



Review: Bodies for Sale

Reviewed Work(s): Body Parts: Property Rights and the Ownership of Human Biological Materials by E. Richard Gold

Review by: Judith Andre

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Bodies for Sale

by Judith Andre

In principle American law does not allow property rights in the human body. In practice, however, matters are more ambiguous. Take, for example, the following: courts denied John Moore property rights in a cell line developed from his spleen, but allowed them to the surgeon-researcher; solid organs are not for sale, but regenerative materials—hair, blood, semen—are; babies are not for sale, but in some states birth mothers may be reimbursed for medical expenses and lost wages; genes may now be patented. And so on. If we see the law as an exercise in line-drawing, and the difference between human beings and objects as the most sacred of lines, these arrangements may look dangerously soft. From a three-dimensional perspective, however, the picture is more complex. The law serves not just to draw lines but to construct and secure social arrangements: it not only draws a line around spheres of bodily privacy, for instance, but also enables institutions like marriage and shapes parent-child relationships. The law makes possible, punishes, insists, rewards: in all these ways it affects what we do and how we understand it.

From this perspective the issue is not so much line-drawing as developing structures in which human beings can flourish. Many different kinds of property relationships are conceivable, drawing from a bundle of possible legal statuses: rights of use, of exclusion, of profit; rights to alter, to destroy, to alienate—these and others exist separately or in combination. Because of this some theorists have suggested that we create property rights of novel kinds that

would reinforce the moral status of the human body.

E. Richard Gold finds this suggestion dangerous. In his book *Body Parts*, he suggests that regardless of what is possible in theory, the fact is that U. S. courts now evaluate disputes about property rights in almost solely economic terms. As a result the decisions protect economic values only; everything else at stake is endangered. To make his point Gold examines several significant series of court cases. Some concern biological materials (cell lines, genetically altered bacteria), but others range more broadly (computer software, a news story, a celebrity's image). In each Gold argues that the court made its decision on economic grounds, failing or refusing to take account of other values.

These case analyses are the most valuable aspect of the book. Part of that value comes from the sheer variety of cases. Thinking about, for example, rights to the commercial use of one's image is a useful reminder that our conventional person/object dichotomy can be simplistic. A living human body is ordinarily a person, but it is also always an object, and the same is true of various aspects of the body. One's DNA, ideas, likeness, blood: each of these is in some way an object, yet in another an intimate aspect of oneself. And the way in which each is part of the self differs. Gold does not explicitly address our oversimplified person/object distinction, but his range of cases naturally challenges it.

Body Parts is also useful for pointing to noneconomic values that can be at

stake. Given the complexities in the concepts of bodies, persons, and property, it is not surprising that we have no single grand principle with which to deal with them. And since market theory—grand and unified—is increasingly assumed everywhere, it can be hard to find language for what is missing. This makes Gold's cases particularly useful. One of his examples features singer Tom Waits, who refused to endorse products because he believed doing so would compromise his artistic integrity. When a television ad was made using an imitation of his voice, Waits sued. His complaint had nothing to do with the economic value of his public image. Similarly, a dispute about the right to use the image of Martin Luther King could have been decided in terms of dignity and respect. Gold argues that both cases were instead decided on economic grounds.

Once away from the cases and into theory, the book is less useful. It originated as a dissertation and still bears the marks of its origin: cumbersome prose, repetitive summaries, and conceptual awkwardness. Gold refers to much of the important writing in this area—another way in which the book is valuable—but does not always use it well. His most egregious misstep is his adaptation of Elizabeth Anderson's phrase "dimensions of value." (She argues that markets will realize some dimensions of value, not others.) Gold creates the similar phrase "ways of valuing"—but his phrase allows room only for individual subjective preferences. On theoretical and philosophical questions readers will be better served by Anderson, Margaret Radin, and the others to whom Gold's notes can lead them.

Body Parts: Property Rights and the Ownership of Human Biological Materials. By E. Richard Gold. Washington, D.C.: Georgetown University Press, 1996. xiii+223 pp. \$49.95 cloth. \$15.95 paper.