

Legal Nature of the Cadaver: A Preliminary Research on a Dual Structure Comprising the Property Right and Mankind Dignity

Wen-Hui Chiu^{*}

Abstract

The advance of organ (or tissue) transplantation technique and biomedical research throughout the latter half of the twentieth century have made possible the surgical replacement of failure organs such as our heart, lung, kidney or even the skin to restore its function and consequently our health. The major source of these organ and tissue herein comes from the human cadaver, or more precisely speaking, the donator's organ and tissue resectioned soon after he (or she) being announced brain death. Inevitably the modern transplantation- and bio-medicine have enfolded the bared cadaver many to be determined meanings besides the traditional one of burial and sacrament, and thus raised numerous upcoming legal disputes, the core essence in which is the legal nature of cadaver, which urge us to pay more attention and effort to elucidate.

This article, in the first place, broadly examined the related contemporary theories regarding the legal nature of the cadaver, only to find on the cadaver vigorous arguments between property rights and personal rights, yet neither of which proved to be really successful. Instead this article proposed a "mankind dignity – property right" dual-element structure to elaborate the phenomenon we observed on the cadaver, that is, when man died, what actually remained on the object cadaver is no more his personal rights, but the mankind dignity. The mankind dignity herein characterized itself as the core value of what human cadavers differ from nonhuman ones in the special "ends-in-themselves" status,

^{*} Adjunct Lecturer, Soochow University, Department of Law. Postdoctoral Research Fellow, National Science Council, Social Science Research Center.
E-mail: alicchiu59@yahoo.com.tw

i.e. they cannot be used as a mere means to another's ends, and consequently always confined the property right of the owner of the cadaver to the good purpose.

With the dual- element structure on the cadaver, we could further build-up the likewise “mankind dignity” incorporated legal structure on the living body as a whole, the body parts removed, and code well with the transition among. Theoretically this will dodge the traditional disputes and controversies, successfully help to establish and preserve the core value of human being regarding protection on the body and its parts on the way coming.

Keywords: cadaver, living body, organ, human tissue, personal right, property right, ownership, mankind dignity, human dignity, social order and good customs