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The Concept of Self-Ownership and its Implications for Ethical Surveillance Infrastructures

T1 Unfortunately, Alena Buyx, who was supposed to talk about self-ownership, can not attend to our conference. Therefore, we, the organizers, decided that I shall present the issue of self-ownership because we had to learn that it is quite difficult to find a replacement speaker for this topic, especially if you are running out of time. In fact, with regard to our main issue – which is ethical surveillance and its maintenance with ICT implants – as far as I can see, it is a hard job to find scholars who are willing to discuss the issue of implants, body modification, and surveillance referring to self-ownership. It is far more common to quote Foucault and other scholars following Foucault’s line of argumentation. For there are a lot of really good reasons to do it that way since Foucault’s main issue is power – power to control people. Whether Foucault is describing real or idealized kinds of societies – of course, “idealized” in a strange sense of the word – is not entirely clear, at least to me. One could reasonably argue that Foucault actually is describing societies while I will just try to talk about moral concepts that might help to protect individuals against power and control. One of these means might be the concept of self-ownership.

T2 In fact, I am not sure whether I will be able to discuss self-ownership on the one hand and ethical surveillance, implants, or body modification on the other hand for a really simple reason: If you take a look on the existing literature you will learn that self-ownership almost exclusively is discussed with respect to distribution of wealth and social goods. That means that self-ownership is used as argument in debates on distributive justice. Predominantly, Robert Nozick employed this line of argumentation in his book “Anarchy, State and Utopia” published in 1974. He wrote that book in reaction to John Rawls’ hallmark book titled “A Theory of Justice”

which was published three years earlier in 1971. Since these times, a quite controversial scholarly debate is going on with regard to the question how a society must be shaped to be a just society.

At first glance it seems that the concept of self-ownership is a really bad starting point for our issue. There are no strong ties connecting the concept of self-ownership on the one side and ethical surveillance infrastructures on the other side. But it is most obvious that the concept of self-ownership was deployed to strengthen individual autonomy and individual rights as constraints to state's and society's interference with a person's course of life. In addition, it is most apparent that today the use of implants and the modification of one's own body is quite common or at least will be quite common. And since ICT implants will be perfect means for control and surveillance the question whether it is possible to design an *ethical* surveillance infrastructure is most important for individual autonomy and rights and the opportunity to choose one's own way of life. Thus, intuition tells us that the concept of self-ownership could be worthwhile with regard of these issues. But we cannot stop with intuition, we need some argumentation.

Some Definitions

T3. At first, we need to clarify the meaning of some words which are often used in relation to the concept of self-ownership. If we talk about ownership, we have to say what is owned. In general, in this case we use the word "property". But we have to learn that "property" has two different meanings, both of importance to our issue.

"Property" can be used as synonym instead of words like "attribute", "capacity", "feature", "quality", "trait", "characteristic", and the like. It is used to say that a particular entity has certain traits as in sentences like "Grass is green", "Snow is white", "A rectangle has four corners", and so on. These sentences can be reformulated to "Green colour is a property of grass", "White colour is a property of snow", or "To have four corners is a property of rectangles". For our purposes we can say that in this sense property can be understood as a relation of an entity and its traits. At the same time property has something to do with ownership. To make things as easy as can be we can say

that in this sense property can be understood as a relation of a person and an entity. One also can say that it is a relation of a subject and an object. Of course, we need to clarify that kind of relation. To do that, let me make a quotation:

“Property is that which a man has the right to use and enjoy without interference; it is what it makes him as a person and guarantees his independence and security.” (Tay 1978: 10)¹

Property in the sense of ownership can be understood as means to support individual autonomy, particularly as means to protect the person against other persons’ and the state’s infringements. Conclusively, property as the right to exclusively use certain physical spaces is a necessary – but not sufficient – prerequisite for privacy and the distinction of private and public sphere. If we understand property in the sense of ownership it is evident what self-ownership shall mean: A person owns herself. To adopt the above mentioned quotation: Self-ownership is a person’s right to use and enjoy herself and her body without interference; it is what makes her as a person and guarantees her independence and security.

Self-Ownership, Subject and Object

T4. So forth, so bad. Self-ownership implies that a person will be subject and object at the same time because the relation of ownership or property needs a subject and an object: Owner and owned, proprietor and property. But can a person be subject as well as object? For instance, Immanuel Kant would deny that rigorously for certain reasons. His whole line of argumentation with regard to moral imperatives would crash if persons could be objects. For if persons could be objects they would have a price and therefore could be sold and bought. But for Kant persons do not have a price but dignity which is priceless. Roughly said, this dignity makes them moral beings.

¹ Alice Tay (1978): Law, the Citizen and the State. In: Eugene Kamenka, Robert Brown, Alice Tay (eds.): Law and Society. The Crisis in Legal Ideas. London: Arnold, pp. 1-17.

Nevertheless, libertarians like Robert Nozick use the concept of self-ownership for their line of argumentation and at the same time, often refer to Kant and his moral imperatives. Therefore, they need a solution for the subject-object-contradiction. And this solution is really obvious and simple to recognize if one takes into account the history of philosophy and its core ideas. The solution is dualism: A person is conceived as a combination of body and mind, *res extensa* and *res cogitans*. Now, employing the concept of self-ownership does not create a contradiction. The subject in the relation of self-ownership is identified as the mind, the object is the body – a person has a body or owns a body, the mind is the proprietor of the body as property. In fact, one could even say that the body is a property of mind in the sense of property as trait or feature. This actually creates a hierarchy of mind and body: Mind is superior to the body.

The development of neuroscience and the possibility that mental processes could be explained completely with reference to physical and chemical processes in the human brain and central nervous system of course put this dualism into question. However, such problems shall not be discussed here. On the level of social interactions we sometimes might talk in dualistic terms but I would like to claim that regularly this does not affect our behavior. Equally, the issue of free will shall not be discussed here. Liberals and libertarians always stress individual autonomy and freedom; obviously one could ask whether they must presuppose free will or merely freedom of action. But again, although these are important and interesting questions, at least for philosophers, they shall not be discussed further.

Constraints Imposed by Self-Ownership

T5. To repeat, I would like to quote from the first part of Eric Mack's text "Self-ownership, Marxism, and egalitarianism", in which he wrote on page 76 that self-ownership is

“[...] the thesis that each individual possesses original moral rights over her own body, faculties, talents, and energies. Adherents of this thesis believe that it best captures our common perception of

the moral inviolability of persons — an inviolability that is manifested in the wrongfulness of unprovoked acts of killing, maiming, imprisoning, enslaving, and extracting labor from other individuals. They believe that the rights of self-ownership provide individuals with the moral immunities appropriate to beings whose lives and well-being are of separate and irreplaceable moral importance.”²

While reading Mack’s essay, again, we have to learn that scholars arguing with reference to the concept of self-ownership particularly are focussed on property rights; they are concerned with the question of just distribution of wealth and the like. But in Mack we can also find some hints that the concept of self-ownership could be used to argue for protection of persons against interference with their bodily integrity. In the above cited quotation, Mack himself mentions maiming as violation of self-ownership and he refers to well-being of humans. Therefore, we are allowed to argue that the concept of self-ownership sets absolute constraints to interference with a person’s bodily integrity. It says that nobody, neither other persons nor the state or society or community, is entitled to violate a person’s bodily integrity as long as this person refuses to consent to this infringement.

Autonomy, Paternalism, and Harming Oneself

T6. Conclusively, we have to talk about autonomy and decision-making. An important aspect of self-ownership is that every person is entitled to decide autonomously about the course of her own life. Clearly this includes the right that this person decide that others are allowed to alter or modify her body. Since the body is nothing than property that is owned by a person, that person is entitled to do everything what she wants to do with her property. Today, tattoos or piercings are quite common examples of body modifications; with regard to self-ownership the implantation of ICT devices into a person’s body is just a new instance of the same kind of decision. But we all know that only a few years ago, tattoos and piercings and even earrings

² Eric Mack (2002): Self-ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement. In: *Politics, Philosophy & Economics* 1 (1), pp. 75-108.

for men often caused moral or aesthetic concerns. It is quite likely that at least some of us found themselves in trouble when they came back home with an earring or something alike. As minors or teenagers our autonomy was limited – actually, the concept of self-ownership is silent with regard to this problem.

But regarding adults, self-ownership implies that it is the person's decision to shape her body as she would like to – other people, communities, society or the state are not entitled to interfere with this decision, neither because of moral nor aesthetic or other reasons. But this freedom has a very far reaching implication: The autonomous person is free to take any decision she wants to – of course only as long as no other persons will be harmed –, but at the same time this person has to bear all consequences of her own decisions – she is fully responsible for the outcomes of her decisions and she must bear them all alone. One may even harm oneself – nobody is entitled to interfere with this kind of action. As Robert Nozick (1974: IX) puts it:

„Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state?“³

After asking this question, Nozick (ibid.) answers it only a few lines below:

“Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.“

The concept of self-ownership allows for that we may feel a strong moral obligation to help those who are in trouble, even if we know that those persons in need caused this trouble by themselves. But if those in trouble may think that they do not need or want our help we are not entitled to force them to accept our help – for those convinced of self-ownership any kind of paternalistic interference is strictly forbidden. Simultaneously, nobody is entitled to enforce us to help others – if

³ Robert Nozick (1974): *Anarchy, State and Utopia*. New York: Basic Books.

we do not feel obliged to help others it is not allowed to force us to help. Particularly the state with its coercive potential must stay morally neutral; libertarians like Nozick (1974: IX) stress that only “[...] a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons’ rights not to be forced to do certain things, and is unjustified; [...]”

Yet, this sounds like every person is queen in her own kingdom of body. Regarding the issue at stake – which is ethical surveillance infrastructure and its maintenance with ICT implants – everything seems to be perfectly clear: Nobody is entitled to force a person to accept such implants; only the person herself is entitled to decide whether she would like to accept that. But it is most important to stress that this is not the whole story regarding the concept of self-ownership, at least from the point of view of libertarians like Robert Nozick.

To Abandon Freedom and other Problems

Actually, from Nozick’s point of view freedom could be used to abandon freedom. In “Anarchy, State and Utopia” (Nozick 1974: 331), he argues that one is allowed to sell oneself into slavery. Since a person is proprietor of her body she is entitled to do with it what she wants to do – selling her body into slavery is only one option among others. More generally speaking freedom implies that a person is free to choose to live in communities or societies which are not free. If one consents to carry on ICT implants for surveillance purposes or which even will control his life by direct interference with his actions, from the point of view of at least some libertarian scholars, others are not entitled to stop that person. For this would be paternalism.

Nozick himself stresses that his point of view might be quite radical and that other scholars would not agree to it. For instance, one could argue that a person must be allowed to abandon freedom only to that extent that there must always be an exit option. With regard to ethical surveillance infrastructures that would imply that a person is entitled to subordinate herself to a restrictive regime as long as that person can exit this community without being restrained to leave, punished or

harmed. But here, we would face some severe problems. The first one is that the respective community could argue that to let go everybody who wants to go would destroy the community. For this would cause harm to other members of the community, conclusively exit must not be allowed – in fact, some communitarian scholars would argue that way. The second problem is the question how to treat minors and teenagers. If children are raised up in a repressive community it is very likely that they are not aware of those rights the concept of self-ownership is supposed to protect. Therefore, even if such a repressive community would grant those persons, when they have grown up to adults, the right to leave the community, they might not be able to autonomously decide whether to exit or to stay.

Net Effects

T7 • But although those two problems just mentioned above are very difficult to solve – and there are good reasons to be skeptic whether there is a good solution for these problems – these are not the most pressing ones: There is a characteristic of concepts like self-ownership which heavily collides with current and coming real-life applications of ICT technology. We are not talking about simple computers or other ICT devices which can be examined as isolated items. Current ICT devices and therefore ICT implants are highly integrated into networks of other ICT devices and into social networks of humans – in fact talking or worrying about one single ICT implant does not make any sense. As one already can learn from the title of our conference we are dealing with an “ethical surveillance infrastructure” – and the word “infrastructure” implies that individuals, institutions, technology, and the like are highly meshed up.

Even if we take it for granted that due to self-ownership it shall be up to a person to decide whether she would like to use ICT implants to join a certain group or to comply with the demands of a particular community, this may have the consequence that it is no more the autonomous decision of that person to leave a group or community. For the exit may cause harm to others: For instance, let us suppose that the community members carrying an implant that makes it possible to experience

what other persons feel. It is very likely that some of the community members, perhaps even all, will develop a kind of dependence or addiction to these transmitted sensations. Obviously, as all addicted people, they will be harmed if they are not able to get what they are addicted to.

Or, to be more realistic: According to libertarians like Nozick the state has the function to protect its citizens against force, theft, fraud, and so on as well as to enforce contracts, and the like. That means that a minimal state is not a weak state – it may heavily use technology to provide the above mentioned functions or services. Now let us presume that a certain kind of ICT implants could be used to measure aggressiveness of the implant carrying person. Only if all citizens would carry an implant of that kind such a network of implants and other devices adequately could serve as a viable means of protection. Therefore it would be questionable whether the concept of self-ownership could protect persons against the compulsory implantation of such a device. Although Nozick would argue that the utility of citizens' majority do not provide reasons to be allowed to interfere with the bodily integrity of a single person he must admit that in this case the state and its law enforcing institutions could not employ all means to realize its core functions.

Thus, as first and tentative conclusion, we can summarize that the concept of self-ownership provides for some arguments against the deployment of ICT implants to create an ethical surveillance infrastructure without the consent of the affected persons. However, these strong constraints themselves cause some ethical trouble. As a result, the concept of self-ownership could be – and I would like to add: must be – a building block for rules concerning an ethical surveillance infrastructure, but still more work must be done to find a comprehensive framework for such an infrastructure.

T8. Thank you!