**Self-Ownership, Relational Dignity, and Organ Sales**

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**I. Introduction**

Material property has traditionally been conceived of as separable and thus external from its owner, otherwise it couldn’t be something alienable and transferable. Combine this conceptual claim with the metaphysical claim that we’re each identical to a living human animal and the result will be that self-ownership is impossible for self-separation can’t be accomplished. People are probably misled by the ability to separate and transfer some of their parts. However, ownership of the parts will depend upon ownership of the whole and that is impossible. It would be incoherent to own all of your body’s parts but not the whole. The whole body is not separable from its current parts. And it would be unprincipled to own some but not all of your removable body parts.

Such metaphysical considerations mean that the contentious moral question of organ sales can be sidestepped. One doesn’t have to enter the perhaps intractable moral debate whether organ sales increase or undermine autonomy and respect or offend human dignity. Moral considerations will only be a factor in a debate over commodifying the organs amidst the remains of the dead. I contend that this moral issue will not be as difficult a debate to resolve. The reason is that these remains do not have the intrinsic dignity of the living human being of the dead, but instead, if they have any dignity, they merely have relational dignity. They would have dignity only because they stand in a historical relationship to a once but no longer existing entity that possessed intrinsic dignity. Although the concept of relational dignity is unclear, perhaps confused, I suspect that even coherent clarifications of it will not be an obstacle to markets in anatomical remains. Most other instances of relational value merely restrict usage, not purchase.

**II. The Concept of Alienable Property and the Metaphysics of the Body**

If you own a cap, can, or clock, then you can sell them to someone else. You can literally hand such things over to the buyer. The other person will take possession of your possession. Property is alienable, and if small enough, it can be physically separated from you and pass into the possession of another. You might meet the buyer at the market place and exchange your property for some money or another good. You both then go on your own way, your earlier property now in the hands or pocket of its new owner, some of his earlier money now in your wallet or purse. The selling of larger property may not involve a literally handing over of an object but would involve ceasing to use something external to oneself that was now recognized to be in someone else’s possession – something others need permission to use, touch, walk across, occupy or destroy. It is this separation of property from the person that allows one exclusive control over it.

 It might seem that a similar description can be given of your selling one of your kidneys. It too is alienable. Your kidney can be removed, once it is separated from you it can become the possession of someone else. In exchange, you receive some money from the purchaser or her agent. However, if you can own your left kidney, then one would expect that you can own your left kidney complement. But if you own your left kidney and your left kidney complement, then separating you from your property becomes more problematic for your kidney and kidney complement would seem to add up to yourself. If property is alienable, i.e. something that can be separated from you and become the possession of someone else, then it would seem that your living body is not alienable property for you cannot be separated from yourself. It doesn’t seem possible for you to go to the marketplace, find a buyer for your body, and then you and your body go your separate ways.

According to the animalist account of personal identity that I favor, each human person is identical to a living human animal (Olson, 1997). We are not something constituted by a body, nor a mere part of our body, nor a soul interacting with our body, nor any other kind of essentially thinking entity distinct from the body. If you are identical to your living body, then you can’t be separated from your body. Your living body can’t be someplace that you aren’t. If property must be alienable, then your body can’t be your property. You can only own your parts if you own your whole person, but the latter is impossible. It might help to consider the ownership of a bracelet that enables one to retain ownership of detached parts of that piece of jewelry. If the bracelet is broken into a few pieces, one owns the detached charm because one owned the entire bracelet. So if you have been paid to transfer an organ, then you must have owned all of them earlier. Ownership of your body parts depends upon ownership of the whole they compose. It would be incoherent to own all the parts of your body but not the whole. The whole body is not separable from its current parts. What could it mean to own all the parts but not the whole? (Sider, 2008: 250) What doesn’t one own and control in such a scenario? [[1]](#footnote-1)

Unlike the case of jewelry, whose valued parts the owner can separate and sell off, the possible removal of our parts misleads us into thinking we own the whole body. All of the matter of your body might appear to be your alienable property because it could be completely divided into little portions and they each could individually be removed and separated from your still living body. But these bits of matter couldn’t actually all be your property since they would add up to the whole of your body. It would be absurd for you to own each of your parts separately, but not all of them jointly. And it would be arbitrary to own some but not all of the parts that could be removed from your body. Why would you own your left half of body but not the right half? That would mean that you could own your left kidney but not your right kidney. But how is it that you could own one but not the other? Is it your choice? Can you switch from owning your left kidney to instead owning your right kidney? What sort of acquisition principle is involved? Is it that one says something to oneself that one no longer owns one’s left side but instead owns one’s right side? That sounds to be a rather unprincipled way to sell any part of one’s body without owning one’s entire body. Given the arbitrariness of owning only some of your parts, the conclusion to draw is that you can’t own any of your body parts and thus ownership of them cannot be transferred before or at your death.

Such considerations suggest that it is correct that material property has traditionally been conceived of as separate and thus external from its owner. Margaret Radin writes: “We have an intuition that property necessarily refers to something in the outside world, separate from oneself… the idea of property seems to require some perceptible boundary, at least insofar as property requires the notion of thing, and the notion of thing requires separation from self.” She adds that “this intuition makes it seem appropriate to call parts of the body property only after they have been removed from the body” (Radin 1982, 957). Mary Anne Warren also denies that the body is property: *“*Furthermore, it is probably inappropriate to describe a woman’s body as her property, since it seems natural to hold that a person is something distinct from her property, but not her body… it would be very odd to describe, say, breaking a leg, as damaging one’s property, and much more appropriate to describe it as injuring oneself.” Robert George holds a similar view that the body is not property writes “After all, if someone ruins your car, he vandalizes your property, but if he amputates your leg, he injures you…there is a difference in kind between vandalism and violation; between destruction of property and mutilation of bodies.” [[2]](#footnote-2) (2010, 253)

The idea that property must be external in order to be alienable can be found in Hegel and Kant as well. Hegel argues that since property “becomes mine in so far as I put my will into it…hence I may abandon…anything that I have or yield it to the will of another, provided that the thing in question is a thing external by nature” (Hegel. *Philosophy of Right* #65). Hegel’s idea is that since one can’t withdraw one’s will from oneself, property must be a thing external to the person if it is something alienable. Kant also stresses that property must be external to the person “for in so far as he is a person he is a subject in whom ownership of things can be vested, and if he were his own property he would be a thing over which he could have ownership...but it is impossible to be both person and a thing” (Kant. *Lectures on Ethics* #165)

However, some readers might respond that alienating one’s property in the sense of it being separable from oneself is just one conception, or a partial conception, of ownership. Maybe at the heart of the notion of property is just the right to ultimately control one’s property and transferring that right to one’s property doesn’t involve physically separating oneself from one’s property. Neither a so called left libertarian like Peter Valentyne, nor a more traditional right libertarian like David Schmidz says anything about separability of property in their characterizations of property below. Vallentyne claims “Full ownership of an entity consists of a full set of the following ownership rights: (1) *control rights* over the use of the entity: both a liberty right to use and a claim right that others not use it, (2) rights to *compensation* if someone uses the entity without one’s permission. *…* (3) *enforcement* rights (e.g., rights of prior restraint if someone is about to violate these rights) ….4) rights to transfer these rights to others…”(Vallentyne 2014) Schmidtz states “Today, the term ‘property rights’ generally is understood to refer to a bundle of rights that include the rights to sell, lend, bequeath, use as collateral, or even destroy…The fact remains, though, that at the heart of any property right is a right to say no: a right to *exclude* now-owners…the difference between a mere liberty and a full-blooded property right is that with the latter, there is an owner who holds a right to *exclude* other would-be users.” (Schmidtz 2011)

My contention is that such bundles of control rights still have to confront non-moral metaphysical and conceptual obstacles to the claim that one can own one’s body.If you could own your parts then you could sell them to me. But if I owned any part of your body – that is, while it is was still a part of your body - I would not be able to exercise *exclusive* control over that part, though perhaps I could maintain *ultimate* control over its fate, determining where it is to be located and whether it is to be destroyed. But I can’t exercise *enforcement* rights to prohibit you from using your own body and thus can’t be *compensated* whenever you do so, though I may be able to prevent you from engaging in certain actions.

Furthermore, advocates of body ownership don’t have a unified account of how others first acquire that right to own themselves that can be extended to their ownership of anything else. But every other *kind* of property can become so through all of those means. I can plant and grow a flower, pick one from the field, or purchase yours. I can carve a paper weight or find one in the field or buy yours. So self-ownership must be a basic and *sui generis* kind of ownership.

Explanations that can unite more disparate phenomena are preferred over those who subsume less. So avoiding a *sui generis* account of body ownership would be preferable to having to introduce additional principles to account for ownership. If we abandon self ownership, we have a more unified account of property ownership through acquisition by labor (which I use loosely enough to include picking up flower petals in the wild) and then consensual transfers of ownership.

It shouldn’t be thought that self-ownership can be justified on the basis of putting labor into oneself. Consider a congenitally, completely paralyzed and unconscious individual – he is not putting effort into his body, intentionally shaping it, exercising, intentionally feeding it etc. In fact, if such labor grounded ownership of a body, it may mean that the mother owns her embryo as she is responsible for the metabolism that enables its growth. A metaphysical argument can also be made that the embryo, after embedment in the uterine wall, is a part of the mother. Kingma (forthcoming) argues that the embryo is attached to the mother just as other organs are attached to her body. The attachment and parthood relationship of the embryo is temporary, but the same is true of a number of body parts that will be discarded later (e.g., baby teeth, placenta, hair).

But if one is not bothered by *sui generis* acquisition of ownership and just accepts that everyone owns themselves without labor or transfer, there is still the puzzle confronting the self-ownership account in making that account conform with the concept of ownership as control. The very young can’t exercise much of any control over their body. One also is left wondering how the congenitally impaired and permanently unconscious could own themselves since they can’t exercise any of the various list of controls mentioned by Schmitz and Vallentyne. Even a *sui generis* acquisition of property shouldn’t be at odds with the conception of control that is at the heart of ownership.

More embarrassing is that advocates of self-ownership want to prevent people from selling themselves to slavery. So they appeal to the notion of inalienable rights. While there aren’t any conceptual problems with inalienable rights in general, what sense can we make of property rights that can’t be exchanged – sold and bought? Such exchange seems a conceptual truth about property. While property rights can be restricted – for instance one can’t modify or destroy one’s own property that has been designated a historical landmark – one is still allowed to sell and buy such property. But to insist upon restrictions that exclude even sale of restricted use property seems to be at odds with the very idea of property. “Property” that can’t be sold isn’t really property. So the moral objections to the sales of people end up being incompatible with the notion that people can own themselves. I think such prohibitions are better repackaged as limits on one’s autonomy – one can’t autonomously give up one’s autonomy.[[3]](#footnote-3)

We can perhaps obtain most of what we want – control over ourselves - by relying not upon self- ownership but just through an appeal to autonomy. That would allow us to have uniform account of ownership – labor and transfer etc. – without losing various rights of noninterference. The autonomous can control dispensation of their remains not because it is or was their property but because the remains were earlier their parts under their autonomous control.

But no one is autonomous at their origins and subsequent months. So it might seem that a *sui generis* account of self-ownership is still needed for non-autonomous human young. The worry might be that if those who aren’t autonomous don’t own themselves, then that might mean someone else could own them? Do their parents own them, or whoever tends to them, finds them, or put their “effort” into such children? And if and when the non-autonomous become autonomous and able to exercise control over themselves, do their previous owners just lose their ownership? That is a very odd account of ownership transfer – one without consent or compensation.

This problematic idea of property as something that involves objects or rights of exclusive control that aren’t bought and sold will remain even if we claim that the non-autonomous (incapacitated) own themselves but have proxies that manage their bodily property in accordance with their interests. Why couldn’t a proxy for an individual sell the latter if it was ever in the latter’s interest to be sold? (Property rights, as other rights, are usually justified in terms of autonomy or interests.) It is surely possible that being sold could be in the non-autonomous person’s interest. We can’t rule out that the money for the sale will serve the interests of the non-autonomous. Philosophical readers can, no doubt, make up farfetched stories where the money from the sale will enable the individual to have an expensive operation or costly care or something else that they currently lack the financial means to obtain. So limiting sales of someone for their benefit isn’t compatible with the concept of the individual being their own property.

Another problem with an incompetent human having a trustee that can use their (alleged) property in pursuit of their interests is the same is true of a tree or cat and yet we are reluctant to claim that such creatures own property and themselves just because a trustee can look out for their interests. I think neither should have a *bodily* *property* proxy; but a proxy to look after the *interests* and rights of the human being is justified but while no such proxy is required for the non-human animal. Why the difference in moral treatment?[[4]](#footnote-4) My contention is that the moral status and protection of non-autonomous human beings will be due, in large part, to their having the capacity for and an interest in healthy development. My belief is that healthy human development produces cognitive and affective states which are far more valuable than those of any other known species. The dignity of the young and demented can be found in this capacity of human beings. I have argued elsewhere that the mindless and minimally minded human beings have greater moral status than mentally indistinguishable minimally minded or mindless creatures of other species.[[5]](#footnote-5) The reason is that the members of other species are not unhealthy when they don’t develop into rational persons. Only human beings are unhealthy when such development is frustrated or undone. I don’t have the space here to do complete justice to this idea. The short story is that all organisms have an interest in their health, i.e., that it is good for them. They may not be interested in (i.e., desire) their health, but it is their interest. This is no different from children who may not be interested in (desire) vegetables, but nonetheless vegetables are in their interest, i.e. good for them, contributing to their flourishing. Even plants have an interest in sunlight, water, and nutrient rich soil. The difference is that when such plant interests are frustrated, a future of great value is not lost. But when humans don’t develop, or their rational development becomes undone, their interest in a future of great value is frustrated. That is why they have moral status that mentally equivalent non-human animals lack. The moral protections they are owed are based upon their interests and capacities to develop valuable minds, not upon their rights of self-ownership.

**III. Corpses, Moral Status, and Property**

 I contend that at death, one ceases to exist and so the matter of the deceased can become property without running into any of the above metaphysical or conceptual problems with self-ownership. It might be countered that the dignity of the human being means a fresh corpse has great moral status and thus its parts can’t be commodified without demeaning the human body. I don’t believe that the corpse has the dignity of the living. At best, it has what I will call “relational dignity.” But before explicating that idea, a brief survey of the traditional notions of dignity would be helpful as discussions of conduct being undignified aren’t always clear what conception of dignity is in play.

There are three traditional senses of dignity (Rosen: 10-19). “…dignity as a valuable characteristic not restricted to human beings, dignity as a high social status, and dignity as behavior with certain respect-worthy character (or indignity as behavior lacking it)…” The dignity concept in antiquity originally indicated high social status and the honor and respect due someone in that position. But even in Cicero, dignity lay in our being human, not animals. So dignity lies not in one’s relation to other human in society, but one’s place in the universe. Likewise, the Catholic tradition stressed that various kinds of creatures could all have dignity, though to different amounts depending upon their intrinsic goodness. There is also a third sense of dignity in terms of behavior being dignified or not.

Kantian dignity is what most have in mind in mind when discussing intrinsic dignity. It differs from the second form of dignity mentioned by Rosen in that Kant recognized humans as the only kind of dignified creatures. Human Dignity was contrasted with the value that Kant called *price* that was tied to exchange value. If something had a price, it could be exchanged with something we desired equally or more. But Kantian dignity, as David Velleman claims, is a value “in oneself”, not “for oneself”. An intrinsic value is good in and of itself, regardless of anyone recognizing it. It is something one must respect in oneself as well as others as the value is the same; hence there are duties to oneself as surely as there are duties to others with the same dignity. Its value is incommensurable, it can’t be exchanged for anything else even if that exchange was in one’s interest and one would be one happier as a result. That would be treat one’s dignity as if it had a price and could be swapped for other things. Although Kant found our dignity to lie in our rationality, an *intrinsic* account of dignity could find it is some other intrinsic property. Whatever the basis of our intrinsic value, it doesn’t follow from the notion of intrinsic that the value couldn’t diminish over time.

A traditional objection to Kantian dignity is that it can’t account for the value of those who have not actualized rationality or have ceased to do so. I argued above that the moral status of the human young or mentally impaired humans who have not or can no longer manifest impressive mental traits can be found in their capacity to do so when healthy. We can understand their dignity to lie in their human capacity for mentally sophisticated properties rather than their actualization. They always have an interest in healthy development at all moments of their life. This interest when frustrated is a great harm as it leads to a great loss of valuable goods. Beings that presently have an interest in not losing such great value have high moral status and deserve the requisite protections. So it is not just the manifestation of impressive mental traits that provide us with dignity, but the capacity to do so.

There is another sense of dignity of the corpse that I will discuss below and it is to be contrasted with discussed later in the paper is to be contrasted with Kant-like accounts of intrinsic value or the just-mentioned capacity to realize impressive mental traits. Relational dignity would lie in something being related to something that had such value. I will argue that such relational dignity doesn’t present a dignity-based objection to commodification.

I have two objections to the claim that commodification of human remains is demeaning.

First, even if the corpse is identical to the earlier living human being, it wouldn’t retain its earlier value. Only the living have interests and well-being. It might help to see this point if we imagine a computer or robot that could *later* develop a conscious mind. There is no interest in the earlier mindless computer or robot in so developing, they are not harmed if they don’t even though identity is preserved in the transformation from mindless to conscious. We can’t say of the non-living and mindless that they are doing well or not. They have no ends or they have them only derivatively as they depend upon our interests.[[6]](#footnote-6) Only the living appear to be goal oriented and can be said to be better or worse off depending upon how they sustain themselves in existence.

 The second reason that the corpse doesn’t have the dignity of the earlier living person is that the human being’s body ceases to exist at death (Hershenov: 2005, 2009). So despite the appearance of the same body being alive than dead a minute later, there is actually later just posthumous remains that don’t compose a body. A fresh corpse might look the same as a living body but at the biochemical level they are completely different after the loss of life processes. It is those life processes that were the key to the composition of the body, making some objects parts of the body and others foreign objects for the latter weren’t caught up in life processes. The nonidentity of living and dead bodies can be seen if we consider the different ways that a living and alleged dead body assimilate, maintain and replace parts. What makes a liquid like blood a part of the living body is different than what makes it part of the dead body. It may just belong to the dead body because it pools in some cavity. But it was part of the living body because it was caught up in life processes. When parts are metabolized, some of the results are used to maintain other parts of the body, while their unused products are released by the body. There is neither systematic maintenance nor release in the corpse. So it is not just the assimilation but also those relations that maintain and remove parts that are different in corpses and live bodies. It is extremely odd that there could be a persisting entity that at one time in its existence possessed one part/whole relationship and then later possessed a very different part/whole relationship. Instead of posting different compositional relations of parts to wholes, we should reject the idea that human bodies persist through death. Different composition relations might mean that a gangrene leg is “dead” and no longer a part of the living body, like a dead skin cell that is caught in one’s hair or trapped under a bandage. Then when the rest of the body dies, the dead leg would once again become part of the body. If one insists it isn’t a part of the resulting corpse, why are the other dead appendages part of the corpse?

There is a principled account of the composition of a living body but no such account for how dead bodies “acquire” new parts posthumously through bloat, decay, isolated cellular activity and postmortem procedures. Bloating, for example, involves the production of gases that were not parts of the body prior to death. Bacteria in the digestive system create new gases and parts of the deceased body. And the bacteria multiplies after death. Are the new bacteria still part of the body? Putrefaction transforms the corpse, giving it perhaps new parts, not just destroying the old. Putrescine and cacaverine are both produced by the breakdown of amino acids in dead organisms and the two compounds are largely responsible for the foul odor of putrefying flesh. If the corpse stinks it is in virtue of *its* changing chemistry as some new chemical compounds come to be parts of *it*, and not due to some other compounds which are not parts of the corpse but constituents of something else that stinks. Much the same could be said about the adipocere (grave wax) which the corpse’s fats sometimes produce in a process called saponification which slows putrefaction. Descriptions of corpses undergoing bodily saponification, embalmment, mummification, and even fossilization implies people might believe such processes involve the addition of body parts rather than the corpses remaining within newer and larger saponified, embalmed, mummified or (partially) fossilized entities. Furthermore, parts of the body removed in autopsies and then replaced before the body is sewed shut are generally considered to be restored to the body but obviously not by being assimilated, i.e., caught up in life processes. Likewise for the pieces of skin that are cut by the coroner into two parts and then sewed back together. Moreover, if blood, water or some other liquid or gas exits the corpse during a postmortem procedure but then flows back into the body later in the procedure, they would generally be considered to be parts of the body gained after death but not assimilated. Also, for a brief period after the animal’s death, some isolated cells cannibalize adjacent tissues in order to continue producing their cellular products. They thus produce what are considered by most to be new parts of the corpse, but they are not assimilated into a living organism. Cells in the muscle tissues of the deceased produce new parts in the form of lactic acid that causes rigor mortis. Furthermore, assuming that brain death is the correct criterion for death, then the corpse would acquire all sorts of new parts as some brain dead bodies fight infection, heal wounds, produce scar tissue, manufacture hormones that prevent diabetes insipidus etc. So while the living body could only acquire parts through assimilation, the dead body can only acquire parts in a number of very different ways. The corpse, mereological speaking, is a Frankensteinian monster.

There is a principled account of composition in the offering for the living, but none for the remains. I take from this that there is not a dead body, a corpse, but just remains arranged “body-wise” corpse. So even if one thought it is logically possible for one body to be vaguely identical with another, as authors such as Norman Cantor, D Gareth Jones and Maja Whitaker suggest is the relation between the living body and then its corpse, there is no corpse with which the body can be vaguely identical.[[7]](#footnote-7)

So there are no dead bodies that could have dignity rendering their ownership and sale degrading. Thus there won’t be the earlier problem about owning the parts summing to owning the whole. The “parts” of the remains don’t compose any body-size object. And so there is not a dignified entity that can be disrespected when an entity of great value is treated as if it had much less value. If it is the case we think of the deceased having agreed to donate their parts to their relatives or the organ procurement organizations, there are no metaphysical or conceptual objections to the recipients being their owners.

 It might be protested that one can only donate what one owns. So the deceased can’t earlier agree to donate their bodily remains to anyone if they don’t earlier own their bodies. Likewise, readers may be worried that I have ruled out live kidney donations since the living don’t own their bodily parts. Virtually any theory objecting to sales of body parts doesn’t want to rule out donation. I need to distinguish the concepts of donating what we control from selling what we own. We can indeed donate what we own but we can also donate what we control and don’t own. I think this donating what one owns misleads people to think we must *always* own what we donate. But consider that I can *donate* my time, services, and “know-how” to charity and they don’t become the property of charities permanently or temporarily. If I could only donate what I own and donation entailed property transfers then my time and labor and knowledge would later become the property of the charity, at least temporarily. So the concept of donation doesn’t entail alienating property or even alienating rights to control that property. The recipients of the donation needn’t always acquire property rights over what is donated. This is not only the case when donating services, time, and “know-how,” but perhaps even more clearly revealed by the fact that I can also donate my body to science and the scientists. I can even dictate that they can’t sell my remains to other researchers to engage in the same kind of research. That is hardly ownership if so circumscribed. “Property” that can’t be resold isn’t property. Now I would be dead at the time of transfer so I couldn’t then own my body as the dead don’t own anything, but nor do the scientists own what they can’t sell. So if donated parts were earlier my property, then when posthumous control is governed by such ante-mortem stipulations, the parts would exist in a rather peculiar “property limbo”. I think instead that the disposal of such biological parts should typically be understood as governed by the ante-mortem autonomous wishes of the now deceased.

**IV. Human Remains and Relational Dignity**

 If I am correct in either what has been said about the corpse not existing, or if it does exist, it lacking the relevant potential, interests and well-being that only the living mindless possess, then there is no possibility of the individual having great dignity that is degraded by ownership. But it might be thought that remains or detached body parts have a “relational dignity.” In virtue of their having a certain historical tie to a valuable being, they must be treated with some respect. It isn’t easy to make sense of this relational dignity. Even if it can be coherently expounded, I have doubts that such respect rules out commodification, rather than place limits on what can be done with the parts, much as landmark status prevents not ownership but restricts the options of the owner.

 I suspect what is responsible for much of the belief in the dignity of the dead is something that I will call “axiological inertia.” We just can’t “turn off” responses typical of when value is present when we are faced with similar scenarios that involve the dead. These posthumous situations are too much alike scenarios where such value judgments and emotional reactions are warranted. Just as one can’t help but feel guilty when one blamelessly strikes a child with one’s car, so one can’t help but feel that remains have the dignity of the person. We would be suspicious of the character of anyone who could treat remains as mere collection of chemicals. We would suspect they lacked the right dispositions to the living rather than possessed a Vulcan-like rational mastery of their attitudes, switching them off at the moment of someone’s death when the living person undergoes substantial change.

Another explanation of relational dignity, compatible with the previous, is that we respect the interests of the living even if they have an unreasonable foundation. Sometimes the mourners talk about respecting the memory of the deceased. But memories are representations and it makes no more sense to respect them then it does to respect a photograph (Yourgrau 1987). The deceased is no more and so there is no great value to be disregarded by certain treatments of their remains, like commodifying them. Nevertheless, if the living relatives of the deceased are opposed to what they take to be demeaning treatment of their loved one’s remains, this is a genuine source of distress and respect for the living may require certain treatment of the dead even if such remains cannot be disrespected for they lack the requisite value. Likewise, we who are still living have interests now in the treatment of our future remains. The idea of our remains being gibbetted or spit upon by our enemies is distressing. It may be that we won’t be harmed when such disrespect occurs but we presently bothered by the prospect and so treating our remains will reassure the living that will be the fate of their flesh and bones.

There may be other explanations of the relational dignity that have something to do with various forms of magical thinking. The deceased could be thought of still present in some sense in their remains. The detached remains of Saints are imbued with powers. Many religions think the dead linger in or near the body. Others teach that the dead still exist somewhere else and thus their temporal coexistence could explain why certain treatment is an offense. While these accounts are not likely to be believed by many scientific or philosophical readers, there may be reasons to respect such views when the deceased and their relatives maintain them. But where there is a willingness to donate organs that could become the marketable property of heirs, it seems that considerations dignity relational dignity considerations would, at most, justify restrict usage rather than prohibit life-saving sales. So the metaphysical conception of our identity with our body and conceptual claim that property must be alienable do not make it impossible for our remains to be donated to others. As long as the donor didn’t dictate otherwise, the recipients of the donated remains can treat those remains as their own property without running afoul of the metaphysical/conceptual impossibility of anyone owning themselves. So the transfer of control doesn’t rule out that those who have received control can’t treat the remains as property. Their acquisition of the bodily property need not even be *sui generis* as one can pick up an unowned flower petal and acquire ownership in virtue of that minimal effort and the intention to acquire.

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1. A referee asked whether a person with artificial body parts (for example, a bionic leg, dental implants, etc) owns them? My response is that for something to be a part of a living body is for it to be caught up in the event that is the life of that organism. See the Lockean-inspired accounts of Olson (1997: 135-140) and van Inwagen (1980: 144-45). One’s prosthetic leg is like one’s walking cane, ribbon in one’s hair, and glasses resting on the bridge of one’s nose - not a part of one’s body. Prosthetics are not caught up in the life of the organism as they don’t grow, aren’t nourished, maintained, protected, repaired, healed etc. (Olson: 1997, 135). Prosthetics should be treated like one’s glasses and cane and ribbons and corrective shoes. If they are accidentally removed, the original owner hasn’t lost his property entitlement. Nor, in the absence of ownership, has the person lost control over the biological parts that were in her autonomous domain. An accidentally removed organ or tissues should still be an organ or tissue under her control. More later about autonomous control in the absence of ownership.

 [↑](#footnote-ref-1)
2. It shouldn’t be thought that one can’t be compensated for injuries even if one doesn’t own one’s body. One can be compensated for suffering, distress, battery, the ruin of one’s non-economic reputation, etc. without ownership. They are just as much violations of rights as is taking or damaging someone else’s property without permission. No one ought to think we shouldn’t make batterers and kidnappers, libelous, and malicious folks pay compensation without our having property rights in our person. [↑](#footnote-ref-2)
3. More below about this substitute of autonomy rights for property rights . [↑](#footnote-ref-3)
4. This was a question asked by a referee. [↑](#footnote-ref-4)
5. See my published articles \_\_ and \_\_ as well as my forthcoming \_\_. [↑](#footnote-ref-5)
6. The can only has an extrinsic interest in an oil change because its owner or driver has an interest in the car running. [↑](#footnote-ref-6)
7. Jones and Whitaker (2009, 36) wrote: “We (the public) consider the person and his body are inseparable... while this applies supremely during life, some very important aspects of this identity continue following death…aspects of this identity continue following death…” Cantor (2010, 297) concurs and writes “This close identity between a cadaver and its predecessor dictates that anyone…” [↑](#footnote-ref-7)