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Do We Own Our Bodies: The Legality of Body Ownership

An idea that people often take for granted is property ownership. When it comes to things that are bought or gifted, it is simple to say who owns it. The more complicated idea associated with ownership is whether or not people own their own bodies. The most common answer given would be “yes” but that doesn’t seem to be the case. The answer to this question may seem inconsequential at first but there are many outcomes that could change depending on that answer such as the number of organs available for transplant and the chances doctors and surgeons have to practice different techniques. This practice would be best maintained if ownership of the cadaver and associated tissues no longer stayed with the deceased or their family. Given that simple fact, it can be argued people do not own their own bodies, they are simply being leased while they are alive. Following this logic, after a person passes, their body should be put in the charges of the public so greater medical and scientific advancements can be made to aid society.

According to Leslie Bowen, by owning an object, three main rights and/or obligations are given to the individual: exercise, legal disposal, and obligation. The ability to “exercise” an object is the ability to do whatever one pleases with the object as long as it is within the law. An example is the possession of alcohol; a person could drink it, water their plants with it, bathe in it, and whatever else they please but they would not be able to feed it to a baby because it would be outside the legal limits set to protect the baby. “Legal disposal” is also called legal disposition and it is the power to exchange ownership of the object or to choose to consume it. In the case of

the person in possession of alcohol, they could sell it, gift it to someone else, or throw the bottle at a wall. It is up to the owner. "Obligation" is the responsibilities associated with possessing the object and anything that becomes of the various uses of the object. Going back to the example of alcohol, it is the possessor's responsibility to make sure the baby doesn't get the alcohol or that the glass from throwing the bottle is cleaned up because the alcohol was in their possession (Bowen 2005). Throughout the paper, it will be seen how these rights and obligations can be used to aid in determining who owns a person's body.

Considering the given responsibilities and actions available to those possessing an object, it can be seen that the American society operates close to, but not strictly, off the idea that people own their bodies. This can be seen in laws such as the "Common Rule," also called Common Law, which maintains that those who donate tissue samples must be fully notified of what the research entails and the risks and benefits that exist if they participate. The researchers then have to receive informed consent from the donor (Rao 2016). Due to a recent revision to this rule, deemed the "Final Rule," as of January 2018 researchers are obligated to inform donors of the potential profit in the use of their samples as well (Roberts 2017). The necessity of consent indicates that the donors have possession of their bodies since the researchers are not able to proceed without consent. The researchers do not have the power to "exercise" the tissues while the tissues are in possession of the donor while the donor does have that power. The acknowledgment of potential profits also leads to the idea that the individual has some form of property interest in their donated samples (Roberts 2017).

While these rules lead to the idea of owning ones' body, it can also be argued that those rules were simply put into place in order to protect a person while they are still alive as the legal drinking age was out in place to protect the young. Those rules help to ensure that the individuals

are less likely to be taken advantage of and are capable of living their life unhindered. Multiple cases have gone through the United States court system on whether a person owns their body and/or tissue. The courts ended up ruling against the individual presenting ownership to the researchers instead as it was the researchers who put labor into the tissues. Any information and profits gained from the tissues then belongs to the researchers unless negotiated between the donor and the researchers prior (George 2004).

The court system generally follows the Lockean Theory of Intellectual Property when it comes to issues in labor; labor can then be defined as a planned action with a planned end goal and can also involve opportunity cost for the time spent on a task or idea that could have been spent elsewhere on potentially more appealing and/or profitable tasks (Cwik 2014). Locke argued that there is no way for another person to claim property of a person's labor since they had no action in. This would mean that no other person should have property rights for what the laborer was once joined to. He qualifies this by saying that what remains is "enough and as good" for everybody else. The main point to get from that qualification is that a laborer is not required to better the situations of another and potentially give them a "free ride;" the laborer simply has to maintain that they did not worsen the situation of others in order to justify gaining property rights to the object/idea labored on and that others are have material to build on for themselves (Moore 2012).

To better explain these ideas about labor, two examples can be looked at. The first would be a tattoo artist. In theory, they would be very rich in tissues due to all the labor they put into pieces they make but there would be two reasons this would not be true. The first would be that the tissue being worked on can readily be claimed and used by another human being and if the tattoo artist claimed it as property, it could in effect worsen the receiver's situation. The second

reason would be because the tattoo artist specifically sells that piece of art to the person who received the tattoo which is a form of “legal disposal” thus transfers ownership of the art to them; the artist could lay claim to the idea so that another artist could not recreate the same piece of work but the tissue would remain in the possession of the purchaser.

Another example of how labor and ownership are determined would be cells and tissues donated for research. If a person willingly separates with tissue and a researcher inputs labor to make scientific advancements, the researcher would then be able to lay claim to that separated tissue as they would not be directly worsening the situation of the donor and they are not required to make the donor’s situation better by sharing profits. Individuals also have the right to control the circumstances in which they perform their labor; by laying claim to the tissue sample, researchers are able to better control those circumstances and potentially make their research more effective (Cwik 2014).

As history stands, it has generally been ruled that nobody can lay claim to any one person because corpses have fallen under the “no-property rule” and living humans have fallen under the “no-ownership rule” (Bowen 2005). To date, there are three general “guiding principles” that are used in the court of law concerning ownership of a human body. The first is that there is no property in a human body as noted by the no-property and no-ownership rules. The second is that a third party may gain ownership of an abandoned body or body parts if they invest labor into it which is seen with Lockean Theory of Intellectual Property. The third is that a person may sometimes claim ownership of themselves if it is to promote their individual autonomy. The cases that follow the third principle are related to blood, hair, urine, bone marrow, and sperm which people can gain property rights to due to the sale of and/or the existence of banks for these materials (George 2004). The first two principles agree with the statements that a person does not

own their body but the third could be argued that it shows the existence of ownership by the person living in the body. An argument against that final principle, however, goes along with the puzzle of whether the chicken or the egg came first. The principle seems to have been developed due to pre-existing conditions within the United States such as the existence of banks for and/or the sale of these specific materials. If the principles had come first, it is unlikely that ownership would be given for these specific materials because ownership of the body does not exist within the first two principles and even the third principle does not extend to the entire body.

Many other developed countries, such as Spain, Portugal, and Austria, operate closer to the idea that people are “renting” their bodies for the time being. This is done by using the policy of presumed consent so that a person’s organs and tissues will be automatically used for donation and/or research unless a person opts-out (Verheijde et al. 2009). As a result, after a person dies the individual and their family have minimal to no ownership of the body since the country already has a set of plans laid out for the organs and tissues assuming there are no contesting arguments. America has often ruled that a person cannot own their own body or body parts. Examples can be found in court cases along with the use of recently deceased patients in the ER who may be used by medical professionals to practice minimally invasive procedures, in how bodies and tissues are treated in the body market, and also when referencing the immortal cell lines such as Henrietta Lacks cancer cells (Ardagh 1997: Rao 2016). Many of the issues that can be found in these examples could be aided or even completely corrected if it is determined that people do not own their bodies. It can also be seen in legality of various activities throughout portions of the United States. Take prostitution and illegal drugs for example. If a person owned their body, they would then be able to sell their body under the “legal disposal” right via

prostitution. They could also use their body in any way they want via drugs under the “exercise” right but this is not the case in many places which argues that people do not own their bodies.

The principles, rights, and obligations set forward are what have come into play in court rulings such as Moore vs Regents of the University of California in 1988, Greenberg vs Miami Children’s Hospital in 2003, and Washington University vs Catalona in 2007 (Charo 2006: Drabiak-Syed 2010). Moore had a splenectomy preformed as a treatment for hairy-cell leukemia. His doctor, along with several researchers, created a cell line from his spleen without his knowledge. Moore attempted to sue the University of California but was unsuccessful as he was not found to have property interests in this spleen cells. A similar case happened with the Greenbergs at Miami Children’s Hospital. The Greenbergs, along with several other families, donated blood, tissue, and urine samples along with family pedigrees to try and find a genetic cause a condition called Canavan. The families had believed that the results of the research would be available to all to aid in the effort to help other families who were affected by Canavan. When the researchers discovered the genetic cause, however, it was put up for sale instead. Once again, it was found that the donors didn’t have property interest in their samples and so they had no control over what was done with their samples, the research, or the profits. In both cases, ownership was given to the researchers instead due to a combination of the first two principles.

In the Washington University vs Catalona case, Catalona had accumulated 3500 tissue samples from patient-donors while he was at Washington University. When he moved to a new university, he suggested that his donors request that their samples be sent to the new university so he could continue working with them. Washington University, however, sued for ownership of the samples and it was found that the university had control over the samples instead of Catalona or the donors. The donors could only request their samples be destroyed due to their

signed consent forms but couldn't request that they be relocated (Roberts 2017). This final case could be argued that ownership of the samples and results automatically belongs to the university due to Catalonia's use of university equipment and him being paid by the university for his research but that policy would depend on the contract Catalonia signed when he was hired. Depending on the policy set in place, it could decrease the role that body ownership would play in the results of the court ruling but doesn't necessarily eliminate the effect body ownership played. This is because the donors have minimal control over their samples and thus cannot be said to own them because "legal disposal" would allow them to specify to whom they gave property of the samples to, i.e. Catalonia, when they donated. In the history of the United States, no court of law has given property interest to the donor of an excised sample (Roberts 2017).

The previous court case examples showcase that the problem of owning oneself continues to play out because people continue to fight for the ownership of their body and tissues. A large portion of the problem seems to have risen from two court cases. Prior to these cases, no living things, hybrids or otherwise, could be patented because they were products of nature and thus unable to be owned by any one person or group. The first case was in 1930 when the Plant Patent Act allowed plant breeders to patent asexually-reproducing, hybrid plants. This opened the door to a court case in 1971, *Diamond vs Chakrabarty*. In this case, Chakrabarty had created a hybrid bacterium that seemed to be able to eat oil. This offered the possibility of a lot of profit due to the potential ability to be used to clean up oil spills. He then applied to patent his hybrid but was denied on the grounds that his bacterium was an animated (living) being and animated beings, outside of hybrid plants, could not be patented at the time. Chakrabarty appealed the decision in court and in 1980, he received his patent as the courts deemed his bacterium "was an invention rather than a life form or product of nature" which is a direct reflection of the Plant Patent Act

rules that mandate the organism be a hybrid. At the time, the justices of the court did not believe that this ruling would have a great impact on future rulings. They were incorrect, however, since in 1988, the first vertebrate, the Harvard's Onco Mouse, was patented (Bowen 2005). The Plant Patent Act and Chakrabarty's bacterium laid the groundwork for the legal policies relating to the human body. These policies allow a body or body parts to become property after an individual or group that has spent labor and time on that body/body parts. The reason that these policies come to issue is that people cannot own their own bodies. Giving power to third parties to own tissues and parts of other people and living organisms brings about conflict between parties and individuals due to the availability of possible profits instead of focusing on the possible advancements in medicine and care.

In order to maintain abilities, people have to keep practicing. It's the old saying "you don't use it, you lose it" which is why doctors and medical students find the need to continue practicing skills in order to confidently aid patients and improve their medical practices. Some of the skills can be practiced on models or donated cadavers but other practices do not work as well due to rigidity and non-life like behaviors of the tissues and plastics. This is why some ER doctors and medical students will practice endotracheal intubation and other minimally invasive procedures on recently deceased patients. These patients' tissues still react close enough to a live human that it is beneficial for them to practice and improve their skills (Ardagh 1997). Many of these people most likely did not consent for their bodies to be used like that but these practices aid in the care of those still living. If this situation is looked at from a scenario in which people were only renting their bodies, there would be no need to consent to such minimal practices as, at the time of death, the body would be in the charge of the society and should then be used in a

way that benefits those still living. If this sort of practice is expected, outrage at such practices would also hold minimal weight.

The body market is a situation with increased problems and controversial activities happening due to the lack of regulation. In the body market, bodies are donated to body brokers who often end up selling the bodies as parts for a profit. Tissue, organs, and even whole cadavers are sold for experimentation, dissection, and/or medical practice (Grow 2004). It is illegal to "knowingly, for valuable consideration, purchase or sell a [body] part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent" under the 1987 Uniform Anatomical Gift Act. Body brokers are able to get around this, however, since the act specifically excludes "the reasonable payment [by health care areas] for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part." The act also does not mention the sale of whole cadavers or body parts not intended for transplant or therapy which allows body brokers an even wider window of opportunity to profit off of donated cadavers (Anteby 2009). Body brokers are thus able to sell whole bodies to universities or practices so they can be dissected, new methods for surgeries can be tested, and more intensive procedures can be practiced. Body brokers may also cut up the bodies and sell individual parts for similar reasons. While these practices allow medical personnel to improve their practices, body brokers then stand to make a relatively large profit off of these donated bodies while the families of the deceased may have received fake ashes back or nothing at all. These practices also lead to cadavers being treated unethically and courts have little to no way to enforce ethical treatment at the time being. One such example was seen in Southern Nevada in 2015. Health inspectors were called to a warehouse because of complaints about "a mysterious stench and bloody boxes in a Dumpster." Upon arrival, they found a man thawing a frozen torso

with a garden hose in the sun. The water spread blood and tissue in front of storefronts and near a school before being deposited in gutters. While many would agree that this is disrespectful treatment of a donated body, the inspectors couldn't charge the organization with anything and could only charge the individual found with the torso with a minor pollution citation (Grow 2004). If it is decided that people do not own their bodies and thus have minimal right to autonomy once they die, government programs, built for the purpose of handling deceased patients, would be able to control where bodies would go and how they are used allowing for the enforcement of respectful treatment of the cadavers.

While people are still alive but have separated from their tissues or other collected samples, it is harder to determine proper ownership. In cases such as Henrietta Lacks, the largest question comes as whether or not, she or her family should receive some form of repayment for the doctor taking her cancer cells and creating an entire cell line from them. That cell line has then been used in a large number of cases to advance medicine and has even been sent to the moon. Even if Henrietta did not own her cells, she in a sense created them and profit made from her cells while she and her family are still poor does not seem right (Rao 2016). While this is unfortunate, saying she should gain a portion of the profit and has some innate property interests in those cells would be like saying electricity producers have property interest in the energy and should get a portion of the profit from anything made through the use of their energy from cakes to cars.

Common law, specifically Final Rule which was put into place on Obama's last day in office, stands to help reconcile this problem. This rule would require doctors or researchers to tell the patients/donors about the possible profit made from the donation. This will make sure the people are aware of the potential, whether or not people own or are renting their bodies or if they

will be given some of the profits, and could decide to donate the samples or negotiate as needed (Roberts 2018). If it is looked at as though people do not own their bodies and the above rules were put into place in order to protect the patient from harm due to donating, then the doctor and researchers did minimal things wrong in using Henrietta's cells without her knowledge. It may seem morally unsound that she and her family remain in poverty but she gave up her cancer cells willingly under the expectation that they would be discarded. Through that expectation, she released any right she had to "exercise" those samples. It is not illegal or seen as stealing to retrieve and use anything found in the garbage with the intention of being discarded so the researchers taking her "garbage" cells is also not illegal and she can claim no property in the material, rental or otherwise. Even looking at the situation from the Lockean Theory of Intellectual Property Rights would say that the researchers had a right to claim use and ownership of the cells since they in no way worsened Henrietta's situation through their exploration and they are also not required to better her or her family's situations by sharing their profit. Not only that but her cells have been used to make large advancements in science and medicine which may not have been seen under other conditions.

Emson proposes an idea for a group in charge of cadavers and cadaveric tissue, in regard to transplant organs, that could be modified for all cadaveric programs. They proposed that an organization made only for the purpose of acquiring organs and tissues for transplant from cadavers be made under the authority of the state. They also propose that this group is maintained at "arm's length" from the state to remain separate from government and politics to ensure that these bodies can be used in the most respectful and beneficial fashion as a transplant donor. Being part of a governmental organization, however, would still allow them to affect legal regulations to maintain and control how cadavers are used. After the bodies have been used, if

the family desires, the body can be returned to them for burial and any other social/religious actions (Emson 2003). While Emson does not discuss using the cadavers for research and study, they are arguing for the removal of the decision making from the family as would be done if the person did not own their body and the body went under the control of another group.

Emson also argue that at many times, people will die before their organs or tissues have outlived their usefulness and so those organs and tissues can be transplanted into other human beings who are still living and can continue to gain use from them. No matter where the organs end, they will still return to the same universal biomass. When everyone contains organs made of the same universal biomass, denying somebody use of their organs when the original owner is done using them would be near equivalent with denying a freezing person the clothes of someone who has passed and has no use for the clothing any more (Emson 2003). All living organisms, humans included, come from the same original source whether it was creation through a god or the big bang. Christian, Jewish, and Islamic believers say that God created Adam from the dirt, mud, or clay and God breathed life into the figure (Al-Ahsan 1999). The Big Bang Theory says life came from the collection and cooling of hot star dust. In all of these cases everyone originated from the universal biomass and when they die, they decompose and return to it (Emson 2003). In the end, nobody can own a body as it decomposes back into dirt. For religions, it is generally thought that the soul, spirit, or life-giving breath is released and all that remains is the memory of a living being.

By looking at bodies as if they are rented, the potential availability of organs for transplant could be increased especially considering that a large portion of society decides not to donate their organs even while supporting organ donation. As it stands, around 95% of US Americans support organ donation but only approximately 54% of those people will sign up to

be an organ donor. When only 3 in 1,000 people die in a way that allows for organ donation, it is necessary to have the largest pool of donors to draw from as possible (Organ... 2016). This lack of donations also showcases the lack of action in relation to the “obligation” that people have to assist other human beings. The owner of a body would have an obligation to assist another human as long as it does not result in harm to the assister. If such a large percentage of people do not agree that they have an obligation to help, it cannot be said that they own their bodies since they do not follow through with the obligations associated with ownership.

“Body Worlds” is a good example of the possibilities available for education and public gain in general when the correct regulations are put in place. Some of the main concerns that many people have with “Body Worlds” are the way the bodies are displayed and the feeling that the exhibit does not maintain the dignity of the bodies and the people they used to be (Burns 2007). Gunther von Hagens has taken it upon himself, however, to require signed informed consent forms that go beyond many requirements set by the government (California...2009). The California Science Center has completed two separate ethical reviews of Body Worlds prior to the exhibit being presented in their museum. In both of these, they reviewed the consent forms signed by those who donated their bodies, matched bodies with the consent forms and actual causes of death, maintained the educational value was consistent with the intentions of the exhibit, and set about the best way to maintain the value and dignity of the exhibit and the models. In both of the reviews, it was found that causes of death matched consent forms and the respective bodies. It was also found that the consent forms far surpassed most other consent forms in use. These forms allow donors to select their preference on anonymity, whether or not to be displayed as a “anatomical work of art,” whether or not they would allow people to touch their plastinated body, and whether or not to be displayed to the public or only to academic

institutions (California...2009; California...2017). Bodies were then connected with those preferences and found to align with what the donor had consented to (California... 2017). Along those lines, no case against Body Worlds has succeeded in court and many times, public prosecutors decide not to push the charges and investigation (California... 2009).

It has also been shown that the exhibit accomplishes its goal of educating the common person and improving people's practices in regard to their own health. This can be seen in the pre and post visit surveys conducted by the California Science Center along with their surveys sent out to those same people a year later (California... 2017). This supported the previous findings from Vienna indicating the exhibit had caused a portion of the visitors to adopt healthier lifestyles (Body worlds 2018). Looking at all these findings, Body Worlds can be seen to maintain the dignity of the people who donate their bodies. Even those modeled in more artistic or controversial ways lose no dignity considering this is something they had wanted and consented specifically for in the consent form. The only possible improvement that could be made through regulation is the length of time bodies can be used. Since the plastination process preserves the bodies indefinitely, there is no definite end when they will "retire" which can cause several concerns (Burns 2007). These concerns can easily be solved by enacting a regulation on the length of time a donated body can be used. Over all, this is an excellent example of what could be gained if cadavers were used to promote education, scientific advancement, and organ transplant as could be done under an organization with the ability to regulate what can and cannot be done with publicly owned bodies rather than individually owned ones.

While the rules set in place can now help educate future donors and protect them and Henrietta's case exemplifies a justification in the legality of samples taken without the donor's knowledge but were already being removed for other reasons, such as cancer, it doesn't help

with all cases. One example is the Havasupai Tribe who donated blood to test for a genetic basis for the high rate of diabetes in the tribe in 1990. While Arizona State University did research on this and did not find such a basis, they also used the tribe's samples to look for inbreeding, schizophrenia, and the geographic origin of the tribe. When the tribe found out about the results in published articles, it negatively affected them for multiple reasons involving their beliefs and culture. The tribal culture says that if inbreeding takes place, another family member will die, so this test directly affected their culture and put tribal members in fear of having loved ones pass away. Geographic origin also affected them because the university found that the tribe originated from Asia while the tribe believes they came from the Grand Canyon. This change in origin could potentially cause the tribe to lose the land they own causing them to become homeless (Rao 2016). These people donated their blood willingly under the belief that they would run a specific test but it can't be said what they expected to happen with the samples after so it cannot be justified as using someone else's garbage in the same way it did for Henrietta. The Lockean Theory of Intellectual Property Rights also does not justify these actions since the researchers did in fact negatively affect/worse the tribe's situation.

In cases such as the tribe's, it would potentially be more beneficial if people did own their bodies and the samples they parted with. This would give them more control over the samples and security in the usage of those samples. This control would then give them the power to fight against injustices done to them. The only problem is the potential for this to limit the amount of advancements that could be made due to the increased control people would have over their tissues. If people own their bodies, they would be due a portion of the profit made from the samples due to property interests and they would be able to control tests done on the samples. This could potentially limit the amount of research done for the betterment of society due to

limitations set by the donors. If people do not own their bodies, they do not have that property interest and so they would rely on the government enforcing more just regulations so that all parties receive beneficial, or neutral, outcomes and still allow researchers to continue in their advancements. If people do not own their bodies, it may also be possible for these regulations to take place so that people would continue to be willing to give tissue samples for study. People completing the research can be held more accountable to infringements on donors' well-being so that it can be confirmed that research being done is not worsening others' situations and is only working to better the general public's situation.

Various benefits could be drawn from the declaration that people do not own their bodies. More organs could be available for transplant and more regulations would be able to be put in place to make work with cadavers more ethical. As it stands, the government is stuck between trying to regulate work with tissues, as in the Uniform Anatomical Gift Act, and allowing people to maintain their sense of autonomy, as in Common Law and Final Rule. This leads to their inability to punish groups who treat cadavers unethically or to maintain the wellbeing of donors. If people do not own their bodies government organizations would be able to be made to control the use of cadavers and tissues and set legal regulations on them to make sure they are treated ethically. These regulations could be who qualifies to receive cadaver materials, how cadaveric material can be stored, and how long cadaveric material can be used. The organization could also set up educational programs to allow people to be informed. The programs could teach on organ transplants and research along with the benefits associated with cadaver uses. As knowledge is built on this material, it could be possible to move toward a presumed consent policy as would make sense if people do not own their bodies. America, along with other countries, have started

to lean toward non-ownership as seen in court rulings and organ donor transplant policies, it just has to be made final.

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