

Is the proposition “my life and body are my own” affirmable?

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People in modern times do not doubt the truth of the proposition “my life, body, limbs belong to me”, “my body is mine”. We firmly believe so either by intuition or common sense. On that basis the so-called self-ownership seems to have been proposed. In relation to that concept of self-ownership, right of self-determination is advocated. Self-determination right implies that people have a right to decide everything within the sphere of themselves including their lives, bodies and limbs, as they please, without subjection to or interference by external influence.

The concept of self-determination right and self-ownership have often been talked recently, though the ideas are traced back to the natural law theory in 17th and 18th centuries. Why have those classical ideas come to the fore again and been discussed so much both in legal and ethical world? I think they were called back by the newly occurred problems such as brain death and the possibility of organ transplantation, the successful result of the modern science and technology.

Encountered with this remarkable result in the medical world, philosophers are forced to think over what ownership is, what is the right to own the life and body, or who owner is. I would like to talk in this short presentation on the following three points: (1) what is the concept “I” in the case of assertion “I decide” (2) what is the meaning of right. We use the word right legally as well as in our daily lives, as if its meaning is rightly understood. But is it truly so? (3) the third is this: do I really own my life and body? My life and body are not what I made by my labour. My life and body are not what I get through a legal transaction. Then what is the title (the source of lawful right to ownership) of self-ownership?

Now I will begin the first question: what is “I”. We, often, say that “I am an owner of this car”, “I have a right to decide what I will” etc. This is a normal way of saying about myself. But what is I? I am here. This I consists of not only the organs but also mind or consciousness, so to speak. This I is understood as a creature having external stretch like body, limbs combined with internal and spiritual quality. However, when we say that “I have a right to transfer to someone a part of my flesh”, or “I impose myself under an obligation by my free will”, this “I” is not on the same level as the I above mentioned. The “I” possessing my body or my free will is considered to be metaphysical and supernatural. Kant called this “I” self-consciousness or transcendental ego. It cannot be localized anywhere in this world where we live. Nevertheless it is supposed to be clung universally to the external I. In this

presentation, I myself have to say only that this transcendental ego is nonsense. We are obliged to re-interpret it from the scientific point of view, e.g. with the help of the results of brain science.

-Next I will move to the word right. This word is one of the very important words in ordinary life as well as in jurisprudence. We cannot go any further without using the word right. But we do not know what the word means. The word right is a noun, so, on the one hand, it is apprehended as designating something factual situation, for example, enjoying some definite advantages, exercising actual control over, or gaining some profit from some thing. But we do not call those fortunate situations our right. They result from the right, conditioned by the behaviour of fellow-citizens. The exclusive possession of the object, actual immunity in enjoying it, stems from the fact that others habitually refrain from interfering. Under all circumstances this security is a relative one.

On the other hand, the right is taken as an objective power: power to impose obligations, or power to control things without fail. This power, however, does not exist in the real world. It is not identical with any factual power. We must distinguish the objective power from the outside power like sanction or compensation. The latter is a physical power. It is exercised to evils acted contrary to an obligation. But in case of the objective power, like property right, human right is supposedly remain as it is, immune from factual situations. In this sense, it is a power ideal, supernatural.

In the classical theory of natural law, which, I mean, was predominant during the 17th and 18th centuries, a supernatural basis of law was more or less openly proclaimed. A distinguished teacher of the classical natural law, comprised four kinds of rights under the term *ius*: (1)*potestas in se* = power over oneself, (2)*potestas in alios* = paternal power over his children or master power over his servants, (3)*dominium* = the right of property, (4)*creditum* = the right of claim against the other. All these rights are conceived as power. Grotius in Holland and his followers have never tried to ascertain something factual corresponding to the word right. For them it is quite natural that such a spiritual power is inward quality of human being. All their power is universally endowed to human being by God. When God created man as *imago dei*, those qualities which originally were the God's own were transferred from the God to the human being. Thus, the human being is a creature *sui generis* (particular kind). Rationalist in the modern time removed the God from their philosophy and from their theoretical inquiries. After the God was put away, however, the human being was installed in the vacant place where the God had occupied before, as one being possessed of a free will, reason and conscience, by means of those qualities human being was qualified to exercise the power to rule over other animals and environment, as the macrocosm. Now the power belonging to the human being has turned to invade into our lives and bodies, as a microcosm.

"I" (supernatural ego) have my own body. "I" am an owner of both my organs and free will. Here, "I" as such is supposed to be a subject attributing a property right to my body, hence as a matter of course, it contains a power to alienate to others a part of my organs, just

analogous to the transference of the property right to my car. This is the import which the word self-ownership conveys. Philosophers at present arguing on self-ownership take their ideas of it from the classical natural law theories. The essence of what they said is that in the state of nature, (that is, at a stage when nation states have not yet been established) human being was born endowed with his proper share which belongs to him. The proper share, according to Grotius, comprises his life, limb and free will. Outstanding thinkers like Pufendorf in Germany, J. Locke in England concurred with this starting point.

The natural law theory by Locke has often been cited as a leading one known by the name libertarianism. Its arguments are that everybody can do whatever he wants at his will as far as those are not expected to harm others, and that every social policy should be put through on complete free competitions. Libertarianism refuses paternalistic interventions. The idea of self-ownership at present is assumed to be the extension of this libertarianism.

The third is concerning the title of the property right to my life and body. To begin with, I would like to submit some doubts to the concept of self-ownership. The import of self-ownership is that has a property right to my organs, as I stated. When we claim the property right to something, we should be able to show any title for it. The following titles can be enumerated as to property right. 1. acquisition by purchase 2. by prescription 3. by inheritance 4. by occupation of a re nulls (occupation of a thing to which no one has yet acquired any right) 5. by forcible execution at a court. 6. by my invention. Well, what is the title of the property right to my organs? My organs are not things which I bought. They are not the things which I invented. They are not gained by prescription, also not by execution. A barely acceptable title is one by inheritance. But who is the donor of my organs? My parents? My parents' parents? My parents' parents' parents?

I, as a human being, am here. What are those belonging to me? Philosophers and lawyers start their theories from the concept of universal fundamental rights. Among others, self-ownership, right of self-determination are contained. I myself do not share this way of thinking. The reason for it is very simple. Because human right is not a substance which can be ascertained by any means. They do not cling to us as a matter of fact. The word fundamental human right is just a term to express a kind of political, ideological ideas to be used to influence people's mind and make them perform some patterns of behaviour. It is all right from the practical point of view. I have no objection to it so far as the word right is used from this political, ideological point of view. But in the present situation that many various kinds of wants are claimed under the plea of human right, such as, reproduction, gaining a child by cloning, organ replacement, and so on, as if these were subsumed in the concept of human right beforehand, the great problem has occurred. We are not sure whether this or that want should be admitted as a right. On what basis the dividing line should be drawn? I think we must give deep considerations in doing that, not to destroy the ecosystem. Human being is a kind of biological existence, and as such it is a creature loaded with genetic code written in by four chemical letters ATGC. In this respect, human being is no better than other

creatures like bacteria or mold etc. So when we could talk something as to human being with the word universality, I would rather like to say that all of us were born inherited universally with genetic code written by four letters. Moreover, this universality occurs not only in human being but also in every being on the earth, without any exception. In addition to it, we have been taught there is nobody at all who has all the same combination of this four chemical letters. It is individuality of human being.

To sum up: Human being is not a particular existence equipped with human rights. We are a kind of creature livings on the earth, having inherited our genes from unknown ancestor who have lives on the earth since 4,400,000 years. The earth is a closed system, so, our various wants must be under control in order to keep harmony with the natural order on the earth.

Our lives, bodies, limbs are not the objects which we possess. These are the things which the earth lent to us. Our duty is, therefore, that we must take care of these things with bona fide (good will) while we live, and must return them to the earth after death. I am not a libertarianist lives or bodies concerned. Therefore I am against committing suicide, transaction of organs, lawful or not, and even against organ transplantation from brain death bodies.

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