A proposal to allow prisoners to save their lives or to have their prison sentences commuted by donating kidneys for transplantation has been a subject of controversy in the Philippines. Notwithstanding the vulnerabilities associated with imprisonment, there are good reasons for allowing organ donations by prisoners. Under certain conditions, such donations can be very beneficial not only to the recipients but to the prisoners themselves. While protection needs to be given to avoid coercion and exploitation, overprotection has to be avoided. The prohibition on the involvement of prisoners in organ transplantation constitutes unjustified overprotection. Under certain conditions, prisoners can make genuinely independent decisions. When it can be reasonably ascertained that they are able to decide freely, society should recognise an obligation to help them implement their decisions, such as when they intend to donate an organ as a way of asserting their religious faith and performing a sacrifice in atonement for their sins.

Kidneys for life is the name that has been given to a proposal in the Philippines to allow prisoners to save their lives or to have their prison sentences commuted by donating kidneys for transplantation. The catchy phrase has been used to refer to convicts who might wish to take advantage of the opportunity whether they are on death row or not. The slogan takes on a peculiar meaning because the donors are invited to save their own lives and not necessarily those of the transplant recipients. From this standpoint, the preservation of the recipients’ lives is only a side effect that the donors might not even care about. There are, however, good reasons for allowing organ donations by prisoners. Under certain conditions, such donations can be very beneficial not only to the recipients but to the prisoners themselves.

Admittedly, prisoners are in a very vulnerable position. They require protection from coercion and exploitation. Paternalism can, however, be overdone. Overprotection can work against the vulnerable people that it aims to protect. The prohibition on the involvement of prisoners in organ transplantation is a type of overprotection that can be exploitative. This kind of exploitation can have worse consequences for the prisoner than underprotection. The vulnerability of prisoners does not, in itself, make it wrong for them to be involved as organ donors.

Notwithstanding the restrictive character of their environment, prisoners can make genuinely independent decisions. When it can be reasonably ascertained that their decisions are truly their own, society should recognise an obligation to help them implement such decisions. This is particularly important when prisoners make the decision to donate an organ as a way of asserting their religious faith and performing a sacrifice in atonement for their sins.

THE BACKGROUND
There have been many proposals to involve prisoners in organ transplantation. Some of these would have prisoners as organ donors. Others contend that prisoners should not be disqualified from being recipients of transplanted organs. Either way, the proposals have generated controversy.

In the Philippines, prisoners were first used as organ donors in the 1970s as local doctors with specialised training in organ transplantation came back from other countries to establish local practice. Eager to practise their newfound skills to aid their countrymen, some of these surgeons personally went to local prisons to try to recruit organ donors. With the cooperation of prison officials, they sought the aid of convicts.

Some prisoners were enticed by the promise that they—or their families—would be given material rewards. In a number of cases, the prisoners were promised pardons or sentence commutation although the agreements were not made in writing. When pardon or sentence commutation was recommended, the justification was that the prisoner had manifested eligibility by undertaking the donation sacrifice. By deciding to take the risk associated with organ donation, a prisoner exhibited the sort of good behaviour that could be taken as evidence of a reformed character. The “good conduct” provided parole officers with a basis for making a positive recommendation to the president, who had the ultimate responsibility to grant reprieve from punishment.

Some prisoners who donated organs did not receive the promised rewards. Even so, the people who broke promises apparently broke no law because there was no legislation that specifically prohibited the practice. This left the disappointed prisoners with no obvious legal avenue for complaint, forcing some of them to come out in the open and denounce their recruiters. As the country was then under martial rule, the authorities easily managed to silence the critics. Nevertheless, the transplant surgeons feared for their reputations and professional careers and the involvement of prisoners as organ donors ground to a temporary halt.

The current kidneys for life proposal surfaced after capital punishment was revived in the country. When the first convict under a new law on capital punishment was due for execution in 1999, the idea was floated that a healthy body should not have to be lost without being useful in some way. In particular, the Kidney Patients’ Association of the Philippines (KPAP) lamented that healthy human organs were being wasted when there were dying patients who had an urgent need for them. Colonel Mariano Santiago, chair of the KPAP board of trustees, announced that they were going to lobby in congress.

There were, of course, prominent detractors. Dr Alberto Romualdez Jr, Secretary of Health, was quoted as saying: “Asking [death row inmates] to donate their organs in exchange for a commutation of their sentence is similar to a poison man being compelled to sell his organs.”

On the legal front, the undersecretary for corrections at the Department of Justice was reported to have said: “To allow a...
convict to donate his or her organs in exchange for a commutation would not only usurp the power of the court to review sentences but is taking advantage of a desperate individual”.

Nevertheless, the undersecretary was candid enough to admit that in the past, “the Bureau of Corrections had allowed convicts to donate their organs in exchange for a promise that the recipient will take care of the prisoner if something goes wrong during or after the transplant operation”.

Many people considered the kidneys for life idea too controversial. No senator or congressman dared to file a supporting bill in congress. Like other proposals for legislation that had a potential for controversy, the kidneys for life proposal was condemned to death for putting political careers in jeopardy.

It did not matter to the legislators at that time that some officials of the Catholic hierarchy were among those who endorsed the proposal. Bishop Teodoro Bacani, Archbishop of Manila, said he did not consider the proposal wrong provided the prisoners voluntarily made the decision to donate. He found “nothing morally objectionable” with “a creative idea by which a person makes a donation in reparation for a crime committed by an ‘antilife’ by giving life” as he highlighted the opportunity for a murderer who had taken another’s life, to make amends by giving another person a life saving organ. To elaborate on this point, the head of the main proponent organisation expressed the view that a prospective donor should make a declaration before his execution that he is committed by an ‘antilife’ by giving life” as he highlighted the opportunity for a murderer who had taken another’s life, to make amends by giving another person a life saving organ.

It was initially made public. We can use the term “controversy ethics” to describe much of the deliberation concerning topics or issues that arouse public controversy. Its characteristic features accompany deliberation and discussion triggered by developments that are controversial, especially in a way that could have political ramifications. One may observe that the response to such developments is often driven by a desire to avoid controversy almost at any cost. Stakeholders tend to take the path of least resistance. Vital ethical considerations are easily overlooked as political exigencies dictate decisions. Temporary solutions that entail little risk carry the greatest attraction. There is, however, a likelihood that controversy left hanging under such conditions will again come to the surface.

Given the controversy ethics phenomenon, decision makers may not constitute the majority but there are enough of them who might consider making a gift of a transplantable organ to a person in need.

Even if the conditions of imprisonment are usually coercive in nature, there are prisoners who are capable of transcending these conditions and acting as autonomous agents. They can be in command of their decisions. These prisoners can be responsible enough to take risks for themselves and to make genuine sacrifices for the rest of society.

### Dealing with Vulnerabilities

Although prisoners require protection because of their vulnerable situation, the nature of the protection provided has to be calibrated to fit their specific vulnerabilities. A blanket prohibition against their involvement as organ donors may be useful on the basis of a general presumption that the conditions of imprisonment are coercive to the point that free decision making is rendered impossible. If, however, it is possible to attain a reasonable level of confidence in a given situation that a particular prisoner can understand the options available and decide freely, a comprehensive ban on organ donation will serve more as an unjustified restriction rather than as a welcome protection.

Vulnerabilities should not be regarded as permanently disabling conditions. They are weaknesses that can be overcome and they should be viewed as difficulties to be overcome. An area of vulnerability need not, in itself, disqualify a person from becoming an organ donor. Instead, it should signal the necessity of providing assistance to ascertain that a
At around this time, some inmates, who have made it a yearly vow to whip their bodies as a form of penance, join the procession around the jail.

On Easter Sunday, they will reenact the Salubong at 7 am with an angel (to be played by an inmate’s daughter) escorting the risen Christ from the steps of the jail’s tower to a waiting Virgin Mary (to be portrayed by a female inmate) in the chapel.

While these rituals have become part of the jail’s tradition over the years, they give the inmates a chance to retreat from their mundane life and reflect on Christ’s suffering via a visit to their own.

The organiser of the Holy Week activities is a convict who heads the inmates’ organisation. For inmates like him, times come “when we reflect on the life of Christ and do our own soul searching”.

If a prisoner were to offer a kidney as an extension of this soul searching it would be unfair to block the effort without being certain about the nature of the protection that this provides.

Given this kind of culture, to deny prisoners the opportunity to donate an organ merely because they are vulnerable is to exploit their vulnerability in a different sort of way. By taking a valuable option away from a prisoner we make that vulnerability worse. This is a case of over-protection working against the very person we want to protect.

Rather than completely prohibiting prisoners’ involvement in organ transplantation, the proper course of action is to put safety nets in place to ensure that their particular vulnerabilities cannot be exploited.

**LIKELIHOOD OF ABUSE**

Like any other activity that can bring unexpected but coveted relief from a difficult situation, kidneys for life is open to abuse. Any legitimate activity is liable to exploitation through creative but wicked moneymaking schemes, especially if it is characterised by the prospect of a windfall type outcome. There is a possibility of collusion between prisoners eager to save their lives and prison officials who might see in the procedure a creative opportunity to make money. Especially in an economically impoverished environment, kidneys for life and organs for money can easily form a convenient merger.

This possibility has to be anticipated and avoided. Safeguards such as those identified below have to be put in place.

One should not, however, be afraid to pursue a novel initiative just because it is liable to abuse.

Moreover, experience has taught us that the refusal of government to take controversial practices head on because of the fear that acknowledgement of the activity can be interpreted as giving official blessings has more often led to greater abuse and more problems. The existing organs for money black market is an example of an undesirable outcome of a general policy of non-involvement in anything that could be controversial.

This is not to deny the risk of abuse entirely. Measures to counter possible abuse can only be effective if the possibility is honestly recognised and anticipated in a guarded and timely fashion. The following discussion of possible objections to the kidneys for life proposal begins on this note and leads to some suggested safeguards to enable a programme of implementation that is cognisant of the rights and welfare of prisoners.

**ESCAPING JUST PUNISHMENT**

One objection to the kidneys for life proposal holds that it involves an unjustified conjunction of the implementation of justice with a desire to benefit a person with health problems.

The point is that these are two distinct concerns that are independently important.
Conceivations of justice dictate that a convicted offender should be put in prison for various kinds of offence. The law provides for that kind of punishment. Thus, a convicted prisoner would most likely have been tried and sentenced in accordance with procedures and legal norms that are reflective of the will of society. The imprisonment has nothing to do with the fact that a convict’s kidney could provide a dying person with a new lease of life.

The desire to donate an organ is founded on a beneficial motive relating to a renal patient who probably does not have anything to do with the victim of the prisoner’s crime. Thus, there are two different relationships that provide distinct frameworks for the two concerns. To mix these things up is to distort the system of justice and erect a barrier to its implementation. To allow a convicted criminal to get away with a lighter sentence is to perpetrate an injustice on the victim of a crime.

The reply to this objection is that kidneys for life fits into the mould of an already existing system for commuting sentences and granting pardon or parole. Under systems that are in place in many countries including the Philippines, convicts may be granted freedom or a commutation of sentence on the basis of “good conduct”. The pertinent rules are part of the law and are integrated into the public understanding of retributive justice, even if good conduct while in prison is not related to crime for which a convicted offender is being punished. This mechanism has long been accepted. It has not been seen as a way of escaping justice but rather, as an integral part of it and as a legitimate tool for its effective administration.

DETERMINING A PRISONER’S REAL MOTIVATION

If kidneys for life were to be regarded as a way of recognising a criminal’s atonement for a crime, there would have to be a fairly effective method of ascertaining a prisoner’s real motivation for offering a transplantable organ. Among other things, the authorities would be aided greatly by the knowledge that a convict:

1. Is truly making the offer as a way of repairing a broken bond with society,
2. Is truly a reformed person (or one who is likely to be reformed after—or as a result of—the donation, or
3. Is going to be more of an asset than a liability to society.

These are questions that are difficult to settle either at a conceptual or practical level. In reply, it will suffice merely to point out that these are the same problems that government officials already have to deal with when they deliberate on applications for pardon or parole. For sure, they have not found it to be an easy task. The difficulties have not, however, prevented them from acting on applications from prisoners every year. The same difficulties should not prevent them from successfully facing the challenge as regards kidneys for life.

MOST PRISONERS ARE POOR AND UNEDUCATED

Most prisoners are poor and uneducated to begin with. These conditions are partly responsible for their having committed crimes. Hence, prisoners cannot be expected to make responsible decisions that reasonably take their true interests into account.

Although this is perhaps true for many (even most) prisoners, it should not prevent the few who are differently situated from being permitted to express their faith or societal commitment in a manner that they see fit. It would be wrong to exclude educated, informed, and deliberative individuals from an activity that is compatible with the terms of the punishment that is being imposed on them.

SOME SAFEGUARDS

A successful kidneys for life proposal should, of course, be equipped with safeguards to ensure that the objectives are not going to be defeated by the actual practice. One can think of the following measures that might be useful:

1. Legal representation: a prisoner is vulnerable in a number of respects. Professional representation ought to be provided to prevent these vulnerabilities from being exploited. A lawyer will be needed to look after the interests of prisoner/donors since the grounds for detention obviously have their roots in the law. Any procedure that seeks to cancel some of the effects of that law in order to provide relief to a convict will require knowledge of legal nuances such as only a professional lawyer can provide.

2. The usefulness of psychological counselling also appears obvious in view of the type of pressures that bear on the prisoner and the prisoner’s family when the kidneys for life option arises.

3. Consultation with the applicant’s family. Family consultation can facilitate a broader base for evaluating the prisoner’s options by situating it within the context of the kinship system that would have been partly responsible for early identity formation. The kinship system is also a support mechanism that enables an individual to make stable decisions in the face of external threats.

4. Determination that the detention facilities available to a particular prisoner/applicant are conducive to an acceptable level of independence in decision making. This is necessary in as much as there is a wide variation in the quality of detention facilities that provide a physical context for the decision making of prisoner/applicants. There has to be an independent examination by experts who can assess the conditions of detention and the effects that these may have on the prisoner’s independence.

5. Independent committee review. Like any ethically contentious activity, the implementation of kidneys for life in particular instances can profit from an independent committee review conducted by members who have no personal stake in the prospective donation.

6. Sufficient waiting time before a prisoner’s application is approved and implemented to ensure, among other things, that the intention is more than fleeting.

WHY COMPENSATE?

It may be argued that if the main justification for a kidneys for life programme were the need to allow prisoners to manifest their repentance in consonance with religious beliefs, they should not have to be given rewards. Thus, they should not have to be entitled to a sentence commutation.

This objection appears to be valid and a decision to permit the involvement of prisoners as organ donors should not be premised on their being entitled to rewards. Nevertheless, the fact that the donor is a prisoner should not diminish society’s appreciation for the value of the donation. A human organ is a priceless contribution regardless of whose body it comes from. Perhaps it should even be more greatly valued for being an organ coming from a person in a vulnerable situation.

If only for this reason, a prisoner/donor ought to be given just compensation for giving an organ. The reasons for giving a reward are not necessarily based on the donor’s being a prisoner—any donor deserves just compensation. The form that a particular reward takes may, however, be adapted to the particular recipient’s situation.

In general, the contribution is so valuable that it would be exploitative to accept it without just compensation. The fact that a person has been convicted of a crime should not give the rest of society the right to take advantage of his imprisonment.

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Conclusions

A comprehensive ban on the involvement of prisoners as organ donors appears to be anchored in a need to protect the possible donors from harm. There are, however, situations when the donation of organs by prisoners can be very beneficial to the prisoners themselves.

Although prisoners require protection from coercion and exploitation, we have to remember that overprotection can also work against them. In the case of the kidneys for life proposal, overprotection can have worse consequences for the prisoner than underprotection. When it can be reasonably ascertained that their decisions are freely made, society should be ready to assist prisoners in implementing such decisions.

Clinical Ethics: Point of View

A volunteer to be killed for his organs

F J Leavitt

Most of the audience were students and physicians. But this man looked more like a patient. The panel discussion, part of a third year round, Brain Death and Organ Transplantation, was open to the public.

I'd been arguing, on the basis of well known data,14 that "brain death" is not death. So, taking a heart from a "brain dead" (BD) patient is killing. But I would not totally oppose "brain death" is not death. So, taking a heart from a "brain dead" patient is killing. But I would not totally oppose "brain death," especially if it were to become well known, might not this encourage even the sane to make similar decisions, perhaps for money for their families?

The guilt-ridden American prisoner, who asked to be killed for his organs, was declared "sane" in court. He was refused on grounds of an obligation to preserve life.11 If suicide is sometimes justifiable, then it might also be justifiable to kill oneself by removing one's organs for donation, if it were possible. But if assistance is needed, an "autonomous" act does not affect only oneself. What does killing do to the killer? What psychological effect would killing conscious, ambulatory patients have on physicians? Killing potentially conscious PVS patients would be traumatic enough.

I am not ready to say that brain death is really death, when I don't believe it. But am I justified in broadcasting my opinion and risking encouraging more volunteers?

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