

Dealing with the Questions of Property and Intellectual Property in Biotechnological Inventions:

Alan Gewirth and the Principle of Generic Consistency

Sadaf Shariat LLB, LLM, MBA, PhD, FHEA ¹

Bodies and Embodiment

30-31 May 2019

Centre for the Study of Global Ethics

University of Birmingham

This paper addresses the controversial issue of whether human agents have property rights in their body, and possibly the right to control what may happen to their organs and tissue after removal from their body, including patenting activities based on these biological materials. This is examined from the concept-theoretical framework. The framework is based on Alan Gewirth's moral theory, according to which the Principle of Generic Consistency² (the PGC) is the supreme principle by which to judge the permissibility of actions. The main objective of this paper is to analyse the view of PGC on human agents, the possibility of owning property rights in their body, and the right to control what may happen to their organs and tissue after removal from their body.

The paper raises issues in specific situations dealing with the question of rights to agents or non-agents. Specifically, it clarifies how the concept-theoretic position views the balancing rights while dealing with property rights for bodily parts, human embryos, and fetuses. It is argued that even without proving the availability of property rights in their bodily parts for agents, according to

¹ Dr Sadaf Shariat is a Lecturer in Law at University of South Wales, UK. She holds a PhD in Law from Durham University and a Masters from the University of Nottingham. Sadaf's research is interdisciplinary, in law, business, and moral and legal philosophy. Her primary interests are in European law, Intellectual Property rights, and regulation of new technologies. She has a particular interest in the relationship between intellectual property and human rights.

Email: sadaf.shariat@southwales.ac.uk

² Gewirth, A. (1995). *Reason and Morality*. Chicago, Ill, University of Chicago Press. See also Beyleveld, D. The Principle of Generic Consistency as the Supreme Principle of Human Rights, *Human Rights Review* (2012) 13: 1. <https://doi.org/10.1007/s12142-011-0210-2>.

Beyleveld and Brownsword's rule-preclusionary theory³, human agents have exclusive control over their body parts. If they are not granted a rule-preclusionary right to exclusively control what happens to their body parts, this contradicts the provision of adequate protection for their generic rights. This is possibly against their human dignity as it denies their possession of implied generic rights. With regard to human embryos, Gewirth's original argument is criticised and Pattinson and Beyleveld's Precautionary Reason argument⁴ selected as a solution to be used in biotechnology patent cases to avoid the fallacy of proportionality.

Keywords: Principle of Generic Consistency, concept-theoretic position, human rights, Alan Gewirth, rule preclusionary.

³ Beyleveld, D., & Brownsword, R. (2004). *Human dignity in bioethics and biolaw*. Oxford, Oxford University Press.

⁴ Pattinson, Shaun D. & Beyleveld, D. (2000) 'Precautionary reason as a link to moral action, In *Medical Ethics*. Upper Saddle River, New Jersey: Pearson, pp. 39-53. Basic ethics in action.