

Whose Body Is It Anyway: Justice and the Integrity of the Person¹

By
Meghan Boone

The human body enjoys a special place in the law. Many of our most basic rights as citizens, including the right to be free from unreasonable search and seizures, the right to be free from physical assaults by others, and the right to privacy, arise from the idea that we should be able to control what happens to our own bodies. This principle of the inviolable body is also the basis for preventing individuals from utilizing their body or body parts in the economic marketplace and gives rise to legislation such as the prohibition on the sale of organs, the invalidation of surrogacy contracts, and the criminalization of prostitution. In the book, *Whose Body Is It Anyway: Justice and the Integrity of the Person*, Cécile Fabre posits that the current legal system would be more just if we disavowed ourselves of this principle of the inviolable body, or the idea that the body is legally special, and instead accepted a legal system in which we all have a right to each other's bodies, including our own. She points out that, "justice requires conferring on the sick a right to the organs of the dead and, in some cases, the living; and...requires conferring on individuals a right to buy and sell organs, sex, and reproductive services."

Fabre admits at the outset of the book that because the principles she advances may disturb our traditional doctrines and principle, she expects little popular support. However, despite my initial distress with an argument that asserts I should not have the right to decide what happens to my own body, I eventually found that the text raised interesting questions about the contradictions inherent in our legal system's treatment of the physical body. As Fabre aptly notes, "our legal and political tradition is such that we have the right to deny others access to our person, even though doing so would harm those who need such access; however, we lack the right to use ourselves as we wish in order to raise income, even though we do not necessarily harm other by doing so..." After reading her book, I found myself agreeing with these inconsistencies under our legal system; while the law tells us that we have complete control over our physical persons, we are in reality legally barred from selling our organs or sexual services, even if doing so causes no harm to others and, in the case of organ sales, even helps those in great need.

To advance her argument, Fabre relies on the fundamental soundness of the principle of distributive justice, which states that some redistribution of wealth or resources across society is necessary in order to achieve justice for all. She points to examples from western society, such as the prevalence of social programs like welfare and the redistribution of wealth through taxation, to illustrate that the principle of distributive justice is already generally accepted. Fabre does not argue that it is necessary to have a wholesale redistribution of resources in which every member of society is given resources in exactly equal amounts. Instead, she works from a framework that stipulates only that each individual has a right to the resources he or she

requires in order to live a "minimally flourishing life," and pursue a "conception of the good." Fabre argues that the natural consequence of meeting these basic goals is allowing those in need, a right to the material resources, including the body, of other members of society. Without these resources, many people are unable to live a minimally flourishing life, or even any life at all.

After asserting that the principles of distributive justice dictate that members of society have a right to the bodies of others, Fabre then explains how the "redistribution" of bodily resources would be accomplished. In chapters 3 through 8, respectively, Fabre advocates for the creation of a mandatory civilian service, the confiscation of organs from both cadavers and living people, and the legalization of the sale of organs, prostitution, and surrogacy contracts.

The arguments I found most compelling were those contained within Fabre's thesis as it relates to the confiscation of organs. Fabre attempts to convince the reader that many of the arguments in favor of absolute bodily autonomy are both misguided and unjust. First, she claims that, compared to another individual's right to live a minimally flourishing life, or in many cases to live at all, a right to absolute bodily integrity seems weak. Moreover, Fabre argues that the confiscation of organs does not deny bodily autonomy, but instead places on it a qualification that the redistribution of organs should occur when individuals are impaired in their ability to lead a minimally flourishing life. She does allow those with true conscientious objections the option to refuse to give their organs to those in need; an absolute requirement that would violate an individual's conscience would also harm his or her ability to realize the "conception of the good." By allowing for these conscientious objections, Fabre addresses the only strong argument against instituting an organ confiscations system. Further, these allowances give her argument internal consistency because they reveal she is equally concerned that all members of society are able to live and pursue their own ideals.

While I was tempted to agree with Fabre's oral arguments in favor of an organ confiscation of the system. I failed to find her chapter regarding the legalization of prostitution persuasive. Her defense of prostitution is especially relevant to current discussions in the feminist community, who questions power differentials, gender equality and the commodification of women's bodies in the marketplace. Fabre acknowledges these issues exist but ultimately argues that the legalization and regulation of the sex industry would shield women from the harm they might otherwise face for supplying such services on the black market. Unlike the more persuasive moral arguments Fabre makes for practices such as organ confiscation, she never reaches a similar conclusion that the legalization of prostitution is moral or just in its own right. Instead, Fabre concludes that the problem with prostitution is not the act of providing sexual services for money

admits that the vast majority of women would not choose to prostitute themselves if they had access to other economic opportunities. Thus, her position that an absolute right to prostitute oneself is required in the interest of justice, is not persuasive.

In the end, *Whose Body Is It Anyway?* is best read as a philosophical text, and not a practical guide to possible changes in the legal treatment of the body. Although it sheds light onto contradictory aspects of both the application of distributive justice and the sacrosanct treatment of the human body in the legal

system, it is neither an “endeavour in social policy,” nor a “party manifesto.” Additionally, due to both Fabre’s writing style and the often dense and complicated philosophical ideas she relies on to make her arguments, the book is neither an easy nor a quick read, especially for anyone who does not have a background in philosophy. However, what is effective about her book is that it both provokes and engages the reader by challenging us to reexamine one of our most basic ideas - that our bodies should belong solely to ourselves.

ENDNOTES

¹ CÉLICE FABRE, *WHOSE BODY IS IT ANYWAY: JUSTICE AND THE INTEGRITY OF THE PERSON I* (Oxford Univ. Press, 2008).

ANNOUNCING

TUESDAY, APRIL 7, 2009

The Modern American Annual Symposium:

Revisiting the Separation of Church & State in the United States

“Congress shall make no law respecting an establishment of religion. . . .”

- First Amendment of the Constitution of the United States of America

Although the United States is constitutionally bound by the separation of church and state, religion has undoubtedly had a major influence on American law and policy. Religion has influenced discourse concerning a variety of issues in America including reproductive rights, foreign policy, marriage, social services, and education. This symposium will revisit the implications of the Establishment Clause, explore to what extent the separation of church and state in America has held true, and discuss which religions have the most legal and political influence, why they do, and the effect such influence has in a religiously and culturally diverse America. The symposium will also analyze recent legislation and state constitutional amendments as well as the interaction between the American people, religion, and state in the regulation of morality.

* CLE* Presented by The Modern American