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THE RIGHT TO  
BODILY INTEGRITY

A.M.VIENS

# The Right to Bodily Integrity

*Edited by*

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ASHGATE

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# Series Preface

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Much of contemporary moral, political and legal discourse is conducted in terms of rights and increasingly in terms of human rights. Yet there is considerable disagreement about the nature of rights, their foundations and their practical implications and more concrete controversies as to the content, scope and force of particular rights. Consequently the discourse of rights calls for extensive analysis in its general meaning and significance, particularly in relation to the nature, location of content of the duties and responsibilities that correlate with rights. Equally important is the determination of the forms of argument that are appropriate to establish whether or not someone or some group has or has not a particular right, and what that might entail in practice.

This series brings together essays that exhibit careful analysis of the concept of rights and detailed knowledge of specific rights and the variety of systems of rights articulation, interpretation, protection and enforcement. Volumes deal with general philosophical and practical issues about different sorts of rights, taking account of international human rights, regional rights conventions and regimes, and domestic bills of rights, as well as the moral and political literature concerning the articulation and implementation of rights.

The volumes are intended to assist those engaged in scholarly research by making available the most important and enduring essays on particular topics. Essays are reproduced in full with the original pagination for ease of reference and citation.

The editors are selected for their eminence in the study of law, politics and philosophy. Each volume represents the editor's selection of the most seminal recent essays in English on an aspect of rights or on rights in a particular field. An introduction presents an overview of the issues in that particular area of rights together with comments on the background and significance of the selected essays.

TOM CAMPBELL

*Series Editor*

*Professorial Fellow, The Centre for Applied Philosophy and Public Ethics (CAPPE),  
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# Introduction

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The right to bodily integrity has become one of the most discussed rights within moral, political and legal discourse. Indeed, next to the right to life, the right to bodily integrity is often cited as one of the most important rights that persons have. Nevertheless, it is only recently that the explication and analysis of the content, scope and force of this right has garnered more attention, in particular with a focus on how a better understanding of the nature of this right will contribute to determining whether a multitude of clinical and research activities in medical practice should be seen as culturally, morally and legally permissible.

As more scholarly and public policy attention is given to this right and its implications, it has become clear that there is a multitude of considerations and interpretations underlying the right to bodily integrity. So much so that it raises the question of whether bodily integrity is a contested concept or whether, in many cases, scholars and practitioners are talking past each other when they believe they are talking about the same thing. The right to bodily integrity has been claimed to be grounded in considerations such as ownership, sovereignty, dignity and privacy. This right is said to be manifested in different ways, such as the maintenance of the wholeness, functionality or inviolability of the body. Further, there are also various putative ways of transgressing the physical integrity of the body that are said to be constituted by particular modes of intervention, such as invasiveness, dismemberment, mutilation or destruction. Further still, over and above the physical harm that can result from such transgressions of bodily integrity, it has also been claimed that distinctive moral harms such as devaluation, defilement and deprivation can result.

For this reason, it is possible to get very different claims about the nature of physical integrity and just what would be permitted, prohibited or even required from the existence of a right to bodily integrity. For instance, one might claim that a right to bodily integrity is grounded in personal sovereignty in a way that makes the physical integrity of the body inviolable, thereby making any invasive intervention impermissible without consent. Likewise, someone might claim something completely different. One might claim that a right to bodily integrity is grounded in human dignity in a way that requires us to maintain the wholeness of the body in a way that prohibits any defiling or destructive modification – even if one wants and would consent to such modification. This is not only theoretically significant in terms of clarifying and explaining the nature of a right to bodily integrity, but also has important implications for practice and policy because, depending on which claims about bodily integrity are being relied on, different answers to the question of which interventions or modifications are morally or legally permissible can be given.

This volume has been divided into six parts, gathering the most relevant and useful contributions to the literature on the right to bodily integrity and focusing on (i) bodies, rights and integrity, (ii) pregnancy and reproduction, (iii) altering children's bodies, (iv) transplantation, (v) controversial modifications and surgeries, and (vi) research, experimentation and dead bodies. What follows is a summary of the main claims, themes and questions raised by the individual contributions in each part.



## **Bodies, Rights and Integrity**

Part I begins with an overview of conceptual and substantive issues concerning the nature of rights in relation to the body in its integrity. Understanding the right to bodily integrity will necessarily require further thought and analysis on some conceptually prior questions concerning the nature of the body, its boundaries and how these considerations come to affect our ideas and regulatory mechanisms about the physical integrity of the body.

In Chapter 1, 'Bodily and Moral Integrity Rights', Jill Marshall provides an overview of the right to bodily integrity with particular attention to how the right has been approached within legislation and jurisprudence in Europe and at the level of the European Union through a human rights framework. She does so by covering a number of important issues, including unwanted intrusions, physical abuse, treatment of the disabled, medical interventions, abortion and dying. Marshall argues that 'each person's psychic and moral space in which each individual is allowed to evaluate and represent who they are ought to be a legally protected right ... of non-intrusion into their body' (p. 3).

Jonathan Herring and P.-L. Chau, in 'My Body, Your Body, Our Bodies' (Chapter 2), begin with the deceptively simple question of whether or not our bodies belong to us. While this question is often answered in the affirmative on the basis of understanding the body as deserving protection for reasons of dignity, privacy or property rights, the authors instead argue that it should be answered in the negative. They argue that bodies often interact with each other, depend on other bodies for their survival and are mutable entities constantly altering and regenerating themselves to such an extent that it does not make sense, in any straightforward way, to understand our bodies as exclusively or wholly our own. These considerations of interconnectedness, interdependency and mutability are often overlooked, and will have obvious implications for the different contexts and relationships in which physical integrity will contribute to the complex legal and moral status of the body and what we are permitted to do to our bodies and the bodies of others.

In Chapter 3, 'Against the Right to Bodily Integrity: Of Cyborgs and Human Rights', Gowri Ramachandran provides a sustained and negative answer to the question of whether persons should be thought to have a fundamental right to bodily integrity understood either in terms of a dignity-based right or under a property model of rights. Indeed, Ramachandran argues for the strong claim that '[t]he concept of a monolithic, fundamental right to bodily "integrity" is both descriptively and normatively wrong. There should be no legal "right to control one's own body," saleable or not, with a scope that matches up perfectly with the physical borders of the organic, physically continuous human body' (p. 74). Nevertheless, this does not entail a free-for-all in terms of what we can do to our bodies and the bodies of others. We still have fundamental rights that protect persons from the monopolization or consolidation of control over individual human bodies.

## **Pregnancy and Reproduction**

The topics of pregnancy and reproduction gives rise to especially difficult and complex moral, political and legal questions surrounding the body because there is more than one human entity in question. How we construe the normative significance and status of these entities and their relationship to each other will affect our analysis of what normative considerations exist,

especially rights, and how these considerations contribute to determining what we should be permitted or required to do with the bodies involved.

Judith Jarvis Thomson, in 'A Defense of Abortion' (Chapter 4), provides what is seen as one of the classic philosophical counterarguments to the view that non-therapeutic abortion is morally impermissible. What makes the argument so widely read and considered is that Thomson argues that we can accept and begin from the premise that foetuses can have rights – a right to life, a right to bodily integrity – and it still need not follow that we ought not allow a pregnant woman to choose whether or not to carry the foetus to term. The assertion of someone having, for instance, a right to bodily integrity is not conclusive in establishing the impermissibility of some intervention or modification. It is merely one relevant consideration that must be taken into account – with this right sometimes carrying the day and other times being defeated by other considerations. Applying her famous violinist thought experiment, Thomson argues that women have a right to decide what happens in and to their bodies – including choosing to transgress their own physical integrity and that of the foetus in a way that would prevent the foetus from being born.

In 'A Feminist, Kantian Conception of the Right to Bodily Integrity' (Chapter 5), Helga Varden focuses on the case of abortion and homosexuality to explore a distinctive conception of the right to bodily integrity predicated on Kantian notions of freedom and justice. It is argued that there is an analytic relation between persons and their body that can ground a right to bodily integrity. Embodied beings enjoy a sphere of freedom that needs to be taken seriously, so long as it does not unjustifiably impinge on the freedom of others, which speaks against the implementation of coercive restrictions by others against how they want to use their own bodies. According to Varden, such a conception of the right to bodily integrity can entail both a right to abortion and a right to engage in homosexual activities.

Kristin Savell, in 'Sex and the Sacred: Sterilization and Bodily Integrity in English and Canadian Law' (Chapter 6), provides an examination of an important yet sporadically examined issue. Using English and Canadian law as a basis for examining the justification for the non-consensual, non-therapeutic sterilization of persons with learning disabilities, she considers the ways in which law and legal discourse seek to balance considerations of sexuality and gender, preserving a particular social order and the best interests of individuals with respect to the integrity of their bodies. While the Canadian context viewed sterilization as an intrusive, permanent deprivation of reproductive capacity that constituted a violation of bodily integrity, the English context viewed sterilization as involving only a minimal intrusion that conferred protection to learning disabled persons. This essay provides an illustrative example of how different conceptions of the body, sexuality and community can play a role in shaping the right to bodily integrity and the conditions under which we should think it is violated.

## **Altering Children's Bodies**

One of the most controversial issues surrounding this topic is whether children have a right to bodily integrity – in particular, whether this right entails that we should never alter their bodies until they can decide for themselves as adults or whether there are some interventions we would be justified in undertaking without their assent or consent. In many cases, the most contentious and oft-focused debate concerns modifying children's genitals. This not only makes the issue highly emotive, but will also involve considering how claims surrounding

physical integrity are to be balanced against parental rights to determine what is in their children's best interests or a right to bring up children according to the dictates of one's personal, philosophical or religious beliefs.

In Chapter 7, 'The Child's Right to Bodily Integrity', Robert Ludbrook argues that not only can children possess a right to bodily integrity but we also have reasons for thinking this right is equally as strong and merits identical protections as afforded to adults. He denies that several possible justifications for denying children a right to bodily integrity, such as dependency and welfare, adult responsibilities, family autonomy and best interests, should be sufficient to enact lesser legal protections. Examining three cases from Australia in which children were held to have lesser rights to bodily integrity than adults would have had in equivalent circumstances, Ludbrook maintains that we often accept problematic double standards with respect to the bodily integrity of children and this needs to be addressed.

Michael Benatar and David Benatar, in 'Between Prophylaxis and Child Abuse: The Ethics of Neonatal Male Circumcision' (Chapter 8), examine, among other considerations, whether non-therapeutic circumcision constitutes bodily mutilation and whether the absence of the child's informed consent makes it wrong. Both considerations have been used to ground the claim that we should understand male circumcision as a violation of bodily integrity. The authors argue that non-therapeutic, neonatal circumcision is a suitable matter for parental discretion. David Benatar has also written an addendum to this paper for inclusion in this volume, which updates some of the developments within the debate that have arisen since the publication of the essay and whether these developments should be thought to impinge on the question of a child's bodily integrity.

In 'Routine (Non-Religious) Neonatal Circumcision and Bodily Integrity: A Transatlantic Dialogue' (Chapter 9), Wim Dekkers provides a contrasting examination of male circumcision. He argues that, in the absence of sufficient evidence of benefit for infant males undergoing circumcision that could override considerations of bodily integrity, physicians ought to refrain from performing circumcision on infants for non-therapeutic reasons. This is more forcefully shown, he argues, if we reject a person-oriented approach to integrity predicated on personal autonomy and control against interventions from others to a body-oriented approach predicated on obligations to our own body. According to the latter view, human bodies have an intrinsic value that should prevent us from being allowed to do whatever we want to our own bodies and bodies of our loved ones wholly on the basis of our own preferences and consent.

Loretta Kopelman, in 'Medicine's Challenge to Relativism: The Case of Female Genital Mutilation' (Chapter 10), examines the ethical relativism and ethical universalism that is often expressed in the debate over the surgical alteration of the genitals of girls. Mothers who typically seek to have their daughters undergo such alteration are generally thought to hold different, and incorrect, moral and cultural judgements about what it is permissible to do to the bodies of loved ones. Such views are often rejected on the basis of the right to bodily integrity, though such views also face charges of cultural imperialism as a result. Kopelman argues that 'an effective way to debate the merits of our different but entrenched cultural beliefs and values is to employ a common ground of shared values and methods. Despite our cultural differences, we share many values and methods of discovery, evaluation, and explanation' (p. 292). The interculturally shared values and methods of medicine provide a way to move forward on this debate and its relevance for bodily integrity.

In Chapter 11, 'Bodily Integrity and the Surgical Management of Intersex', Emily Grabham seeks to further develop our understanding of the right to bodily integrity in cases of surgical interventions that are fundamentally and radically transformative. In the case of surgical modification in patients with disorders of sex development, Grabham maintains that when these people 'experience aesthetic genital surgeries as painful and full of social unease this is not necessarily because the pre-surgical body was the "natural", "whole" or "intact" body prior to surgery. Instead, it is because these surgeries interrupt [bodily considerations] ... intimately linked with social power and possibilities' (p. 297). As our knowledge of the biological, psychological and sociological issues surrounding persons with disorders of sex development continues to improve, this topic and its relation to bodily integrity will be one that both lawyers and ethicists will continue to face with greater frequency.

Eva Kittay, in 'Forever Small: The Strange Case of Ashley X' (Chapter 12), examines a fascinating recent case involving the ethical implications of using hormones and removing the uterus and breast buds of Ashley, a 6-year-old girl with severe cognitive and developmental disabilities requiring care throughout her life. The parents sought these bodily alterations in their daughter in order to facilitate their ability to provide lifelong care and her integration within the family. Kittay examines whether Ashley's parents, doctors and the hospital ethics committee acted ethically and whether such bodily alternations should be offered to all children with a similar disorder.

## **Transplantation**

The topic of bodily integrity in relation to transplantation has been a central issue – both in terms of considerations that affect the willingness of individuals or their families to voluntarily donate and also in terms of setting constraints on what is viewed as permissible in relation to possible policies or intervention practices aimed at increasing the availability of donor organs and parts. The contributions to this section consider how the physical integrity of the body should impact on what are considered permissible transplantation practices and policies.

T.M. Wilkinson, in 'Transplantation and Rights over Our Bodies' (Chapter 13), provides an account of bodily rights in the context of organ transplantation from living donors. He begins by setting out a number of essential concepts and distinctions within rights theory, which nicely expand on some of the considerations touched on in Part I, as well as setting the stage for how they specifically relate to the context of transplantation. He maintains that all competent persons possess a personal sovereignty that is protected by rights to bodily integrity and individual autonomy. Nevertheless, such rights are limited in scope and should be understood only as negative rights. Understanding the right to bodily integrity in terms of personal sovereignty, Wilkinson claims, permits both individuals to make organ donation decisions without consulting their family and the alternative option of deferring to the decision of their families or even community members.

In Chapter 14, 'Confiscating Live Body Parts', Cécile Fabre provides controversial, yet intriguing and forceful, arguments concerning posthumous organ transplantation. While the right to bodily integrity typically results in a focus on questions of organ procurement, it also tends to ignore important questions about organ allocation. As a matter of distributive justice, it may be required that body parts, if viewed as a scarce resource that can substantially help the least advantaged, should be taken even if deceased persons have not expressed any

wishes to donate. Fabre maintains ‘if one thinks that the poor’s interest in leading a minimally flourishing life, and a fortiori in remaining alive, is important enough to confer on them a right to some of the material resources of the well off, by way of taxation and, in particular, by way of restrictions on bequests and inheritance, one must think that the very same interest is important enough to confer on the sick a right to the organs of the now-dead able-bodied’ (Cécile Fabre, *Whose Body is it Anyway? Justice and the Integrity of the Person*, New York: Oxford University Press, 2008, p. 5).

Jenny Slatman and Guy Widdershoven, in ‘Hand Transplants and Bodily Integrity’ (Chapter 15), focus on aspects of non-organ transplantation affecting bodily integrity that arise from the recent viability of transplanting external body parts such as faces and appendages. Slatman and Widdershoven use a phenomenological narrative perspective in order to explore how we might conceptualize bodily integrity as the subjective bodily experience of wholeness as opposed to actual physical intactness. Using the case of hand transplants, they maintain that the justification for bodily modifications that aim to restore integrity should not be based merely on considerations of physical mutilation, but also on how much being in this mutilated state prevents a person from identifying with their body.

### Controversial Modifications and Surgeries

Often, the right to bodily integrity is thought about in negative terms concerning a sphere of freedom or protection against the unwanted or undesirable interventions of others. Topics such as non-therapeutic or purely cosmetic procedures raise important questions about the positive aspects related to bodily integrity. In particular, whether one’s desire and consent to have one’s body modified should be thought sufficient to make it permissible, and possibly whether this could also permit or even require others to perform such modifications.

Thomas Schramme, in Chapter 16, ‘Should We Prevent Non-therapeutic Mutilation and Extreme Body Modification?’, provides a concise and incisive examination of the permissibility of body modifications that are undertaken for non-therapeutic purposes and are not seen as aesthetically acceptable by the majority. Schramme sees extreme body modifications as an ultimate test case for liberalism since they directly challenge widely held liberal commitments to anti-paternalism and neutrality. He discusses several reasons for prohibiting these modifications from being allowed, such as duties to self, harm and irrationality. He argues that none of these reasons should be thought sufficient to support a prohibition on adults who voluntarily seek to undergo non-therapeutic modifications of their body – even when such modifications are seen as extreme or mutilating.

In Chapter 17, ‘Body Dysmorphic Disorder, Radical Surgery and the Limits of Consent’, Tracey Elliott examines how requests for limb amputation by persons with body dysmorphic disorder are further complicated by the fact that in addition to considerations of bodily integrity, they also raise the question of whether it is appropriate to treat those with psychological disorders with radical surgery. In particular, she is concerned with whether a qualified surgeon who is motivated by the interests and well-being of a patient could be susceptible to criminal liability for amputating the limb(s) of a competent adult who voluntarily seeks the operation. While other areas of medical practice, for example organ transplantation, gender reassignment surgery and cosmetic surgery, have an exception that exists to the general rule that consent is no defence to causing bodily harm in the case of reasonable surgical interference, the limits

to this exception are uncertain. While the law has generally adopted a somewhat ‘hands off’ approach, leaving such matters of diagnosis and treatment involving transgressing bodily integrity to medical practitioners, this may or may not continue.

Tim Bayne and Neil Levy, in ‘Amputees by Choice: Body Integrity Identity Disorder and the Ethics of Amputation’ (Chapter 18), also tackle the issue of limb amputation for persons with Body Integrity Identity Disorder (BIID). In this essay, probably the most read and cited philosophical contribution on the ethics of allowing individuals with BIID to have a limb amputated, the authors maintain that the moral considerations in favour of allowing such limb amputations (for example harm minimization, autonomy, therapeutic benefit) outweigh moral considerations against allowing amputations (for example repugnance, indirect effects). Bayne and Levy argue that ‘BIID sufferers meet reasonable standards for rationality and autonomy: so as long as no other effective treatment for their disorder is available, surgeons ought to be allowed to accede to their requests’ (p. 461).

In Chapter 19, ‘Transsexualism and Gender Reassignment Surgery’, Heather Draper and Neil Evans examine why gender reassignment surgery is a contested surgery and how the surgery should be undertaken in order to be ethically permissible. Of all the surgical interventions examined, gender reassignment surgery is the most radical in terms of bodily integrity. Not only are a person’s genitals modified, but alterations to the chest, face, vocal cords, hips or buttocks are often undertaken in an attempt to further enhance the appearance of masculinity or femininity. These fundamental alterations also give rise to important ethical, social and political questions related to bodily integrity concerning how transsexualism should be accommodated more generally, including why transexuals have a right to access these surgeries.

While the topic of female genital modification of children was addressed in Part III, the topic returns here with Sally Sheldon and Stephen Wilkinson in ‘Female Genital Mutilation and Cosmetic Surgery: Regulating Non-therapeutic Body Modification’ (Chapter 20), where they examine whether it would also be permissible to ban female genital modification for competent, consenting women. They examine four arguments that have been advanced to support keeping female genital modification unlawful: (i) no woman could validly consent to it, (ii) it is an oppressive and sexist practice, (iii) it involves the intentional infliction of injury and (iv) it causes offence. Sheldon and Wilkinson argue that (iii) and (iv) are unsound arguments and that, while (i) and (ii) are sound, they are insufficient to justify a ban on such procedures.

## **Experimentation and Dead Bodies**

A further non-therapeutic reason for intervening in or modifying the human body can also include an attempt to attain or test knowledge for the future benefit of living individuals. Indeed, the enterprise of medical research depends upon such experimentation. Some of these investigations need to take place on dead bodies, and the issue of whether there is such a thing as posthumous interests or a posthumous right to bodily integrity becomes relevant for the scope of the right and its force in practice.

Karen Maschke, in ‘Proxy Research Consent and the Decisionally Impaired: Science, the Common Good, and Bodily Integrity’ (Chapter 21), examines the rationales for using proxy research consent for non-therapeutic experiments on decisionally impaired individuals. She

finds these rationales lacking – especially justifications for such research based on the common good – on the basis that they conflict with the right to bodily integrity. Maschke maintains that in order to respect the human dignity of decisionally impaired research participants, protected through a right to bodily integrity, proxy research consent should only be permitted in a limited number of cases.

In Chapter 22, ‘Last Rights: The Ethics of Research on the Dead’, T.M. Wilkinson examines the idea of posthumous interests and whether the normative significance of those interests should ground ethical constraints on the kind of research we should be able to undertake with dead bodies. Wilkinson maintains that while there is a symmetry between the interests of living and dead people, using the idea of posthumous privacy as an exemplar, if it is true that posthumous interests – such as the interest in preserving one’s bodily integrity – can be sustained long after we die, this will place important limits on the kinds of research we can permissibly undertake with dead bodies.

In ‘Consent and the Use of the Bodies of the Dead’ (Chapter 23), Wilkinson continues his examination of research on dead bodies and the extent to which the bodies we are using can make moral claims on us that limit what we should be allowed to do with them. Typically, so long as the person, when living, provided consent as to what would happen to their body after they died it is often taken as ethically permissible to use their body. Wilkinson considers whether consent is directly required in virtue of the bodily rights people have in relation to the posthumous use of their corpse. He maintains that bodily rights, such as the right to bodily integrity, do not require that consent is always obtained in relation to how people wanted or would have wanted their bodies to be used. While some effort should be made to take right-holders’ wishes into account, in setting rules on using dead bodies, mistaken uses of bodies should not be viewed as worse than mistaken failure to use bodies where the living wishes of the individual were not known.

## **Conclusions**

The contributions to this volume underscore the breadth of topics that the right to bodily integrity underpins. It is a subject that not only has been explicated and clarified by scholarly analysis, but continues to be relevant for numerous public policy issues and debates. As rights discourse, and especially a rights-based approach to moral, political and legal issues, continues to remain popular, sustained attention to the theoretical and practical implications of the content, scope and force of a right protecting the physical integrity of the body remains a central and important endeavour. Seeking answers about how we should be allowed to modify our bodies, what we can do to and with the bodies of others and how such self-regarding and other-regarding bodily modifications affect our relationships and institutions are all essential components of a better understanding of what it takes to live a good life and sustain a good society.



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