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What is behind the meaning attributed to the expression
“property”?

by Ana Paula de Barcellos

The purpose of this article is to discuss three ideas under the topic of “property.” *First* I would like to demonstrate that the meaning and scope of the concept of property are socially and historically constructed and that certain philosophical and ethical concepts that are dominant in a given society perform an important role in that construction. What I wish to suggest is that the definition (i) of what anyone can and cannot appropriate privately (that is: the objects to which ownership of property may apply); and (ii) the rights that owning property may give the owner (that is: what the owner can do with his/her property and what he/she can prevent others from doing with it) has varied in time and space. That variation is derived from a series of factors, specially philosophical and ethical.

Second, I will demonstrate that the dominant philosophical and ethical concepts in contemporary western societies are not compatible with an absolute notion of property: absolute in relation to the intention of applying it to the greatest number of objects possible and absolute – specially – in regard to the significantly broad prerogatives once conferred on their owners. That notion of absolute ownership evolved mainly in the 19th Century, under the influence of an exacerbated form of individualism that is now in decline. It is no surprise that today the meaning and scope of the concept of property is undergoing extensive reformulation.

Third and finally, I will try to show that it is wrong to utilize the former, absolute concept of property ownership to describe the relationship between the individual and his/her own body, in an attempt to solve – via this rhetorical artifice – such complex

problems as those we see in topics like abortion, the female's role as homemaker (and its social devaluation), euthanasia and self-mutilation, among others.

Part I

It seems correct to say that human history has always recorded property ownership experiences.¹ In other words: persons (or groups of persons) have always had the right to use private property in some way and to prevent others from taking it from them and also from using it in certain ways. As a rule, ownership applied to property that was external to the individual and, initially, only to tangible goods. In time, intangible goods (ex: ideas, inventions, etc.) also began to be subject to appropriation, with the recognition that persons could own them. In effect, property was present in ancient times, in tribal societies and was never eliminated, not even under the Soviet Regime.² However, this does not mean that the expression “property” has always had the same meaning and scope, at all times and in all places and cultures. Much to the contrary, different answers may have been given – and in fact were and are still being given – to questions like (i) what can be appropriated for the purpose of becoming someone's property? (ii) what uses can the owner be authorized to make of his/her property? and (iii) what acts by others can the owner prevent so that his/her rights will not be violated or what acts must he/she tolerate? There are many examples.

It is a known fact that various tribal societies valued the notion of collective ownership relative to certain property, such as land, for example. In this case, it is possible to speak of property, even though there was no individual appropriation, because it was considered legitimate to exclude others who were not members of the tribe from enjoying

¹ On this topic, GROSSI, Paolo. *História da propriedade e outros ensaios* [History of property and other essays], published by Editora Renovar, 2006.

² V. KHÁLFINA R. *O direito de propriedade pessoal na URSS* [The right to personal property in the USSR], published by *Edições Progresso*, 1979.

the fruits of this property. There was, however, an exclusive right to utilize the property (in certain ways), even though exclusivity was not attributed to one person but, rather, to a group of persons. Under ancient Mosaic Law, a kind of temporary property, or ownership subject to termination, was practiced: every 50 years (the so-called Jubilee Year), all real property that was commercialized in the period had to be returned to its original owners.³ Also under ancient Mosaic Law, the owner of rural property was not allowed to harvest the entire cultivated area so that there would be food left over for the poor to harvest⁴. The opposite was also true: the right to own property during the Roman Empire had a very rigid profile, giving its owner practically absolute powers.

Contemporary examples confirm the idea that there is no single and abstract concept of property. There are countries that forbid private appropriation and commercialization of certain kinds of property such as, for example, blood and human organs, water and minerals, among others.⁵ An international treaty prohibits the appropriation of outer space, the planets, the moon or any other celestial body by any State.⁶ The same prerogatives are not conferred upon property rights in the different western countries of today: we will get back to this aspect of the question further on.

In reality, although the western countries today are still strongly under the influence of a certain notion of property – which was predominant perhaps from the middle of the 18th Century to the beginning of the 20th Century –, what the right to own property really signifies was derived from a social and historic construction varying in time and space.

³ Book of Leviticus 25.8-25 and 27.16-25.

⁴ Book of Leviticus 19.9-10.

⁵ In the Brazilian Constitution of 1988, for example, water is generally considered public property, as is power produced by hydraulic energy (article 21, III, VIII; and article 26, I). As for human organs and tissue, including blood, the Brazilian Constitution forbids any type of commercialization, even though it permits its use in transplants, transfusions, research and treatment (art. 199, § 4).

⁶ In effect, a treaty signed in the U.N in 1967 dealing with the “legal principles governing the activities of the States in the exploration and use of outer space”, art. 3 states that: “Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”

Although the existence of the right of ownership and a fairly elementary sense of what it means can be described as being specific to humanity, the precise contours of the category summarized in the three questions already mentioned above: what can be the object of a property ownership relationship? what can the owner do with his/her property? and what can the owner prevent others from doing? – are not universal or timeless⁷.

What is certain is that each society is affected by a great variety of circumstances that influence the evolution of the meaning attributed to property, from its religion to its geography and the technological development of the social group, among a myriad of other elements. For purposes of this study, I have highlighted just a few of these elements: concepts that the individual has about (i) him/herself and others and (ii) the nature of the relationships that exist and/or should exist between the individual and society. These concepts naturally involve definitions regarding philosophical and religious topics in general and ethical topics in particular. The transformations observed throughout the 20th Century – in relation to man's perception of himself and his relationship with society, as well as with regard to the concept of property – shed a great deal of light on the roles these concepts perform in the construction of the very meaning and scope of the idea of property.

In truth, it is not by chance that a certain radicalization of the enlightened humanist movement experienced since the 19th Century – and which gave rise to profoundly individualistic concepts – has evolved parallel to the development of an absolute meaning of property ownership.⁸ This exacerbated individualism has created the image of a completely independent man: a man who is alone, who needs no one, who depends on no one, who carries out his own existential projects through his own efforts. Once we have

⁷ It should be noted that international human rights' treaties protect the use and enjoyment of property, once it is acquired, but not its acquisition. V. TIBURCIO, Carmen. *The Human Rights of Aliens under International and Comparative Law*, Martinus Nijhoff Publishers, 2001, at 135-137.

⁸ FACHIN, Luiz Edson. *A função social da posse e da propriedade contemporânea* [The social function of possession and contemporary property], published by Editora Sergio Fabris, 1988, p. 17; and UNDERKUFFLER, Laura S. "On Property: An Essay", *The Yale Law Journal*, vol. 100, 1990/1991, p. 146-147.

accepted these assumptions and the belief that man depends only on himself, without help from anyone, it is not difficult to conclude that a man has very few obligations to others. After all, his obligations are only to himself.

In this context, ownership was gradually understood as being, on one side, a right that gave its owner almost absolute prerogatives. In other words: the owner was authorized to use his/her property any way he/she desired, even to destroy it or not utilize it in any way, if he/she deemed fit, in addition to depriving anyone else of its use. And if property were considered a right that gave its owner such broad prerogatives, any eventual limitations or conditions on the exercise of these prerogatives were soon suspected of carrying illegitimate restrictions on the right of property ownership itself.

On the other hand, some people began to consider new phenomena as possible objects of property rights: there was now talk of ownership of liberty, honor and human dignity itself,⁹ as if the basic category of every legal system were property, to which all other phenomena should be diverted and under which all phenomena should be classified. In reality, a large portion of that expansion of the very object of the right to own property was related much more to the rhetorical use of the expression, which was easy to understand. In an attempt to give these other things greater legal protection, they were classified under the category of “property” so that their legal protection could automatically benefit from the specially reinforced protection enjoyed by property.

In summary: this trajectory shows that there is no timeless or universal concept of property ownership. The meaning and scope of this right varied in the past and continue to vary today. They are the result of the cultural construction given to them by the people.¹⁰ In this sense and considering the western societies, the absolute concept of property that

⁹ UNDERKUFFLER, Laura S. “On Property: An Essay”, *The Yale Law Journal*, vol. 100, 1990/1991, p. 134-142.

¹⁰ BEERMANN, Jack M. & SINGER, William Joseph. “The Social Origins of Property”, *Canadian Journal of Law and Jurisprudence*, vol. VI, N. 2, July/1993, pp. 217-248.

marked earlier centuries and is now in a state of crisis was closely related to certain concepts that were dominant then in regard to man and his relationship to society, concepts that are also in a state of crisis. That is the subject matter of the next topic.

Part II

The individualism that characterized, above all, the 19th Century can be described as a kind of radicalization of the general idea of the increased value of the individual, which has been under construction at least since the beginning of Christianity.¹¹ A good image of this process is perhaps the pendulum that, when released on one end, will arrive at the other end first, before reaching a position of equilibrium. People were treated as unimportant beings for so long that the reaction led the pendulum to swing too far, to the point of making man a divine being, as if he were necessary and not contingent.

Nevertheless, and for other reasons also, the evidence furnished by the 20th Century has imposed the need to revise individualism. The infinite ability of individuals to hate, destroy and harm each other (wars, crimes, terrorism, etc.), the damaging collateral effects of scientific and industrial progress (damage to the environment and to human health) and the failure of well-meaning ideologies (which, more often than not were transformed into totalitarian regimes) are merely some indications that perhaps man has presumed too much about himself. In this context, the concepts that the individual has about him/herself, other individuals and the nature of the relationships that exist and/or ought to exist between him and society are no longer the same as they were in the 19th Century and radical individualism is becoming unsustainable. Although relativism still dominates post-modern theoretical-philosophical discourse – as a corollary of the concept according to which each individual can define his/her own “truths” –, on the more

¹¹ Without detriment to earlier manifestations in this regard, Christianity certainly marks a point of no return and a deepening of the concepts of equality of mankind and the value of the individual resulting there from.

pragmatic plane of ethical requirements, curiously enough and as a contradiction, what one seeks is a more adequate equilibrium between autonomy and interdependence, individuality and social relations.

Two important elements of this transformation of individuals' own concepts in regard to themselves, to others and to society deserve special mention. In the first place, and in spite of all the practical difficulties that still exist, there is no doubt that the reaction to the barbarities committed by the Nazi and Fascist regimes in general led to the consecration, in the second half of the 20th Century, of human dignity,¹² internally, within the countries,¹³ and also internationally, as the maximum value of legal systems and the guiding principle of the role of governments and international bodies. Main multilateral international organizations,¹⁴ to which a considerable part of the world's countries belong, consider the protection of human rights to be one of their main objectives and count on institutional instruments to do so.¹⁵ It is not by chance that practically all of the recent interventions sponsored by international organizations have sought to legitimize their actions by alleging the need to protect the rights of local populations.¹⁶

¹² Philosophically, dignity is a characteristic of man, which the Law does not grant, but merely acknowledges; this is why it is said that there is no 'right' to dignity but rather the right to have one's dignity respected and fostered. The importance of that observation lies in the fact that the individual still has his dignity when subjected to conditions that are incompatible with his essential dignity.

¹³ Germany, Portugal, Spain and several countries of Western Europe introduced to their Constitutions provisions along these lines. In France, the *Conseil Constitutionnel* considers human dignity to be an implicit constitutional element: "*Considérant que le peuple français a, par le préambule de la Constitution de 1958, proclamé solennellement 'son attachement aux droits de l'homme et aux principes de la souveraineté nationale tels qu'ils ont été définis par la Déclaration de 1789, confirmée et complétée par le préambule de la Constitution de 1946; qu'il ressort, par ailleurs, du préambule de la Constitution de 1946 que la sauvegarde de la dignité de la personne humaine contre toute forme d'asservissement et de dégradation est un principe de valeur constitutionnelle'*" (Décision n° 98.408 DC, 22.1.99). Latin-American and African countries have done the same.

¹⁴ Including, among others, the U.N., the OAS and the OMC. The United Nations Charter of 1945, reaffirms in its preamble the commitment to dignity and the value of the human person.

¹⁵ This is the case, for example of the Council on Human Rights tied to the UN General Assembly. In addition, in order to join the OMC, each country is subjected to an evaluation by the organization of its human rights record.

¹⁶ Below are some examples of resolutions by the UN Security Council authorizing military intervention in member countries for humanitarian reasons: Resolution no. 688/1991 – Humanitarian intervention in Iraque due to the repression of the Kurds; Resolution no. 794/1992 –

Clearly, the formulation of international acts is very often conveniently generic and the external discourse of the countries is not necessarily coherent with their internal legal, historic or cultural realities. It would also be naïve to ignore the fact that a country's subscription to a treaty is related to interests other than the Government's desire to implement the contents of the act. Nevertheless, it is symptomatic that, even so, some governments are compelled to express their commitment to protect human dignity and human rights. So true is this that a closer look at international treaties protecting human rights reveals – contrary to what one might imagine – that the subscribers are not only western or westernized countries,¹⁷ but also several African and Asian countries with cultural traditions totally different from those of the western countries.¹⁸

There is an important note to make on this topic. Individualism also presupposes – somehow – the dignity of the individual. But there is at least one central difference here. Individualism recognizes – from the theoretical standpoint – the dignity of the individual, but this recognition is, for the most part, inert, failing to generate relevant repercussions in the sphere of rights and obligations of others. The contemporary concept of dignity is different and involves not only its theoretical recognition but also the protection and promotion thereof.

There is also a second line of reasoning that explains the decline of the exacerbated individualism referred to above. Contemporary society seems to have rediscovered the

Humanitarian intervention in Somalia, because that country was in a state of anarchy caused by the civil war between various factions; Resolution no. 929/1994 – Humanitarian intervention in Rwanda due to ethnic warfare between The Tutsi's and the Hutu's; Resolution no. 940/1994 – Humanitarian intervention in Haiti resulting from a coupe d' etat by members of the military that led to civil war; Resolution no. 770/1992 – Humanitarian intervention in Bósnia-Herzegovina due to civil war waged by the government against separatists; Resolution no. 1244/1999 – Military intervention in Kosovo, also for humanitarian reasons. The text of these resolutions are available on <http://www.un.org/documents/>.

¹⁷ Just like, although only partially, Australia, Nova Zealand, Israel, and others.

¹⁸ Art. 4 of the UN General Charter of 1945, for example, admitted as members, among others, Afganistan, Azerbaijan, Albania, South Korea, North Korea, United Aran Emirates, Kuwait, Nigeria, Pakistan, Somalia, Thailand, Uganda, Uzbequistan, Zambia and Zimbabwe. Also the Universal Declaration of Human Rights of 1948 was signed by countries like Afghanistan, China, Ethiopia, Iran, Iraq, Lebanon, Paquistan and Thailand.

somewhat intuitive reality that the individual is not a substantially independent being, capable of fulfilling his/her own desires and projects by him/herself, isolated from society. On the purely existential plane, the rise of the human being is surrounded by dependency. The birth and survival of the newborn individual (and any child up to a certain age) are feasible only through the help and collaboration of others. On the other extreme, the elderly will also depend – to a greater or lesser degree – on others. This is an uncontested physical and anthropological fact: all humans were once newborn infants and children and a great many of them will one day be elderly individuals and, therefore, will probably depend directly on other individuals. Between these two extremes – namely: throughout childhood and adulthood –, relationships of dependency continue.

From the viewpoint of human projects, interdependency takes many forms. No one actually begins from nothing:¹⁹ what each individual conquers through his/her work and efforts is built on and benefits from everything that was produced, thought and developed by past generations. There is a whole wealth of accumulated knowledge, assets and possibilities that each generation can utilize, although it may not have contributed to its formation. Simply stated, it seems correct to say that the merit of that which man conquers or creates is not exclusively his. From another standpoint, the contemporary individual is far from being capable of producing everything he/she needs to survive. No matter how brilliant the individual may be in his/her field, he/she will depend on a whole group of other people to make many things possible, for example, his food and transportation. Along the same line, individuals occupied with the production of food depend on others who develop fertilizers, machinery, etc. Finally, the impact that human acts have on the environment – and, therefore, on other individuals – is one more example of the inevitable

¹⁹ ACKERMAN, Bruce & ALSTOTT, Anne. "Why stake holding?". In: ACKERMAN, Bruce; ALSTOTT; VAN PARIJS, Philippe. *Redesigning distribution: basic income and stakeholder grants as cornerstones for an egalitarian capitalism*, Verso, 2006 (The Real Utopias Project, Edited by Erick Olin Wright), specially p. 43.

interdependence that exists among people. Aggression against the environment in China or Brazil will have repercussions in Europe, the United States and many other countries because it is impossible to limit the damage to those who cause it or even to national frontiers. Also from the perspective of the environment, acts committed today will have an impact on the environment in which future generations will live, just as the consequences of acts committed in the past affect today's populations.

The two perceptions I just mentioned – the essential value of the human being and the interdependence that exists among individuals – have very direct consequences on the discussions involving the subject of property, both in regard to the objects that can be the target of private appropriation and to the prerogatives given by property rights. In effect, in this new environment it will no longer be possible to sustain an absolute concept of property. Here are some examples to illustrate this point.

The idea of human dignity leads to the idea that each person is valuable in his/her own right, regardless of his/her personal abilities, the opportunities he/she were given or even his/her past acts. And if this is true, the eventual circumstance that someone might not be a property owner is no justification for situations that violate the essential dignity of man. It is a known fact, however, that the fruition of certain material utilities indispensable for survival – such as food, shelter and basic health services, for example – involve costs that can generally be borne only by those who own property. On the other hand, a situation in which a person does not have access to food, shelter and basic health service can certainly be described as a violation of his/her dignity. What can one do then?

Application of the above situation seems to lead to the conclusion that access to utilities that are fundamental for human survival should not be entirely subordinate to the fact that an individual is or is not able to pay for them. Added to the argument of the dignity of the individual is a circumstance derived from the interdependence that exists between individuals and society; namely, that in complex societies such as those existing

today, becoming a property owner is not always the natural result of the will and efforts of individuals, since a series of factors almost entirely beyond the control of individual (for example, being born into a poor family, severe economic crises, lack of access to education and the inability to perform work that is more highly remunerated, etc.) can make the individual's real capacity to own property unfeasible. That conclusion will lead to others. Upon agreeing with the above assumptions, it seems certain that society should have some type of social security system capable of creating a safety net to prevent people from falling into a situation of misery. More often than not, taxes – which restrict the property of those who pay them, naturally – will be necessary for this purpose.

Along another line of thinking, the certainty that the decision of a property owner about what to do with his/her property affects other individuals, that these individuals have an essential dignity that must be preserved and that this circumstance may require practical measures leads to reflections regarding the prerogatives that, after all, will be attributed to the owner. Discussions regarding property's social function²⁰ are inserted into this context, raising some questions. The owner of rural property, for example, will be free to utilize it for production any way he/she wishes and to benefit from the profits produced. However, is he/she allowed not to utilize the property in any way (either because he/she prefers to wait for it to increase in value and sell it later or for any other reason)? The answer coming from many legal systems will be 'no.'²¹ In other words: the owner of rural property cannot keep his land unproductive; this is not a choice given by his/her property rights. Why not?

²⁰ The Brazilian Constitution is specific on the subject. Right after it enunciates the fundamental right to property, it establishes the requirement that property must comply with its "social function" (Federal Constitution, art. 5, XXII and XXIII).

²¹ This is what occurs in Brazil. In a section dedicated specially to the land-ownership policy, the Constitution of 1988 authorizes the expropriation, for land reform purposes, of rural property that fails to comply with its social function (art. 184). The definition of social function is provided by the Constitution itself, which includes in it: (i) the rational and adequate utilization of land; (ii) the adequate utilization of natural resources and preservation of the environment; (iii) compliance with the rules of the Labor Laws; and (iv) exploitation that benefits the owners and the workers (art. 186). Excluded from expropriation are the small and medium-sized rural properties, provided their owners do not own other properties, as well as productive properties (art. 185).

Because the productive use of rural areas is important not only to generate revenue to benefit its owner, but also for society (namely, to generate jobs and food). Therefore, within the utilizations that are theoretically possible for his/her property, the owner may not choose one that excludes society from the benefits it would naturally enjoy if the property were used in a *proper* manner.

Similar reasoning can be developed relative to other objects, like urban real estate and intellectual property. Considering the need for housing for individuals – and the limited amount of space available in urban areas –, the possibility that an owner of urban real estate might not utilize his/her property, keeping it unoccupied, would be highly questionable.²² A similar discussion might arise regarding, for example, the dominion of intellectual property. Can the inventor of a certain industrial process choose not to commercialize his invention?²³ The answer would be the same, if it involved the owner of a patent for medicine with the potential to, for example, cure certain types of cancer? Would this utilization be allowed?

There are also other examples of how human dignity and interdependence among individuals can affect the understanding of the meaning and scope of property. Many of the legal systems that exist today simply prevent the private appropriation of some things (such as, for example, water, forests, beaches, certain minerals, etc.) or impose broad restrictions on the utilization of others, taking into account concerns of various kinds, such as sanitary, environmental and urbanistic. And this is because certain things are so important to people – water, for example – that it is considered more adequate to attribute

²² The social function requirement is repeated by the Constitution of 1988, specifically in relation to urban property (art. 182, § 2). The Constitution allows the Government to compel the owners of urban land that has no structures on it, is underutilized or not utilized at all to adopt measures to adequately utilize it, authorizing three forms of sanctions: (i) compulsory subdivision or edification; (ii) progressively increasing property tax over time; and (iii) expropriation of the property (art. 182, § 4).

²³ In Brazil the answer here would also be 'no.' Art. 68, par. 1, I, of Law no. 9.279/96 subjects patent owners to compulsory licensing if they fail to exploit the object of the patent in Brazil, or fail to fully use the patented process, subject to some conditions.

the management of these resources to the Government, for the benefit of all. Or for environmental reasons, for example, limits are imposed on the occupation of certain areas, not only to avoid damage to the environment, but also to preserve specific forms of life for future generations. The examples are many and there is no need to list them.

The conclusion one arrives at, therefore, is the following. The meaning and scope of the notion of property – namely, the answers to the following questions: what prerogatives do property rights give to the property’s owner and, after all, what can and cannot be appropriated – are being broadly re-discussed. The perception that the answers to such questions affect others, not just the owner, and that, depending on these answers, the repercussion can contribute to generating situations that violate the dignity of individuals, leads to the need to revise the concept of property.

Furthermore, to the extent that these considerations can only be visualized adequately in concrete situations, the truth is that the ensuing debate will not revolve around the abstract concept of property. It is necessary to evaluate the meaning and the scope of the right to own property taking into account – particularly – each type of object that the right might apply to. Therefore, one shall now direct this discussion to “property rights” rather than a single right to property, which is abstract and lacking specific context.²⁴ The importance of each form of property to society, of the possible uses by its owner, and the consequences of these uses for others, among other considerations, are not the same when one takes into account the various types of property that exist, such as real property, personal property, consumer goods, luxury goods, patents, trademarks, literary works, software and so many other possible objects of appropriation. Therefore, it is not feasible to defend an absolute concept of property anymore and, strictly speaking, not even a single concept of property.

²⁴ GRAU, Eros Roberto. *A ordem econômica na Constituição de 1988* [The Economic Order in the Constitution of 1988], 2001, p. 267.

Part III

It is now necessary to connect what I have just finished explaining to the debate currently underway about the convenience of applying the idea of ownership to certain existential aspects of the human being, specially his/her own body²⁵. In effect, it is not rare for the idea of ownership of one's own body to arise as a rhetorical formula that seemingly offers a simple solution to complex problems involving issues of this kind (such as, for example, abortion, devaluation of the female's role as homemaker) and other subjects (like euthanasia, prostitution, sale of human organs, self mutilation, death by consent, etc). The rationale is basically as follows: the individual is the owner of his/her own body and, therefore, can do with it – and anything that might be inside it – whatever he/she wants. This strategy, however, seems wrong, in addition to being an artificial way of skirting the intense debate currently taking place in a certain society.

In the first place, it would be simplistic to imagine that the individual's relationship with his/her body and with what, as a rule or by chance, happens to it or within it, can be treated in all aspects to the type of relationship established between property and its owner. This is because, beyond an eventual property relationship, which will always assume quite specific contours in this context, the problems referred to above involve other problems – ethical and legal – that do not fail to exist, much less to be resolved by a mere rhetorical discourse on the concept of property.

Just for illustration purposes, in the case of abortion, the issue is not specifically what a woman can or cannot do with her own body. To address the problem in these terms is a way of ignoring previous questions (or to answer them in a certain way, without explaining the problem) that will have to be confronted: should the fetus be considered part

²⁵ On the topic, see RAO, Radhika. "Property, privacy, and the human body", *Boston University Law Review*, vol. 80, 2000, pp. 359-399 and SINGER, Joseph William. *Introduction to property*, Aspen Publishers, 2005, pp. 829-834.

of the woman's body? During the entire pregnancy? For what reasons? Or is it a new individual who, by an imposition of nature, is created necessarily in this manner? In any case, must the woman carry this new being for the entire pregnancy period if she does not want to? If this is considered to be her duty, how should she be punished for failing to comply with it? Utilization of the concept of property does not offer answers to these questions. Other questions are asked, for example, in the debate involving the sale of human organs and self-mutilation. If the human body is the property of each individual, can he/she freely sell his/her organs, even if it will endanger his/her own life? Does that decision lie in the sphere of individual autonomy or should the Government interfere to protect the individual from him/herself (in such situations as extreme need, which could lead the individual to offer his/her organs for money) or to prevent possible trafficking in human organs, which would be fed by the criminal removal of organs from persons? Can the individual mutilate him/herself (for no therapeutic purpose)? Will the fact that self-mutilation might transform the individual into an invalid, who will now require social assistance paid for by society, alter the answer to the preceding question?

This study is not meant to debate each of these issues. It is meant merely to point out that, regardless of the conclusion one might arrive at in relation to each of them, the relevant reasons for argumentation will be far from involving merely the property/owner question. To try to utilize the category of property to deal with this type of problem is, as one can see, not very useful and – strictly speaking – invalid. The dilemmas that lie behind these issues – whether ethical, political, sociological or otherwise – will have to be confronted: they will neither disappear nor be automatically resolved by the mere utilization of the word “property.”

The artifice of employing the property category in the different issues referred to above also seems wrong *for a second reason*. As already mentioned, utilizing the idea of property in these cases is an attempt to take advantage of the broad powers associated with

an absolute concept of property to provide a supposedly simple answer to complex problems. It so happens that there is no absolute concept of property anymore, that authorizes the owner to use his/her property whichever way he/she wishes and to prevent any kind of outside interference or intervention, without any concern for the effects his/her actions might have on others. As mentioned before, that absolute notion of property was strongly impregnated with an exacerbated individualist concept regarding the human being, a concept that is undergoing a broad crisis. For that reason also, the meaning and scope of the notion of property is undergoing a process of broad re-discussion. It is not possible to ignore the fact that answers to the questions “what can be the object of the property relationship? and “what can the owner prevent others from doing with his/her property?” have repercussions in society to the point of affecting the dignity of others.

If this is so, by applying the notion of property to existential issues involving the human being, it will be necessary to answer the following question: what is the concept of property that is employed here? The absolute concept of the 19th Century? Why should the application of property rights to these issues go in a backwards direction in the debate involving the ownership of things that are external to the individual, to consecrate once again profoundly individualist concepts that ignore the interdependence of individuals? Why, when applied to the human body, would the right to property automatically attribute absolute powers to its owner, without being obliged to consider the impact of these prerogatives on society as a whole?

It does not seem consistent to take up once again a concept of property that has already become obsolete – and obsolete because it is incompatible with dominant philosophical and ethical concepts in contemporary societies –, without greater justification, for the sole and specific purpose of applying it to the human body and, by this artifice, rhetorically resolving certain controversial issues.

In summary: using the concept of property in these cases does not eliminate the complexities involved in each of the topics and does not eliminate the need to discuss the meaning and scope that the notion of property could have in such cases.

Conclusion

There is no timeless or universal concept of property. The meaning and scope of this right have varied and continue to vary, and are the result of the social and historical construction given to them by the people. The dominant philosophical and ethical concepts in Western Societies today are incompatible with the absolute notion of property that predominated, specially throughout the 19th Century. Taking into account the fact that the definition and scope of property rights affect not only the owner, but can also affect society as a whole and have negative repercussions on the dignity of others, it will be necessary to rethink which prerogatives property rights give to their owners. And, in reality, insofar as these considerations can only be visualized adequately when confronting concrete situations, the truth is that the debate that will ensue will not revolve around an abstract concept of property, but around the meaning and scope of property, taking into account each type of particular object the right can apply to. Therefore, what is now being debated are “property rights” and no longer a single, abstract property right lacking any specific context.

Considering these elements, it would be wrong to use the former, absolute concept of property to describe the individual’s relationship with his own body. The rhetorical resource for this concept fails to eliminate not only the complexities involved in each of the topics but also the need to discuss the meaning and scope that the notion of property can have in such cases.