

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suitable for Global Health Care is on the same level as with globally-recognized standards, and making these services equitably available for both Medical Travellers and local patients' (DOH 2011).

shows that even the medical professionals themselves are involved in compromising ethics in donations.

With these ongoing debates involving the legal, medical and government institutions, bioethics is seriously compromised. Inconsistencies in the laws concerning paid donations have been the trajectories of exploiting the poor. The Philippine government has even been explicitly advised by the Harvard professor Michael Porter to improve its competitive advantage compared to its neighbours Thailand and Malaysia. As he said, 'To tap into its growth potential, especially high-value customers from rich countries, the government needs to improve the Philippines' business environment and infrastructure and provide an enabling political, legal and social environment' (Porter 2008: 27). This adjustment of the institutions is where new constitutionalism could be particularly operating responding to the alluring calls of neoliberal policies to encourage mobile capital through opening up the system to foreign transplant tourists. As Turner observed (2007 in Yea 2010: 361) such legal backing in medical tourism can be attributed to the reliance on 'a global market for low cost and affordable health care outside the patient's home country, while providing economic stimuli to developing country economies'.

This is why the notion of responsibility towards addressing the consequences of the inconsistencies in the law cannot be addressed by just running after certain government officials. It remains vital that analysing the role and situation of the actors involved since the issue exploitation manifests in subtle ways in altering laws to serve the profit-oriented objectives of transplant tourism and the privatization of health care. I shall discuss then in the next chapter how the decision to sell a kidney is framed along the lines of poverty and fraud in poor communities.

Chapter 4
It's not the person, it's just the kidney[9]: Findings from BASECO

People from poor communities both in urban and rural areas in the Philippines have been the target of organ brokers (Turner 2009: 192). Despite the presence of public awareness campaigns promoting organ donation, the gap between supply and demand has not been closed, which is further aggravated by poor implementation of the policies banning organ commercialization in the country. As discussed in Chapter 3, despite the proclamation of the Philippine government has decided that transplantation is not included in its medical tourism program and the issuance of the IRR on organ trafficking of the 2003 Anti-Trafficking Law, kidney trafficking has not been put into halt as illustrated by the findings of Asia ACTS (2012) in its study of victims in the province of Camarines Norte and the City of Davao. Five out of the 29 victims of kidney trafficking who were interviewed underwent organ removal after the 2009 IRR was put into place (Asia ACTS 2012: 2).

The enthusiasm of a many members of the transplant community, bioethicists and economists propelled the belief that selling body parts has become a 'moral imperative' (Rothman and Rothman 2006: 1524). They base their argument that this measure is needed due to the increasing number of end-stage renal disease patients. But where to get the needed kidneys plagues bioethics with a lot of controversies. I shall then discuss how poverty pushes people to enter into transactions of selling their kidneys. I shall present in the first part the findings from my interviews with non-government organization (NGO) representatives from the poor community of BASECO in Manila area who are working on issues of housing tenure, livelihood and reproductive health. This is to underscore the social and economic circumstances faced by residents here which frame the decision to sell a kidney. I shall present in the second part the stories of three BASECO kidney donors will be presented to understand what circumstances frame their decision to donate. Finally, I shall discuss in the third section the shortcomings of the existing framework of donation and how mechanisms of new constitutionalism in health care transforming poor people to what Cohen (2001: 25) calls 'organs' bank for the better off'.

4.1 Living Conditions in BASECO

Informal communities, with houses made up of salvaged materials and standing on mud and garbage are not unfamiliar sights in the capital city of the Philippines, Manila. As the second most populous region in the country with 11.8 million people in 2010, it has a 19.4% increase from its 9.8 million population in 2000 (NSO 2012a). The National Statistics Office (NSO) has reported that Manila is also second all over the country in household number in 2010

[9] Derived from Donna Dickenson's *Body Shopping: Converting Body Parts to Profit* (2008)

with 2.76 million (NSO 2012a). With a national average family income of P206.00 or roughly US$ 5 (NSO 2012b), many Filipinos endure poverty which is particularly obvious in housing and livelihood security. People from the different parts of the Philippine archipelago tend to flock in Manila with the hope for better opportunities which is one reason why the growth of informal communities became unprecedented. Threats and stories of eviction, resettlement, fire and crimes have become the typical scenarios in these places.

One of the most known communities in kidney selling is the reclaimed land of BASECO, shorthand for Bataan Shipyard and Engineering Company. According to UNESCAP (2004), it belongs to Barangay 649 in the district of Tondo in the City of Manila and is consisted of a 52-hectare-Engineer's island and two stone breakwaters extending towards Manila Bay which is home for 6,060 families. It has been identified by the Asian Development Bank (ADB) and the Pasig River Rehabilitation Commission (PRRC) 'as a high priority area for urban renewal' (Ibid). Presidential Proclamation 145 issued by former President Gloria Macapagal-Arroyo in 2001 has declared that the area could be 'open for disposition to its actual occupants' (as cited by Soriano 2003). According to the Barangay Councilor who heads BASECO's *Environmental Protection Council* and a representative from the NGO *Laban ng Mamamayan ng BASECO* (*LAMBALUPA*) which is working on housing security, the Proclamation assured the residents in the area that their houses cannot be demolished.

The threats of eviction, vulnerability to flooding and land reclamation have been constant sources of anxiety for the residents of BASECO. They are given an index card from the Barangay Office as a proof that they have been part of the census in the area. The index cards are presented to the authorities in claiming for free food, pieces of wood and galvanized iron for roofing when calamities like typhoons which cause floods and destruction of properties and fires strike them. Observing around the area with some members of the NGO, *Port Area of Baseco Neighborhood Associations League, Inc* (PABANAL) which was established by priests but became independent and now focused in livelihood programs, I saw houses made up of scrapped woods, sacks, used tarpaulins and other salvaged, light materials pinned together. Though this situation is not new to me any longer since I have worked before in an NGO dealing with informal communities, I have not desensitized myself in such a sight. A lot of households are still using firewood for cooking and candles and gas as light during the night since they have no access to electricity making the area more prone to fire outbreaks.

Majority of the BASECO residents have not received their land awards yet which has many consequences in their quality of life. The area which they intend to be awarded has to pass a soil test first which is administered by the Philippine Reclamation Authority, making sure it is suitable for human settlement. Otherwise, residents have to endure manually mounding the land where their houses are standing. The soil usually comes from areas where there are building constructions though the awarding is distributed per block. Re-blocking in BASECO has to be done which to LAMBALUPA representatives, poses serious challenges. LAMBALUPA has been engaging in the advocacy to urge the National Housing Authority (NHA) and the President of the country

to award the residents their own land. Members of this organization shared that struggles to stop attempts of demolition have been successful since 1997 through a dialogue with the authorities. As of now, LAMBALUPA members said that they have papers from the Department of Interior and Local Government (DILG) assuring registered BASECO residents that they will all receive the award for their lands.

Meanwhile, those residents who were able to get an award from the government have relatively sturdy houses made up of concrete and with galvanized roof. The Barangay Captain issued an order prohibiting outsiders to build new houses since old residents are at risk of losing theirs. Low-cost housing is also one proposed solution to this issue through programs of medium-rise buildings. According to the Barangay Councilor on *Environmental Protection*, the Philippine President has approved already its budget though there is no plan yet in the local level for its implementation.

But the eligibility and the efficiency to get an award are plagued with controversies. Interviews with some PABANAL and LAMBALUPA members revealed disagreements with the people's oganization, *Kabalikat sa Pagpapaunlad ng BASECO* (KABALIKAT) which serves as BASECO's representative in discussions on security of tenure on land and housing. The issue on the fee charged to become a member of KABALIKAT is also questioned while LAMBALUPA does not charge anything according to its representatives. This gives some residents who are not members a feeling of exclusion.

However, the Barangay Councilor on *Environmental Protection* has emphasized during my interviews that BASECO's Barangay Council, which is composed of the duly-elected leaders of the area, has a firm stand for an '*on-site development*' and that they are strongly opposed to relocation. The Council works with different people's organizations in the area, particularly its official representative KABALIKAT, to urge the Housing and Urban Development Coordinating Council (HUDCC) and the President of the Philippines for granting them the right to settle permanently in BASECO. This has been a challenge since the Philippine Reclamation Authority has stopped the reclamation process when Gloria Macapagal-Arroyo (2001-2010) finished her term of office as President of the Republic of the Philippines. This is important to note as another way how policies become highly dependent to personalities in office which has massive consequences in the housing issues of people in such a vulnerable area.

A wide range of social and economic issues beset the community since the non-possession of a land award is a crucial entitlement. I shall mention some here like the ineligibility to have access to electricity and water connections without this document. This then becomes a business opportunity for houses which has their own electric meter from the Manila Electric Company (MERALCO) to tap illegal connections to those not eligible to have their own meter. According to a PABANAL representative, the price charged by those who have their own electric meters is three times the price charged by MERALCO.

In the case of water supply, LAMBALUPA narrated that their group solicited the help of the Mayor of Manila to ask the Maynilad Water Services Inc. (Maynilad) for options so the area will have access to water. The meeting with Maynilad was successful somehow since the residents can buy a gallon of water for Php6.00 or US$ 0.14. In some cases, residents have to buy their own hoses and take turns in connecting to a faucet.

These facets in the persistence of poverty in the area is also attributed by one representative of LAMBALUPA to having many children wherein many are sick, out-of-school or inhaling substances such as the adhesive rugby. During my visits in the area, it is very common to see young children of ages two to six, majority of whom are malnourished, completely naked or with dirty clothes and barefooted and playing in garbage and mud. A nurse from Likhaan, said that it is a top priority that reproductive health and responsible parenting are promoted. Twice I have received answers from representatives of NGOs from LAMBALUPA and PABANAL that these children are strong since they are immune to all sorts of bacteria.

Moving around the area could also be difficult especially during the rainy season. This is even aggravated by the frequency of typhoons hitting the country which cause flooding. Dirt roads are common in the alleys as asphalt roads are only available in the main roads. I even encountered going on to the land by which the water failed to subside when I was walking around the area with some PABANAL members during the rainy month of July 2012.

But despite these difficult circumstances by which people from BASECO find themselves in, leaving the area is hardly an option given its proximity to sources of livelihood, particularly the huge marketplace Divisoria. Data from the barangay office reports that the area's residents are commonly working as porters, fishermen and waste pickers. A LAMBALUPA representative said that many residents are also picking rejected vegetables and rice from Divisoria, removing the unpleasant parts and re-selling them. Many also work as waste pickers selling those which could be recycled in junk shops. I have observed during that many houses are peeling sacks of garlic soaked in water to be sold in the market which according to one PABANAL member is a sure source of income.

As poverty is rampant, the Philippine government has been giving subsidies to poor families through its cash transfer program but according to the representatives of the NGOs, there is something wrong with the targeting procedure. BASECO residents use the term *ALTANGHAP* which is shorthand for the three meals in Filipino '*ALmusal*' (breakfast), '*TANGhalian*' (lunch) and '*HAPunan*' (dinner) to describe their experience of destitution through having just one meal a day.

NGO representatives said that those who decided to sell their kidneys became frustrated with these problems though they have some anecdotes telling about some of those who sold theirs just used the money they received for their vices particularly alcohol and drugs. The perspectives of the kidney donors from the area will then be analysed through three case studies in the next

section of this chapter through analysing the circumstances which led them to sell their kidneys.

4.2 Conspicuous Agency Amidst Destitution: Told Stories of BASECO Kidney Donors

The three kidney donors who participated here were selected by the Chairperson of BASECO's Committee on Committee on *Health, Women and Family*. They are all in their 40s during the time of my interview. Conversations with the NGOs working in BASECO reveal that the residents' perceptions on kidney selling are usually associated with the personalities of the donor as I mentioned earlier relating to being drunkards and drug addicts. To give space for the stories of kidney donors in this locality, I shall explore how they view their experience and how layers of fraud were happening along this seemingly subtle process of degrading the integrity of the human being.

Table 2 summarizes the basic demographic profile of the three BASECO kidney donors I interviewed for this research. All participants have just reached elementary education. Except for Amy, who was described by the Barangay Councilor as a 'tomboy' and single, the other two participants are married males. But during my interview, Amy proudly told me she was the only woman who sold a kidney in BASECO. All of them, though, have dependents. Amy is supporting an adopted daughter; Jess has 16 children while Neil has seven. The two men have also grandchildren with them.

Table 2Basic Demographic Profile of the 3 BASECO Kidney Donors

Name	Age as of July 2012	Year Started Living in BASECO	Civil Status	Educational Attainment	Religion	Occupation
Amy	42	2000	Single	Elementary graduate (Grade 6)	Roman Catholic	Vendor of nuts and selling food, care taker of the village plant nursery
Jess	45	1991	Married	Elementary undergraduate (Grade 3)	Roman Catholic	Porter, Boatman/ fisherman at BASECO
Neil	40	1985	Married	Elementary undergraduate (Grade 4)	Roman Catholic	Tricycle driver (tricycle not owned)

Source: Interviews with Amy, Jess and Neil at BASECO, Tondo in Manila, Philippines July 2012

Table 3 shows some of the information related to the kidney removal of the participants. Except for Amy who remembered the complete date of her kidney removal, Jess and Neil can only recall the year of their surgery. Amy and Neil had their organ removed at government hospitals in Manila while Jess had

it from one of the elite private hospitals in the country which is in the capital city as well. It is important to note here that both Jess and Neil's kidney removal occurred prior to the 2003 Anti-Trafficking Law and as Dr Alberto Chua of PSN said, the law is not retroactive posing its limitations in the protection of people in such areas.

Table 3 Basic Information on the Kidney Removal of the 3 BASECO Donors

Name	Date of Kidney Removal	Hospital	Amount Received for Kidney Selling	Reason for Kidney Selling	Knows the Identity of the Recipient
Amy	March 18, 2005	NKTI (public)	US$4400	Build house	Yes
Jess	2002	St. Luke's Medical Center (private)	US$2400	No house	Somehow
Neil	2001	San Juan Medical Center (public)	US$2400	Build house, sick father	Somehow

Source: Interviews with Amy, Jess and Neil at BASECO, Tondo in Manila, Philippines July 2012

Speaking about people's motives, interests, disappointments, hopes and dreams in one seating might not do justice to the gravity of the experience of these kidney donors. We had our conversations under a tree in a piece of land near the Barangay Hall where Amy grows vegetables. Jess was even tipsy when he spoke to me while Neil was still recovering from flu. With these circumstances at hand, I have constantly struggled to move back and forth in their told stories, inquiring with so much curiosity on their 'self-understanding' of their life-world within the 'double temporal horizon of past and future' (Fischer and Goblirsch 2006: 30) to understand what kidney donation means in the context of BASECO's condition as described above.

The three of them all migrated to BASECO due to the lack of economic opportunities in the provinces. The three had thoughts of their families and care for the patient, in one way or another, in finally making the decision to donate one of their kidneys. As indicated in Table 2, the three participants have been in BASECO for a long time with Jess living there the longest with his wife and children for 26 years.

The reasons of the participants to donate their kidneys reverberate the findings of Asia ACTS in its research in the province of Camarines Norte and Davao City. It reported that all of victims stated that money was their motivation for reasons of improving their situation through starting their own business, build/rebuild their houses, support the education of their children, help their families (parents, spouses), buy a parcel of land, provide the needs of their family and pay off their debts (Asia ACTS 2012: 3).

Interviews with BASECO NGOs and local officials highlighted that brokers are usually roaming around the area looking for potential donors. Brokers' involvement is an important prerequisite for a successful transaction. They play an essential role in serving as a 'domestic servant of a vascular surgeon involved in renal transplantation' as Cohen (2001: 13) observed in Chennai, India, apart from cases they have sold one of their kidneys as well. Interestingly, Scheper-Hughes (2001b: 42) documented that there is a broker who considers himself as not an 'outlaw' but rather like a marriage matchmaker helping those in need and those who could be alleviated by the other.

This was substantiated by my interviews with the kidney donors though they emphasized that it is not an easy decision to have an organ removed. They have to manage multiple jobs to provide their everyday needs. Lack of houses and a stable livelihood are the primary reasons why they decided to donate their kidney in exchange of some money which eventually didn't also help in having a better quality of life. As I discussed earlier, the long process for a land award to be granted poses a lot of limitations in the lives of BASECO residents and with the absence of firm and constant policies, many are duped with the instant cash promised by brokers.

Though initially undecided, the love for family outweighs all the anxiety. As Jess said with all conviction that, '*I had my kidney removed…as if I could allow my children to just live in the sidewalks. It can't be. I have to build them a house'.* Neil also has his reasons along these lines as well as contributing to his ailing father back then. Two of his seven children are still in school but all are still with him, with the eldest who have a family as well. Neil said that '*they have nowhere to go*'. Though he was able to buy electric appliances such as TV, DVD and washing machine and was able to have a small store of canned goods, his quality of life didn't have much improvement. The same is true in Jess's case. The participants have to look for further means to survive. As Amy shared, '*I can't say that my life has really improved since I am supporting somebody. The amount she [Ms X] gave me will never be sufficient for a lifetime of comfort. Of course, you who have a mind, you have to budget that yourself*'.

People with such stories are referred by some members of the NGO PABANAL as '*one-day millionaires*'—since donors had instant cash from the transaction but was instantly lost in buying the said electric appliances, treating friends and lending to relatives. As a study by Asia ACTS (2012: 3) noted, 'the purchasing power of the victims was only temporary. After spending all the money paid to them, they realized that their situation has not really improved and they remain in the same situation as before the kidney donation'. Even Amy herself testified that there were kidney donors who misused the money for their vices and it is a matter of self-regulation, of taking care of oneself as an assurance that living with only one kidney will work out well. As she said:

> *Sometimes it is because of their vices, it becomes a cycle. They sell their kidney but in the end they will also need to buy a kidney. They get sick in the end because they do not take care of themselves. That's how it is for the majority here. There's a lot, but I am not trying to say that all of them are like that. There are some who abuse themselves and in turn, their bodies get weak. But of course, if you do not push yourself to the limit, nothing*

will happen, like it is in my case. I am normal. In fact, I think I have a better physique since I had the operation…

Though in the end, it's just the indelible scar which is left by the removal of the (Rothman and Rothman 2006: 1526), faith in God has been a recurring theme in my interviews with them. All of them are Roman Catholics and they view faith in God as an outstanding source of fortitude to bear poverty and to remain hopeful and happy. I constantly hear in their stories the phrase '*with God's mercy*' showing their resilience in facing the everyday challenge of where to get the money to provide food and other needs of their families. But I was appalled also when Jess proudly told me that he has deep gratitude to God when his twins were born after his kidney removal. He already had 12 children prior to his kidney donate on and got four more after.

Amy also shares such devotion. As she said, '*I also frequently pray to God. It's difficult to refuse the Lord God in your life*'. When I asked if her faith or something else motivates her to donate, she was quite defensive that her pity emanates from her faith. As she questioned, '*I have no money? I can live even if I don't do this but out of my pity for others, I always extend help to others*'.

This taking over of responsibilities to seek for alternatives when financial shortcomings are constantly at hand, breed the exercise of illusory agency through tricky choices. These circumstances combined with tricky promises of a better life is exploitative to its core since it treats poor people's bodies as a market place where they can be devoured by the economic forces which limit their capacity to have a decent life. Instead of being judged as frustrated individuals who are 'merely exercising their right to sell an organ' (Moazam, et al. 2009: 30), the difficulty of qualifying what choice means given the situation in BASECO warrants a careful analysis of their life-worlds. Instead of calling them with many names as 'lazy, ignorant and without ambition' which I commonly hear when speaking about their lives, we have to rethink of these circumstances of the absence of conditions which will uphold their dignity.

4.3 '*and never the twain shall meet*'[10]? Altruism and Choice in the Lived Lives of BASECO Kidney Donors

Altruism and informed consent are broad principles in bioethics which serve as guiding principles in life sciences. As I discussed in Chapter 3, these two are crucial prerequisites in organ donation but establishing a clear-cut distinction from a commodified transaction is not an easy task. As the Barangay official I interviewed in BASECO said, it is impossible to have no favours involved in kidney donations coming from such areas.

[10] From Rudyard Kipling's *The Ballad of East and West*

During my interviews with BASECO kidney donors, it has transpired that they are considering their decision as acting in good faith. This is best illustrated by how Amy reflected on her experience. As she said, '…*we are there that we are indeed in need financially but it was not totally that I sold it. I really gave it out of free will to Ms. X*'. This notion of '*free will*' wherein pity plays a decisive role in her choice illustrates what Cohen (2001: 20) calls the 'vertical sacrifice' of helping the suffering patient and the 'horizontal sacrifice' of helping loved ones. But these forms of sacrifice do not capture the thin line between exploitation of people's economic vulnerability through being duped by instant cash and exercising one's capacity to choose so one could have access to the much needed money.

However, despite the knowledge that donating a kidney with monetary compensation is illegal, the participants don't acknowledge their decision in the language of commodification. For example, Amy who donated her kidney in 2005 – two years after the Anti-Trafficking Law has been enacted – even narrated to me that she knows the standard procedures in detail as accorded in the rules and regulations of organ transplantation.

> *That's actually prohibited. Before you undergo the surgery, to take out your kidney, you have to attend a seminar. We do listen to each step of the process that's explained. They even explain to you that you have the right to back-out if ever you change your mind. They show you the whole procedure, how you'll be cut open. So you'll be aware before you back-out…*

Accordingly, Jess also said that, '*I didn't really sell. It's just a donation. Of course it's just a donation*'. Donation then becomes a concept empty of meaning as it is difficult to qualify as to which circumstances is 'taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation' as stated in the 2003 Anti-Trafficking Law. Veiling exploitation in the language of donation through qualifying it as an act of altruism, seems to be a '*presentation of the self*', to borrow a term from the sociologist Erving Goffman (1959) and as substantiated by my interview with Abueva (2012), that there could be an impression management on the part of the participants during my interviews. As Amy said, she is used to speaking with the media on this matter wherein sensationalizing their experience of poverty is sought after. But this warrants careful attention on certain cultural values such as shame (*hiya* in Filipino) as manifested confusingly in her modesty towards asking more favours from the patient who gave the assurance that she could still help her if she needs anything. As she said:

> … *But once you see someone who needs your help, you can never say no. I just hope that when the time comes that I'll need help, they also can't deny me of help. That's my request. In short, we had an agreement and even Ms. X honors this. Ms. X every year, on March 18, the anniversary of the kidney transplant from my body to hers. We have a life-long connection. But whenever I see her, I'm still shy. I sometimes make excuses and tell her "I'm busy" I maintain modesty even though I know that she only intends to give me something in return.*

This interplay of pity and reciprocity which is loosely translated into a feeling of altruism is an essential element to uplift one's dignity. As Amy told me, it was really in her personality to be kind to others as

she adopted homeless children and treated them as if they were her own. She even took pride of telling me that she is the only woman in BASECO who donated a kidney '*legally*'. As she said, '*Of all those who have it removed here, mine is legal. I have the transaction that we met and what. I'm the only one. And I'm the only woman who has been involved here*'.

On the other hand, Jess was quite sentimental about his experience. He was angry that he was duped by the broker. He was treated as a mere subordinate who was just there to provide the organ. As he narrated:

> *I don't know. He is a liar. I don't even know him. But I am ok with M, I gave my kidneys to him. Because even before we consulted the doctor, he told me, "You're not family, you're just my employee". He told me other things, but all on the same note. He just asked me to donate my kidney but I am not sure. They never left. I always visit them but they never recognize my presence, I told them, "I am the one whose other kidney got extracted". I even went to one of his siblings who resides at Libis, still the same. All he said was, "So you were the donor?" Since he got my kidneys, we have been disconnected from each other's lives. I have no idea why.*

Fraud is even clear in Neil's case who doesn't know the recipient of his kidney. As he tried to recall it, '*I don't know the name. I just saw him just then, I didn't even see his face. He's quite old as well. What's his name again?*' A broker was involved in his case and his friends who had it as well. The broker helped him have some money during the time that he needed it the most, which illustrates how the life and death circumstances of life and death force him to enter into this illegal trade. As he narrated:

> *I don't know if it's true. He said he's an agent. He's the one, he's the one who contacted to what. There are a lot of us here. It includes me and my friend J. They even had it before me. He (broker) told me that, "I'm going to have you checked-up tomorrow". He said that. The check-ups took me five months. I didn't expect it after five months. We were transferred when fire broke in. We were living then in shanties. I had to get a cash advance from them. I told them if I can get a cash advance of five thousand because I have to build my (pause) bring my father to the hospital and have a house built. They gave me five thousand. Then I had the operation. My father was in the hospital. I just prayed.*

Furthermore, to add insult to injury, the doctor who performed the removal of his kidney made it appear as a donation. He somehow gave him a guarantee that he could come back for a check-up if ever he feels something odd and explained what he has to avoid, especially in food. Though he thinks his health didn't deteriorate since the kidney removal, the wound sometime hurt and becomes itchy especially when it's cold.

This recognition of fraud is an essential element on how poor people's bodies are reduced to a mere repository of organs which could be harvested for those who have can pay. This is the case since the socio-economic background of patients has no bearing in their willingness to donate (Chua 2012). The absence of a well-explained procedure on the process and consequences of organ donation which is the foundation of 'informed consent' is denying people of their right to information. As Abueva (2012) remarked, kidney trafficking victims were not even interviewed for papers. Healthier people such as '*older children*' who donated their kidneys were given a premium since they are healthier.

Another illustration of these fraudulent transactions are the participants' accounts that they have been told by the medical personnel, particularly the transplant surgeons that the removed kidney will '*re-grow*'. I was further astounded when Jess uttered in the presence of his wife that the doctor even advised him to still drink alcohol as long as it is '*hard*'. As he said, '*The doctor, you see, is there. As time goes by, if you know how to take care of it, it will not bubble. Hard. Then I told him … "Doc, I am a drunkard". He said, "While you are drinking, the kidney, it will grow".*'

Layers of corruption then are involved in the circumstances which easily escape the regulation of kidney donations. Altruism and choice operate as discourses which symbolically annihilate people's subjectivities since bureaucrats and bioethicists are too engulfed that the great need for human kidneys demand measures which the market could provide at the expense of exploiting the poor. The absence of something, the longing for the non-existent, could oftentimes be a painful reminder that people are denied of what rightfully belongs to them. Despite my short experience in working before with informal communities, I am still appalled by the living conditions and how people from areas such as BASECO frame their aspirations. Asking about their dreams, I endeavoured to explore how the participants' non-lived life are embedded in their 'expectations and thwarted life plans, demonstrating the influence of the 'not-lived life' (Fischer and Goblirsch 2006: 30).

Coming from a middle class background, I am amused of how simple their dreams are. Upon listening to them, I could sense the gravity of how much they want to give their families a life with just sufficient food, a decent house and sending their children to school so they can hopefully be better off in the future. During those moments, I felt that there was nothing much for me to interpret.

Amy, for example, said that she is quite contended with the life she's living. Upon asking her if she sees herself outside BASECO, she told me that, '*…I'm not saying that I don't want BASECO anymore. You can move to another place but you don't have to sell your house since you'll always return in your own house. If you sell it, you can't get it back if it's lost from you*'. She just hopes that the nephews and nieces she reared before will someday do the same to her. She is proud that most of them have landed in good jobs and even extend some financial assistance without her asking. She is also glad that a child came to her life in her adopted daughter. She even reflected on dying wherein she has a wish that God will not allow her to suffer much like what happened to her parents. Meanwhile Jess was very firm that he wants to take back his father's house which has been claimed by some relatives. Lastly, Neil just hopes that his children and grandchildren will have a better life. With all these stories, I shall analyse the different technologies which shape and are shaped by the circumstances of a system which normalises the existence of the downtrodden, of *bare lives* as a necessity in the perpetuation of social injustices.

Chapter 5

From *Bare Life* to *Qualified Lives*: An Analysis

More than any period in history, it cannot be discounted that the amazing innovations and developments in bio-science and biotechnology today created enormous hopes and possibilities for people to have longer, quality lives. Kidney transplantation enabled patients with end-stage renal disease (ESRD) to survive the painful and expensive treatments such as dialysis so they could have normal and healthy lives again. Regulating donation and transplantation through legal provisions to ensure an efficient and ethical response to the increasing demand on human kidneys have provided ways on how to facilitate safe and quality process from the harvesting of the organ to allocation to the actual surgery and extending to post-operative care. Since it is a fundamental principle in medicine to do no harm to all parties involved in this process, it warrants our attention that along these lengthy years of waiting to get a donation are regimes of exploitation of poor people's bodies.

In this chapter I shall establish that the existing norms of bioethics governing kidney donation in the Philippines do not reflect a platform by which human rights are respected, protected and fulfilled. Bioethics is co-opted by market regulations through the rise of new constitutionalism which transforms health care into a business through privatisation and linking it to tourism. Coupling with the neoliberal ideology of the rational individual, I shall criticize in the first part that manufacturing agency through worshiping individual freedom i.e. doing whatever wants to one's body and disregarding the social and economic circumstances which frame the decision to donate cannot be a ground for the realisation of human rights. This celebration of the individual as the prime mover in the biocapitalist era through merely focusing on consent in kidney donation is an articulation of how individualist the framing of human rights is. This is why I shall discuss in the second part of this chapter that the notion of the collective must also be embedded in human rights.

5.1 Moral Bankruptcy in Bioethics

The developments in the field of biomedicine, which are cited to be 'overwhelmingly responsible for the growth in commodification of body parts, by creating new technologies to fragment and isolate bodily components to serve a variety of purposes, and allowing these to be exchanged in commercial transactions' (Cavers, Seale and Dixon-Woods, 2006: 25), warrants a scrutiny of the framing of *bioethics*.Through the complex nexus of the market mediating in meeting the global need for kidneys, Cohen(2001: 11) in his discussion about immunopolitics said that suppression instead of recognition has 'turned transplantation into a major industry'[11]. Combined with tourism, transplanta-

[11] Cohen attribute to the widespread availability of immunosuppressant drugs like cyclosporine, under the Swiss pharmaceutical company Novartis AG, the mobilization of large populations in searching for tissue matches. This enabled 'a more pragmatic biopolitics of suppres-

tion has been one way for the governments of India, Indonesia, Malaysia, Singapore, Thailand and the Philippines to promote inexpensive healthcare (Turner 2009: 192).

As I discussed in Chapter 4, economic exploitation masquerading as gratuity supports Cohen's argument that the poor are treated as mere 'organs bank for the better off' (2001: 25). Scheper-Hughes (2001b: 34) laments that the invisibility and social exclusion of the organ supplier have been ignored within the immanent goodness of transplant medicine. Kidney sellers are portrayed as nothing but 'faceless individuals merely exercising their right to sell an organ' (Moazam, et al. 2009: 30). These premises are where the ethical debates on the legalisation of selling organs, welfare of the poor and individual freedom continue to circulate.

According to Rothman and Rothman (2006: 1524), ethics became the battleground between those who emphasize autonomy as 'the right of persons to sell their body parts, free of heavy-handed paternalism' against proponents of fairness and justice since selling organs could engender systematic exploitation. Barsoum (2008: 1928) also presents a spectrum along similar lines—as between 'community image and individual freedom' with those who believe in the values of human dignity, 'completely condemning the core concept of donation for money' on one hand and those 'pragmatic defenders of "human rights" of a sane adult to do whatever he/she wishes with his/her body, so long as no evil is done to the community, as well as his/her right to be compensated for this deed' on the end'.

But the powerful ideology of individual autonomy gained so much momentum, especially with the support of neoclassical economists who are in favour of the legalisation of paid organ donations. As poverty and economic marginalization induces such a 'sacrifice' (Yea 2010: 363), kidney commercialization is justified as having a mutual benefit to both donor and patient since they are both in 'need to survive'. Cohen (2001: 20) characterized this mutual benefit as *horizontal* and *vertical* sacrifices. The former refers to the act of selling for the benefit of the seller's family and the latter to describe the exchange of money and organ with the patient who needs renal transplantation. The Nobel laureate Gary Becker in his paper with Julio Jorge Elías (2007: 3) even developed a procedure on how to calculate the monetary compensation for the organ seller to eliminate the huge demand in the organ markets. They argue that allowing compensation would spare the patients from waiting for long wasting their money in expensive treatments like dialysis and if it is allowed for women to get paid for surrogacy, then selling organs is equally acceptable since it can save lives (Becker and Elías 2007: 21).

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sion, disabling the recognition apparatus so that operationability and not sameness/difference becomes the criterion of the match' (Cohen 2001: 11). Scheper-Hughes (2002: 53 in Yea 2010: 362) also emphasized that without this drug, 'there would be no story here at all', which highlights its key role in the rise of transplant tourism.

The creation of such a discourse justifies the existence of a 'legal organs market' which is argued to be beneficial since those 'unwilling to donate their kidneys would be willing to sell them' (Taylor 2006: 167-168). It is also justified as a better way to regulate demand and supply much like legalising prostitution could lessen exploitation among sex workers (Yea 2010: 364). With these lines of argument, selling kidneys is a lesser evil since it is not as worse as other forms of trafficking for it helps end the agonies of renal disease patients. As my fieldwork in BASECO shows, the kidney donors themselves are justifying that they sold their organs 'out of free will'.

As poverty becomes a focal consideration, even bioethicists themselves are caught in a deadlock of how to handle this complex issue. In the US for example, the neglect of the poor became the justification of the bioethicist Robert Veatch to retract his position of opposition to paying donors since it could be a measure to assist them in their situation given the inadequacy of social welfare programs (Rothman and Rothman 2006: 1527).

On the other hand, these schemes are also strongly opposed by medical professionals and NGO activists. Backing up Shimazono's study (2007), the medical doctor Rashad Barsoum (2008:1928) criticized commercial living, non-related donation as 'pure business' as 'motives of transplantation are clearly announced as such in different media, including the Internet, and the set-up is geared as any other business. Recipients are recruited to transplant centres as individuals or groups, donors by brokers, and the whole business is overseen by financial and legal experts'. My interview with Amihan Abueva (2012) of Asia ACTS also emphasized the negative outcomes of commercial transactions. The profit just goes to the pockets of mostly private transplant hospitals while the long term cost of health care for those who illegally sold their kidneys are shouldered by the government.

Kidney selling then, in this respect, qualifies as trafficking since it is borne out of financial coercion, taking advantage of people's poverty (Chua 2012). The systematic deprivation of the social, economic and cultural right to decent living breeds such corruption of the poor's body. Settling into mere impression management of the Philippine government in the media and the international community is certainly not a solid ground to permanently put into halt this inhuman trade. As Barsoum (2008: 1928) said, 'From many donors' perspective, the community is providing too little social support to claim any right of prioritising its image at the expense of their suffering from poverty and lack of even the minimal satisfaction of essential family needs'.

Poverty then is a central element which bioethicists, policymakers and medical professionals cannot afford to ignore. As in the case of racism which according to Michel Foucault 'justifies the death-function in the economy of biopower by appealing to the principle that the death of others makes one biologically stronger insofar as one is a member of a race or a population' (Foucault 2002: 258 in Rabinow and Rose 2006: 201), poverty also becomes a rationale for the same logic under the regime of new constitutionalism. Transforming kidney transplantation into a business creates a locus which reinforces inequality in terms of access to decent quality of life. As poor kidney donors are caught in circumstances of desperate need to provide housing and

food to their families, their life of destitution reinforces this 'death-function' as a group of people are particularly targeted for their organs. To add insult to injury, the ideology of individual freedom is waged when they are blamed that 'it is their choice' to sell their organ and find themselves stuck in the same old situation (or even worse) after kidney removal.

Making it appear during ethical screenings that donation is made out of altruism and not out of desperation or fraud illustrates the problematic framing of bioethics. With the lack of sustainable source of income, who would not be forced to be involved into such trade when there could be alternatives? As Rothman and Rothman (2006: 1526) said, many sellers could be attracted from 'the lower class and lower-middle class since it is 'doubtful that anyone with significant means would sell a kidney even for a substantial sum'.

It is therefore imperative that the social and economic background of kidney donors should be a central concern for bioethics as it could be wielded for exploitative means. Human rights in this case must also be embedded in dealing with the collective characteristics of a specific group of people.

5.2 Reframing Human Rights as a Collective Responsibility

The rampant selling of organs in the Philippines took a while before it received attention from the Philippine government. This was particularly vivid in 2007 when the Asian financial crisis started to devastate the country's economy. According to my interview with Dr Alberto Chua of the Philippine Society of Nephrology (PSN), the same year was also the peak of the commercial donations. But being caught in the crisis, the issue was neglected. The pressure from the World Health Organization (WHO) also contributed for the issue to be addressed through the Administrative Orders (AOs) issued by the Department of Health (DOH) banning transplantation to foreigners and its non-inclusion in the medical tourism program of the government.

As I have mentioned in Chapter 3, nobody has been convicted yet for organ trafficking in the Philippines despite the presence of an Anti-Trafficking Law in 2003 and its late 2009 Implementing Rules and Regulations (IRR)[12]. This is attributed to a number of reasons as what has transpired in my interview with Abueva (2012). First, the Anti-Trafficking Law has sketchy grounds by which people are harboured for their organs. Second, the difficulty of filing cases poses serious challenges since many documented victims cannot remember the transplant surgeons and the laboratories involved. Third, the country's

[12] In the case of the US, there is the controversial Rosenbaum case which is said to be the first federal conviction for having received profits from the illegal sale of human organs (Henry 2012). Didymus (2012) reported that Levy Yitzhak Rosenbaum is an Israeli-American who admitted to a federal court in Trenton that he became a broker for black market kidney transplant deals wealthy for New Jersey customers. The kidney donors are said to come from Israel.

National Bureau of Investigation (NBI) is not equipped in qualifying cases as organ trafficking since the law is new to them. In many instances, NBI categorizes cases as estafa rather than trafficking. Fourth, investigations of cases would entail looking into hospital records but this could be a violation of the right to privacy of the patients and medical institutions. Lastly, the execution of the law is not receiving sufficient support from the DOH. Since the authority in this government ministry is changing depending on the prerogatives of the country's President, the rules and regulations are also subjected to the discretion of who is at office.

This is why measures have to be done since the Philippine anti-trafficking framework does not offer social policies to protect the victims of organ trafficking (Yea 2010: 359). As long as the framing of human rights is limited to representing the human person as legal entities while our physical bodies and the environment by which we thrive are set into oblivion, corporeal integrity is nothing but rhetoric. Upholding the right to decent standard of living as enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the 1987 Philippine Constitution itself requires that bioethicists, health practitioners and government reframe the orientation on human rights towards improving the quality of life of poor people. Poverty is clearly the breeding ground of taking advantage of their miseries. The mere absence of a roof where they can be secured amidst the harsh life in the city and from the natural elements deny them their humanity as what has been primarily the reason why the kidney donors who participated in this research narrated. Such situation reproduces the vicious status of *bare life*—which anytime could be devoured, without pity and worse, without any possibilities for atonement. Though there is knowledge that we could survive with just one kidney, it is never acceptable to subject poor people's bodies to market terms. The lost kidney represents our alienation from fellow human beings. To render Kantian ethics here, human beings are never means to anything but *are* ends in themselves.

The told stories of kidney donors in this research present a locus of grounding the human rights discourse on the human experience of having to give up a precious organ which nature had given to people to function well and be a source of bond with others when used to save a life. Through giving space for them to articulate their feelings, hopes and even regrets, the participants optimistically have been able to have a platform that kidney donation is about the moral conduct of securing the sanctity of lives of all parties involved in the process. Even the 2008 *Istanbul Declaration* is clear that transplant policies and programs have the primary objective 'optimal short- and long-term medical care to promote the health of both donors and recipients' (American Society of Nephrology 2008: 1228).

Through the reconstruction of the biographical selves of the participants, magnifying the role of memory as something which is not merely present in the moment of talk but is actually socio-historically generated (Fischer and Goblirsch 2006: 29), the overarching discourse on the rise of new constitutionalism in the health care system has been explored. The weight of the policies of privatization and making transplantation a business are never morally justifiable as an act of saving people's lives. The kidney donors' 'self-

understanding' of their present lives demonstrates the influence of 'expectations and thwarted life plans' or their 'not-lived life' (Fischer and Goblirsch 2006: 30) in shaping their decision to partake into such kinds of commercial transactions.

Technological breakthroughs in medicine which are supposed to facilitate the saving of lives of others through connecting people's existences have turned into a tool for waging *thanatopolitics* (politics of death) against this particular group of people. Highlighting then the social and economic circumstances which framed the decision of the kidney donors who participated in this research have made it essential in bioethics that a systemic analysis be a crucial element in guiding protocols on living, non-related donations. As Young (2006: 115) said, it is equally fitting to understand 'how macro-social processes allow such exploitation in a variety of ways. And as the rallying call of McGregor (2001: 88) goes, 'Health care needs to be restored to a level that achieves social justice and protects and enhances human life and dignity'.

Conclusion

This research asserts that the rights of kidney donors from economically marginalised communities are equally 'qualified lives' in framing human rights in bioethics. With the overarching goal that the untold or underrepresented voices could be a potential force to anticipate the reproduction of dehumanizing people because they are poor, it hopes to contribute in combatting the waging of *thanatopolitics* (politics of death) towards such vulnerable population. As bio-science promises to save lives through continuous innovations and procedures of donation from living donors, the medical institution is caught in a compromise of how far it could commit towards upholding the dignity of the human person to serve this purpose. Being co-opted by purely profit-oriented objectives, bioethics should not misrecognizing consent as agency, as a qualifier for living, non-related donations. Poverty is obviously pushing people to engage in fraudulent procedures.

Through highlighting the essential element that social and economic circumstances play in the framing the decision of people from these areas, going beyond consent and altruism in bioethics is absolutely crucial to uphold the dignity of the human person. The told stories of kidney donors from economically marginalised areas such as BASECO have so much depth on how much poverty could push people to enter into such transactions of commodifying human body parts.

Several actions can be taken to combat this inhuman treatment of economically marginalised people. First, campaigns for cadaveric donations have crucial to address the misconceptions and mistrust about kidney donations (American Society of Nephrology 2008: 1227-1228; Interview with Chua 2012). Second, the promotion of early screening as the best way to prevent renal failure is an anticipatory mechanism to avoid transplantations. Through educating lay people and doctors about early treatment as well as lobby for renal patients, such illegal trade in organs could be avoided. Third, hospitals have a key role together with the transplant surgeons and ethical committees as kidney brokers are usually linked with them (Interview with Abueva 2012). It will be easy to monitor kidney donations since there are only few transplant hospitals and surgeons in the Philippines. Lastly, building partnerships for advocacy and research which are used for pushing firm legislative measures to permanently ban the selling of organs are necessary. Findings from research in the Philippines, for example, were presented by Asia ACTS and PSN to international conferences such as in Istanbul in 2008. They made contacts with the Philippine Department of Justice (DOJ) to implement the 2009 IRR of the Anti-Trafficking Law. This proves that the law will not speak for itself unless we invoke them with horizons beyond the individualistic and market co-opted health care system in the biocapitalist era.

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