

The Paradox of a Dead Person

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1 A Dead Body and a Person

The simple question ‘who is dead?’ may actually be regarded as semantically flawed, though few people would question the meaning of a phrase which is so commonly used. Deconstructing the phrase exposes the paradox it contains, however, as ‘being dead’ means that the living person no longer exists; there could be, if any, only a dead body. As a result, the interrogative ‘who’, which expects a proper noun (a name) of a particular person to be given in answer, is no longer appropriate, as the ‘who’ or ‘person’ has ceased to exist. Of course, it seems that we could ordinarily refer to or predicate a dead person, which is called ‘posthumous reference’ or ‘posthumous predication’¹. For instance, we could say meaningfully, ‘Winston Churchill is still respected’. However, even though those kinds of expression might sound meaningful or natural as English sentences, we have to say that there are some serious semantic problems hidden here, as, exactly speaking, an object to be referred no longer exists so that we should be involved in a problem about how to understand the truth condition of those sentences. The same point obviously applies to the case of dead body that has just died.

This argument becomes clearer if we consider what a person’s name refers to. Ultimately, any given name actually refers to the person possessing that name, who thus belongs to a particular culture and who is, as a consequence, part of a particular social context for welfare, medical service, a national election or something like those. The crux of the paradox is, therefore, represented by the question ‘is a dead body a person?’ I would argue that a dead body is not a person, a point of view reinforced by our treatment of cadavers which, although not dealt with in exactly same way as other objects (in deference to the fact that a corpse once *was* a person), are certainly not treated in the same way as a living person. That is, we do not count a corpse as a unit

of the population, and thus don't consider its social welfare or give it political rights such as the vote. Even when a dead body triggers specific emotions and memories in us, the distinction between that body and the living person as body once was remains absolutely clear-cut². Nevertheless, we tend to take a paradoxical attitude about dead people, as I described above. This paradox evident in our attitudes towards the dead (which I call 'the paradox of a dead person') is, I would argue, a key to the issue of euthanasia, and is a fundamental matter I will return to later in this paper.

Any one of us could be forced to depend upon others for our continued survival, as a result of old age, serious illness or an accident. In such a situation, the dependent person may suffer deep despair or serious anxiety about the burden placed upon, for example, their family. Such cases raise the issue of euthanasia. From the viewpoint of medical ethics, three main debates underlie the euthanasia controversy: (1) a debate concerning the theories forwarded to support euthanasia as morally justifiable, (2) a controversy over the degree of moral approval allowable concerning the distinct concepts of 'killing' and 'letting die', and (3) a controversy surrounding the practical consequences of legalizing euthanasia, including, for example, the abuse of such a law by doctors or the risk that family members may pressurise a patient into calling for euthanasia. This article aims to scrutinize the first of the above points, while simultaneously clarifying how the paradoxical concept of a 'dead person' affects our way of thinking.

Usually, a person's autonomy or self-determination is referred to when justifying the euthanasia of a patient who has manifestly expressed his or her desire to die. From this perspective, 'the right to life' includes the right to dictate the limit of one's own lifespan, suggesting that, as a result, euthanasia should be morally acceptable. The use of the concept of autonomy or self-determination to justify euthanasia is sometimes therefore forwarded by supporters of euthanasia as 'the right to die', a concept which may be considered to be a stronger variant of 'the right to life'³. However, the issue of whether euthanasia can be justified in terms of the right to die remains controversial⁴.

2 Perversion of Self-Determination

As noted above, the supporters of euthanasia often appeal to autonomy or

self-determination as ideas that validate the concept of our right to life. For example, Kuhse, an eager supporter of euthanasia, writes

I take the view that decision-making in the practice of medicine should - other things being equal - be based on the patient's best interest...competent patients have an interest in well-being...But a competent patient's interests reach far beyond simple well-being. A competent patient has an overriding interest in autonomy or self-determination...Respect for autonomy should also, in my view, guide the administration of potentially life-shortening palliative care, and of euthanasia. A doctor acting in accordance with this principle does not, when practicing voluntary euthanasia, perform a morally bad action (Kuhse 1996, pp.253-254).

Currently, as I have already suggested, a patient's right to call for euthanasia through self-determination in the face of a life-prolonging but ultimately useless treatment, is often called the right to die, as a result of an influential paper written by Joseph Fletcher (Fletcher 1960, pp.139-143). This might imply that, as far as this is a right, our society and medical institutes are obliged to help patients to exercise that right. Arguably, the acceptance of such an assertion could change the quality of modern medical treatment⁵.

In any case, the right to life, or our 'interest in well-being' as Kuhse terms it, provides the basis for the whole euthanasia controversy: the right to die or the right to call for euthanasia is introduced as an extreme extension of the right to life. This right to life was originally conceptualised as a right over one's own body, a right which society has accepted as the most basic human right in a legal and medical sense since the beginning of the modern period:

The right to determine what shall be done with one's own body is by no means a novel judicial concept. American common law and the Constitution have long recognized individual freedom from bodily invasion or interference (Humphry & Wickett 1986, p. 218).

In this context, the right to die may be considered to be the right to dispose of one's own

body freely, which in turn suggests that our right to dictate the fate of our body is actually an extension of our property rights:

The principal analogy drawn by the euthanasia supporter is with property rights. Surely, it is argued, property rights are alienable, so why isn't the right to life? A premise usually found in this argument is that the right to life just is a species of property right, since we own our bodies (Oderberg 2000, p.55).

Thus, it is argued, since we have property rights over our body, we should be able to govern our lives through autonomous self-determination, which may sometimes include our decision to ask for euthanasia. However, though this argument for the right to euthanasia sounds simple and consistent, it actually contains several flaws when considered in depth.

First, I want to assert that, strictly speaking, it is impossible to view so-called autonomous decisions as truly autonomous, in so far as the phrase refers to decisions we make about ourselves and for which we are responsible. When deciding something, we are usually motivated by our own values. For instance, a patient who asks for euthanasia may believe that 'we should die gracefully' or 'we should not burden our families'. However, it should be remembered that such values were not actually chosen by the patient herself or himself. Rather, the patient has been psychologically imprinted (or brain-washed) with these values by the adults, or social environments, which surrounded him or her since childhood. Bearing this in mind, can such decisions (motivated by passively imprinted factors) truly and entirely arise from autonomous self-determination? I maintain that we cannot say so.

Obviously, the concept of 'autonomy' is linked with the concept of 'freedom' which is conceptually connected with the notion of 'responsibility'. Roughly speaking, we usually judge an agent to be 'free' or 'not free' by questioning whether or not that individual was responsible for a particular action. To put it another way, it seems that those situations in which responsibility may attributed to an agent are considered to be equivalent to that agent being autonomous via the concept of 'freedom'⁶. However, in such instances, responsibility is actually ascribed to the agent by a third person, rather

than by the agent's first personal viewpoint, sometimes at a level beyond the individual's consciousness. The example most often used to demonstrate this is that of a lorry driver who negligently hits a pedestrian without being aware of it. In such a case the driver is considered to be responsible for the accident. However, in fact, responsibility for the accident is not assigned by the driver himself (who was not aware of the accident), but by another person. Such assignation of responsibility may be generalized to almost all cases where a person's responsibility for his or her actions is considered, in so far as the concept of responsibility works in an intrinsically interpersonal way as typically exemplified in the court proceedings. Actually the concept of responsibility doesn't function properly even if the agent concerned declared, 'I am responsible', as a confession is not always reliable. Therefore 'autonomy', as defined by its connection with the concept of 'responsibility', must be involved in this heteronomous feature of the concept of responsibility. Thus, if we regard such 'autonomy' simply as an exercise in 'self-determination' by the agent themselves, and restrict the problems addressed only to, for example, the agent's welfare or happiness, then we distort the problem of autonomy.

Presumably, my view proposed thus far would be also supported by the Basic Argument which Galen Strawson introduced to show the impossibility of moral responsibility. According to the argument, if one is to be truly responsible for how one acts, one must be truly responsible for how one is. But one cannot really be said to choose, in a conscious, reasoned, fashion, to be the way one is, so true moral responsibility is impossible (Strawson 2008, pp.319-320). We cannot completely self-determine how we are, because there are lots of matters of chance or moral luck around us that, nevertheless, intrinsically affect our personalities or characters, for example, biological conditions, financial circumstance of our parents, infant educations and so on. Therefore, in judging an agent's responsibility for his/her actions, we have to consider many objective factors beyond their first personal declarations from the third personal point of view without attributing *ultimate* moral responsibility or autonomous self-determination to the agent. Thus, a viewpoint to regard people as *literally* autonomous to be able to self-determine how they are should be abandoned.

This flaw in the theory of autonomous self-determination is also denounced by

Callahan, though from a different perspective, when he asserts that, in general, the application of the principle of self-determination to euthanasia emphasises only the self-determination of the patient. He goes on to argue that this viewpoint therefore does not recognise all the facts associated with euthanasia, as euthanasia involves other people who must give moral or physical support to the patient wishing to die:

Euthanasia is thus no longer a matter only of self-determination, but of a mutual, social decision between two people, the one to be killed and the other to do the killing (Callahan 1992, p. 52).

Callahan goes on to ask what grounds exist for a person to transfer their right of self-determination to another person, such as a doctor, and concludes that sufficient justification has yet to be provided. Undoubtedly, euthanasia creates a strong emotional response, not only in the patient, but also in the medical staff undertaking the procedure, as well as in any family members witnessing it. Thus, if the theory of autonomous self-determination does not take into account the impact had upon individuals other than the patient, the theory may be said to misunderstand or pervert the problem of euthanasia.

3. The Fabrication of Property Rights

The issue of whether one can transfer one's rights to self determination to others in the case of euthanasia leads, I would suggest, to a second fundamental issue underlying the argument for euthanasia based upon self-determination and the right to die. Namely, doubt exists as to whether the link drawn between the concept of the right to die and the concept of property rights is a valid one. My argument for questioning the validity of this association consists of three points, which I will discuss below. Ultimately, my consideration of those points will return us to the paradox inherent within the concept of 'a dead person', as described at the beginning of this paper.

First, the concept of the right to life can be shown to be flawed by careful consideration of the theory of property rights. Modern society and the modern theory of human rights are obviously influenced by John Locke's (1632-1704) theory of

property rights, which influenced political mandates such as America's Declaration of Independence and France's Declaration of Human Rights. Locke's theory has also been discussed in depth in the current context of the theory of justice, since Nozick paid considerable attention to Locke's philosophies in his works. Locke's basic idea is best expressed by his historically famous formulation of the property concept:

every man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property (Locke 1960, pp. 287-288).

But, Locke's 'labour theory' is more complicated than it seems; for instance, there exists the so called 'Lockean proviso', which sets out certain conditions which must be met for a person's property rights to be fully justified. Most importantly, in addition, Locke stipulates that the notion of property rights is applicable to a person, but not to the body or to life itself:

no Man can, by agreement, pass over to another that which he hath not in himself, a Power over his own Life (Locke 1960, p.285).

Why does Locke include this caveat? Because neither one's life itself nor one's body itself are a consequence of one's labour and, in that sense, have nothing to do with the concept of labour by definition. They therefore cannot be counted among those objects or concepts to which property rights can be applied. It is perfectly true that certain bodily abilities or states, such as strength or health, can be acquired through our own labour (for example weight lifting or a healthy lifestyle); however, such abilities or states are only aspects of our body or life. In the case of euthanasia, what matters is the body or life itself taken as a whole. In such a context, property rights must be deemed to be irrelevant. As a result, the concepts of the right to life or the right to die used to support euthanasia must be viewed as nonsensical concepts, in so far as those rights are

understood by analogy with the notion of property rights.

Of course, objections might be raised to my argument in so far as Locke's theory of property rights is not the only authority; there are other cogent theories, such as Hume's convention theory. It might also be argued that Locke's theory, because it builds only upon the concept of labour, is too simple to explain property rights properly. I would answer both objections by stating that the concept of 'labour' has very far-reaching implications, which make the labour theory not altogether worthless and even allow it to encompass 'the convention theory of property right', which states that establishing a convention (such as ownership) and ensuring that society continues to regard it as valid requires some sort of labour. People tend to equate the concept of 'labour' with physical (muscular) labour when examining the labour theory of property rights. However, in this context, the term 'labour' is actually connected with any form of effort: thinking, planning, arranging, formulating, and sometimes even smiling (in the case of photographic models) can be forms of labour. I would argue that common sense dictates that property rights are established through all such labours. Thus, though tacit acceptance, like convention, can give grounds for a property right, one can further argue that labour plays a part in ensuring that such conventions are deemed to be valid justifications of property rights. There is no doubt, therefore, that labour is the key concept underlying property rights in general and that, as a result, Locke's theory of property rights retains its significance.

Second, we should note that life itself is inalienable (it cannot be transferred). As alienability is generally considered to be a basic aspect of property, the notion of property rights cannot be applied to life, negating the theory which underlies the concept of the right to die. This point can be claimed independently of Locke's argument. The concept of the right to die rests upon the notion of property rights over our lives, which intrinsically implies 'alienability', and thus that, theoretically speaking, euthanasia can be carried out on the basis of alienating a particular property right through the right to die. However, extending the concept of alienability to its logical conclusion would mean that some other person would have to receive that 'life', as 'alienation' implies the transferability of the alienated object. This therefore implies that the recipient would come to have 'two' lives, as a result of the alienation.

However, such a state of affairs is clearly impossible and the supposition meaningless; life cannot be alienated. Thus, the concept of the right to die must also be considered a misleading fabrication⁷.

My third and final point rests upon the fact that I believe that the concept of a 'right' must include the possibility of enjoying the result of exercising that right. Indeed, I would argue, that every instance of a right actually used proves this. For example, if I purchase a vehicle but am not able to use it legally after buying (and thus owning) it, it could be argued that this is not really an instance of full 'ownership'. In the case of an individual exercising the right to die, once their wish is carried out, the person exercising their right no longer exists to enjoy the result of their action/decision. Logically, therefore, what is termed the right to die cannot, in fact, be considered a right at all. As a result, to subscribe to the concept of the right to die, you must be involved in the paradox of 'the dead person' described at the beginning of this paper, by assuming that the 'person' continues post mortem. If the owner of the property right must necessarily disappear as soon as he or she actually exercises their right, the concept becomes paradoxical. That is, since the person involved cannot enjoy the results of exercising their right, we must conclude that they did not, in fact, have any property rights to exercise.

Some objections could perhaps be raised to this argument, such as the fact that we have the right to leave a will. However, I would argue that the drawing up of a valid will is an action which is completed before death. As a result, the making of a will is something we can enjoy. I would also argue that a will concerns not only the author but also those to whom bequests are made. As a consequence, the beneficiaries also enjoy the result of the author's actions. However, in the case of euthanasia and the concept of the right to die, the person exercising the 'right' cannot enjoy the result as, by definition, they cease to exist. To continue to contend that the right to die is a real right, we must allow, or imagine, that a dead 'person' (who, as I have already argued, cannot actually be considered to be a person) is able to enjoy the result in some way. Clearly, therefore, to hold such a belief, we must allow the paradox of 'a dead person' to cloud our thinking.

4. From ‘the Paradox of a Dead Person’ to ‘Property Rights over Our Own Death’

Why then, despite the theoretical difficulties I consider above, are people easily trapped by the paradox of ‘a dead person’ into thinking that the concept of the right to die is meaningful? Even philosophers sometimes offer arguments in favour of euthanasia which are based upon the right to life or the right to die. In order to clarify this, we must first ask why the idea of alienating life seems to be acceptable or logical to many people. Presumably, the answer is that, when a person dies, we realistically feel that something is given to other people. However, the thing that is given to other people cannot be ‘life’ itself as, when a person dies, his or her ‘life’ simply disappears in a physical, medical and social sense (which does not, of course, take into account religious views). Life therefore cannot be given to anyone in such an instance. What then is ‘given’? It is possible to argue certain things are given to (or fall to) other people when a person dies, such as the deathbed scene, the corpse, a longing for the dead man or woman, a fear of death, a yearning for death, or a significant occasion which allows one to think deeply about death. That is to say, we could suppose that ‘death’ somehow appears when a person dies. In this way, it is possible to regard ‘death’ as something ‘given’ to other people when the person dies. I therefore think that to regard ‘death’ as something which is given is much more consistent with our feelings than to regard ‘life’ as something which is given.

Taking this argument to its logical conclusion, one could argue that we own, or have property rights over, our own death while we live, otherwise death could not be given. Thus the idea of ‘owning death’ while living could be interpreted as, for instance, possessing the ability to die whenever we pleased, or having the ability to imagine having a conversation with a dead person and so on. Certainly it seems plausible to argue that we have a ‘property’ in our own death while we live so that that ‘property’ is given or alienated to other people when we die. This notion of having proprietary rights over our own death arises, I would argue, most naturally in the context of the debate over the death penalty on murderers. The most primitive and basic way of justifying that death penalty (whether or not it is ultimately actually acceptable) is a retributive one which states that those who take another person’s life must ‘give’ their own in return. Taken literally, however, such justification is absolute nonsense as, as I

have argued above, 'life' is inalienable, and cannot be given. Nevertheless some people feel that the death penalty is justifiable as a form of retribution, when they subscribe to the hidden 'logic' of retribution that states that those who have taken another person's property over his or her own death, by killing them, must give up their own 'property' over their own death by dying themselves.

However, I would stress strongly here that the idea of having property rights over our own death is ultimately untenable and illogical as, in literal terms, owning death would be equivalent to being dead. The idea may also be seen to be inconsistent in so far as, if death is something over which we can have property rights, and so can be alienated, we have to address the question 'what happens to the original giver?' Does he or she disappear after alienating 'their' property? If so, the notion of alienation loses its significance because, as I argue above, conceiving of property rights as including the right to alienate the thing held implies that the holder can enjoy the result of exercising their right. As a result, the holder of the right cannot simply disappear after exercising that right. Therefore, for a person to have property rights over their own death, that person would have to somehow continue to exist socially after dying. Such a way of thinking may therefore be seen to be simply another face of the paradox of 'a dead person'. However, and most importantly here, the fact that people's attitudes to, for example, execution, indicate that they somehow accept the idea of property rights over death provides further evidence for people's tendency to be easily involved in the paradox of 'a dead person'. As I argue above, it is this which underlies people's general feeling that euthanasia is justifiable on the basis of the right to die. In this way our traditional and cultural way of thinking about death in general could be clearly understood by this idea of having property rights over our own death. Thus, my point is that the idea of having property rights over our own death is more persuasive and consistent to explain our intuitive feeling about execution or euthanasia than the idea of the right to life or the right to die, although both ideas are illusionary in the end.

As far as the problems of euthanasia are concerned, especially with regard to the issue of whether or not to legalize this practice, we must avoid appealing to the idea of possessing property rights over our own death at all costs, since the idea implies nothing substantial in a legal sense, even though the idea can somehow logically explain our

intuitive feeling about the paradox of ‘a dead person’ and our traditional attitude to death outside the area of legal issues. That is to say, as far as society accepts the modern concepts of property rights and human rights (both of which are connected) as the basis of law or politics, it is absolutely impermissible to accept the concept of euthanasia, whether active or passive. Any form of euthanasia must therefore be viewed as a crime. As a result, if a physician, or a member of a patient’s family, feels that euthanasia is somehow permissible when he or she is confronted with a patient suffering serious pain and asking for euthanasia, those people must accept that, theoretically, there are only two rational ways to resolve such a dilemma without resorting to self deceit. One way is to take a stance that does not view the concept of ‘a dead person’ as paradoxical while simultaneously accepting in literal terms, the idea that a person can have property rights over their own death. This abolishes the modern concepts of property rights and human rights (the latter of which I have simply presupposed in my argument thus far). This option might imply a revival of medieval sense of morality like Japanese *Bushido*, which, in any case, sound to be infeasible. The alternative, which seems to be the only practical possibility, is to commit euthanasia while being aware that it is a crime⁸.

Thus I would argue, first, that the concept of the right to die lies outside the accepted law and morality of modern society. If acted upon, therefore, it leads to an action which should be regarded as a crime in the present context of law and accepted morality. Possibly, therefore, if thus far my argument is correct, the question of euthanasia might expose a fatal defect in the modern concept of ‘human rights’. In any case, all that I would propose is that any reasonable system of punishment applied to euthanasia as a ‘crime’ should be carefully structured. This is a view which, I believe, is consonant with the common-sense approach required when dealing with what is, after all, a very extraordinary and delicate action.

*This article is based upon a part of my paper written in Japanese, ‘The Deceit in The Right to Die’ (*Bulletin of Death and Life Studies*, 2003 Spring, Graduate School of Humanities and Sociology, The University of Tokyo, pp.36-68). Making its English version this time, I modified my argument and added many new points.

¹ David-Hillel Ruben declares that posthumous reference is wholly unproblematic, whereas posthumous predication seems to cause some puzzles at first sight (Ruben 1988, p.213). However, as far as we semantically analyse a sentence in the past tense including a posthumous reference, we must be involved in a difficulty of how to understand what happens to the dead person referred to and what should be a truth maker of the sentence.

² However, strictly speaking, we have to admit that there are borderline cases between being alive and being dead. For instance, when does a person die after his/her blood pressure falls to 0? Does the person die ten seconds after that, one minute after that, or ten minutes after that? Undoubtedly the sorites paradox comes up here. It should be noted, however, that I just focus upon the existence of the distinction between clearly living people (e.g. who actually work) and clearly dead people (e.g. one day after their heartbeat stopped), apart from those borderline cases.

³ However, it should be borne in mind that, when the idea of the right to life is linked with the idea of the sanctity of life (through anti-abortion campaigns for example) that right may be argued to be delicately opposed to the right to die (see Humphry & Wickett (1986), pp.169-176).

⁴ This paper will not discuss those cases in which the patient cannot express a desire to die. In such cases, the quality of the patient's life is often mentioned as an important factor in the euthanasia controversy (see, e.g. Singer (1995), pp.57-80).

⁵ Mary Warnock, for example, gives dire warnings against the use of reproductive techniques like cloning, when noting the relationship between right and obligation. According to Warnock, more and more people are coming to believe that they have the right to make use of such reproductive techniques. If our society accepts that right, it is obliged to help them to exercise the right, which is, however, undesirable because it might undermine the relationship which exists between doctors and patients. See Warnock (2002), pp.25-27.

⁶ Exactly speaking, freedom and responsibility are not always supposed to have an overlapping extension. For instance, John F. Fischer develops what is called

semicompatibilism' as to free will debates, according to which 'moral responsibility is compatible with causal determinism, quite apart from whether causal determinism threatens regulative control' (Fischer 2007, p.71). In a word, the problem of responsibility could be argued separately from that of freedom. However, I set this kind of issue aside now, as this would not substantially affect my argument.

⁷ Oderberg also argues, although from a different viewpoint from my claim, that the right to life is inalienable, after confirming that the right to life and the right to die are asserted by analogy with property rights and positing that the hallmark of property lies in its alienability. His point is that property rights as a whole are inalienable, because the concept of a right would not make sense if the right as a whole were alienated altogether. See Oderberg (2000), p. 562.

⁸ The question of whether or not suicide is a crime seems to be naturally raised here, and could be used to counter my argument as, apart from those cases caused by impulse or insanity, suicide which is knowingly and deliberately committed may be justified by appealing to the concept of the right to die. However, I would argue that this criticism is not valid as, in the case of euthanasia, a third person carries out the action, whereas an agent of each suicide must by definition disappear once they have committed suicide. According to my standpoint on the modern concept of property rights and human rights, suicide should be considered to be a crime. However, if suicide is a crime, it is an *irregular* crime that is incapable of punishment, as successfully carrying out the crime makes it impossible for the individual concerned ever to be punished.

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