

## The Religious Jurisprudence and Legal Analysis of the Heirs right for Legators, Organ Transplantation

Majidi J. \*, Ameri P. PhD \*\*, Hatami A. A. PhD \*\*\*

### Abstract:

**Background and Objective:** One of causes of suffering and challenging issues that raised many questions in human body transplantation is the heirs right for legators organ transplantation when he or she is dead or in brain death. On the other hand existing laws are silent or ambiguous in this matter and the way of different and almost opposed interpretation made open by jurisconsults and lawyers. So some of them made a comment that human being is the owner of his or her body and on the strength of this principal heirs also have the ownership right as a successors for legators body as a part of inheritance and they consider the successors ownership as the base of legators organs transplant right. Some of them consider God as the owner of everything and just made a comment that the successors have just domination right. It seems that the base of successors right for legators organ transplantation, ownership and their domination for legators organs are not based on inheritance laws, because the inheritance laws are not dominant in this matter and when it is necessary for saving a Muslim soul and it is not available to get permission from successors, transplantation is considered as a permissible matter. In this paper the descriptive – analytic method is used.

**Materials & Methods:** In this article, descriptive analytical method is used. In this way, all the available sources of study and content have been extracted and used in different parts of the article.

**Results:** The result of this article is that a person can take possession of his body parts and organs due to the control he has over his body parts. The heirs have the same right in a limited way with respect to the body parts of their heirs, although this right and control is not subject to the laws of inheritance. The permission of the heirs is required for organ harvesting and transplantation, and this right has a legal basis.

**Conclusion:** The results showed that today many needy patients can continue their lives by receiving and transplanting an organ from another person. The law on transplanting organs of deceased patients or patients whose brain death is certain states that the organ transplant medical team can do this with the permission of the heirs. In fact, the legislator has considered a right for the heirs. Regarding the nature and basis of the right of the heirs, various theories have been presented in the matter of organ harvesting and transplantation. The investigation shows that the heirs do not have the authority and rights as considered for them in the discussion of inheritance, that the rules and regulations of inheritance in the property and estate of the deceased do not apply to the body parts of the heir, and this right has a legal basis.

**Keywords:** *Successors, Human Body Organs, Organ Transplantation, Family Consent, Organ Donation, Brain Death*

\*PhD student of the Private Law Department, Emirates Branch, Islamic Azad University and Member of the Faculty of Islamic Azad University, Safashahr Branch

\*\*Assistant Professor, Department of Law, Faculty of Law, Shiraz University

\*\*\*Associate Professor of Law Department, Faculty of Law, Shiraz University

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**Corresponding Author: Dr. Javad Majidi**  
Tel: 07144451936

E-mail: rainlawyer@gmail.com

## Background and Objective

The significant advancements in science and technology—particularly in the fields of medicine and organ transplantation—necessitate a comprehensive legal examination of the processes involved in organ and tissue removal and transplantation. The transfer of human organs or body parts can occur during an individual's lifetime through voluntary legal agreements, such as donations or sales, or through bequests posthumously. Additionally, organ harvesting and transplantation may take place after death, particularly in cases involving individuals who are diagnosed as brain dead. In this context, elucidating the legal relationship between the heirs of a deceased individual and the organs or body parts of the decedent represents an urgent societal need and serves as the focal point of this research.

A primary area of exploration encompasses the economic value and ownership of human body parts, as well as the legal implications surrounding individuals' relationships with their own bodies. This inquiry is of paramount importance for several reasons:

First, the transfer of human body parts, particularly within contractual frameworks, is predicated on the understanding that these organs and tissues possess economic value.

Second, should human body parts be recognized as property, they would be classified as part of the deceased's estate and thus subject to established inheritance laws.

Third, recognizing the economic value of body parts and categorizing them as estate assets permits heirs, as the legal successors of the decedent, to assert their rights over these assets.

Various theories have emerged regarding the relationship between an individual and their own body parts, subsequently influencing the legal standing of heirs concerning the decedent's organs. Two prominent theories have gained notable traction.

The first asserts that individuals retain ownership over their own body parts, extending this ownership to their heirs. Thus, both the decedent and their legal successors

would possess the authority to exercise control over these assets.

The second theory proposes that ultimate ownership resides with a divine entity, while also acknowledging that individuals hold authority over their own body parts. This perspective confers a corresponding right upon heirs as successors based on that authority.

A potential third perspective posits that heirs do not possess ownership or control over the organs and body parts of the decedent, as delineated by inheritance law. Under this view, the rights of heirs concerning the decedent's body parts are not grounded in ownership or control, indicating that the legal principles governing the economic value and ownership of such parts do not operate in the same manner as they do for other assets within an estate.

For example, inheritance rules, which dictate a share ratio—where male heirs receive double the share of female heirs or where a child-bearing spouse inherits one-eighth of the estate—cannot be directly applied to the organs and body parts of the deceased.

In light of the current legal framework in the country, which remains ambiguous and largely silent regarding the rights of heirs in relation to the deceased's organs concerning removal and transplantation, a thorough legal and jurisprudential analysis of the rights of heirs in the context of organ transplantation is both necessary and urgent.

Exploring the dimensions of this issue will contribute significantly to efforts aimed at enacting comprehensive and effective legislation to address the existing legal gaps.

## Research Background

While there exists a burgeoning body of literature addressing both organ transplantation and the sale of human body parts, a significant gap remains in dedicated studies that focus specifically on the nature and basis of heirs' rights concerning the removal and transplantation of organs. This deficiency underscores the critical necessity for the present research.

Mostafa Kafi Qomshaei, in his book *\*The Sale of Human Body Parts\**, investigates the

sale of body parts for transplantation to individuals in need. However, his work primarily centers on the transfer of organs during an individual's lifetime and does not address the specific issue of heirs' rights.

Similarly, Hurr Ameli, in *\*Wasail al-Shi'a\**, acknowledges the rights of heirs regarding organ removal, asserting that heirs possess the authority to grant or deny permission for the extraction of organs from the deceased.

Dr. Saeed Nazari Tavakoli examines organ transplantation in his book *\*Organ Transplantation in Islamic Jurisprudence\**, yet he neglects to explore the nature or basis of heirs' rights in relation to organ removal and transplantation.

Hossein Habibi, in *\*Brain Death and Organ Transplantation: Perspectives of Jurisprudence and Law\**, discusses various forms of death, particularly brain death, but does not address the focal research area.

Ismail Aqababaei's work, *\*Organ Transplants from Deceased or Brain Dead Patients\**, offers a legal and jurisprudential analysis concerning organ transplantation from deceased individuals, albeit briefly referencing the necessity of heir consent for such procedures.

Seyyed Mohammad Sadiq, a cleric, presents inquiries from esteemed religious authorities in *\*Judicial Inquiries\**, which reveal divergent opinions regarding the rights of heirs in this context.

Additionally, Mohammad Ali Albar, a Sunni scholar, scrutinizes organ transplantation through the lenses of jurisprudence and ethics in his book *\*The Jurisprudential and Ethical Stance on the Issue of Organ Transplantation\**, providing only cursory references to the rights of heirs.

Mullah Mohammad Al-Ghazni, another Sunni scholar, investigates issues related to organ transplantation in his work *\*The Ruling on the Transfer and Implantation of Human Organs in Islamic Jurisprudence and Law\**, where he analyzes relevant legal sources and regulations.

## General Concepts and Definitions

Before delving into the subject matter, it is imperative to define and clarify the

foundational concepts relevant to this research:

**Authority:** Legally, authority refers to an individual's legal rights concerning property, assets, or others, encompassing the owner's rights over their property, the rights of a promisee regarding obligations made for their benefit, and the authority of a guardian over a ward's affairs concerning maintenance and education.<sup>2</sup>

Linguistically, the term pertains to notions of power, control, and governance, as defined in the Mo'in Dictionary.<sup>3</sup>

**Ownership:** Legally, ownership is defined as the right to use, benefit from, and transfer an asset in any form unless restricted by law.<sup>3</sup> Linguistically, it denotes the concept of being the possessor or owner, as outlined in the Mo'in Dictionary.<sup>2</sup>

**Heirs:** Legally, heirs are individuals who inherit property from another person,<sup>3</sup> as similarly defined in the Mo'in Dictionary.<sup>2</sup>

**Body Organs:** The term refers to the plural form of "organ" and is defined in the dictionary as limbs and any distinct and naturally defined parts of the human body, including hands, feet, and ears.

**Deceased:** Legally, this term denotes an individual who has died and has left behind property. Linguistically, according to the Mo'in Dictionary,<sup>3</sup> it is described as something pertaining to inheritance.<sup>2</sup>

## Legal and Jurisprudential Analysis of Heirs' Rights Over Deceased's Body Organs in Organ Transplantation Determination of heirs

The concept of 'inheritance', as defined linguistically in the Mo'in Dictionary, pertains to the sharing of a deceased person's wealth or what is transmitted from the deceased's estate to their survivors.<sup>2</sup>

Legally, inheritance encompasses the property and rights that are transferred to heirs based on established inheritance laws following an individual's death. This foundational understanding paves the way for a comprehensive analysis of the legal and jurisprudential rights of heirs concerning organ transplantation.<sup>3</sup>

In the context of inheritance rights, the degree of kinship holds substantial

significance. The fundamental principle "the closer excludes the farther" dictates that closer relatives take priority over more distant relatives in matters of inheritance.<sup>4</sup>

When identifying potential heirs, the basis for inheritance may arise from either marital relationships (affinal kinship) or blood relationships (consanguinity). Affinal relatives are entitled to their designated share of an inheritance, thereby excluding their more distant counterparts. Conversely, among blood relatives, individuals closer in degree to the deceased hold the authority to prevent those in more distant degrees from inheriting. Thus, individuals deemed eligible to inherit based on their kinship degree and classification are referred to as heirs; when multiple individuals qualify, they are termed co-heirs.<sup>5</sup>

It is essential to clarify that heirs are not necessarily the guardians of the deceased. For instance, while spouses are recognized as heirs, they do not automatically assume the role of guardians.<sup>7</sup>

Furthermore, as delineated in Article 7 of the Executive Regulations of the Organ Transplantation Law, guardians of the deceased are defined as adult heirs, whose consent is required for any removal or transplantation of organs. Importantly, minor heirs are not recognized as guardians and, consequently, are unable to provide the requisite consent.<sup>6</sup>

### Types of Rights Related to Human Body Organs

In a general classification of human rights associated with the body and its organs, four principal rights can be identified:

1- **Divine Right over Human Bodies:** Ultimately, God is recognized as the primary owner of all human bodies, as referenced in verses 29 and 63 of Surah An-Nisa and verse 195 of Surah Al-Baqarah.<sup>1</sup>

A pertinent verse states, "Whoever intentionally kills a believer, his punishment will be hell, wherein he will abide eternally, and Allah will be angry with him and curse him and prepare for him a tremendous punishment."

2- **Human Rights Over One's Own Body:** In alignment with divine will and personal

autonomy, individuals hold the right to make decisions regarding their bodies.

This human right can be examined from two perspectives:

a. **Legal Rights:** This encompasses the right to retribution (qisas) for murder and minor offenses, the right to pardon, and the right to claim or forgo blood money (diyeh). Relevant verses discussing these concepts can be found in verse 129 of Surah An-Nahl and verses 40-43 of Surah Ash-Shura. For instance, it is stated: "And we ordained upon them: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, and a wound for a wound."

And whoever gives up his right as charity, it is an expiation for him."

b. **The Performance of Legal Actions Regarding One's Body:** This includes actions that may yield worldly or spiritual benefits, such as the sale or gifting of body parts. Relevant verses addressing these actions can be found in verse 14 of Surah An-Nahl, verse 15 of Surah Al-Mulk, and verse 29 of Surah An-Nisa.

It states: "O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]."<sup>1</sup>

In summary, based on the aforementioned verses and principles, it can be concluded that individuals possess inherent rights over their own bodies, which are endorsed by God. These rights can be exercised during one's lifetime or articulated in a will for posthumous execution. Legally, an act is deemed permissible if it is rewarded when performed and does not incur punishment when omitted.

3- **The Rights of Guardians and Heirs of the Deceased Concerning Their Body**

An examination of reputable jurisprudential sources elucidates that divine law recognizes specific rights assigned to the guardians and heirs of the deceased.

Both religious and statutory frameworks affirm that these guardians possess rights such as retribution (qisas), blood money (diyah), pardon, and forgiveness.

For example, verse 33 of Surah Al-Isra articulates: "And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly — We have given his guardian authority, but let him not exceed limits in taking life. Indeed, he has been supported."

While this right will be explored in greater detail, it can be broadly asserted that, akin to being heirs to an estate, the guardians of the deceased also hold rights regarding the deceased's body. These rights allow them to undertake lawful actions within established parameters following the individual's passing.

#### 4- Human Rights Over the Body of Another Person

In specific circumstances, individuals may possess rights concerning the bodies of others. For instance, in cases where a spouse serves as an organ donor, it is imperative that consent is obtained if the removal and transplantation of an organ may pose a risk or harm to the spouse.<sup>8</sup>

Among the various types of rights, particular emphasis will be placed on the rights of guardians and heirs over the body of the deceased, especially in the context of organ removal and transplantation.

### Human Rights Over One's Own Body During Lifetime

An individual's rights concerning their body during their lifetime can be examined through two lenses: actions taken while they are alive and actions intended for posthumous execution.

Certain jurists contend that a person inherently possesses ownership of their body, while others, acknowledging God's ultimate ownership, maintain that individuals retain dominion over their organs and limbs. This belief facilitates individuals' ability to make decisions concerning their own organs and to engage in legal transactions involving non-vital organs—such as sales, wills, and gifts.<sup>9</sup>

Even among those who dispute the concept of human ownership over the body, it remains incontrovertible that individuals possess authority over their own limbs

during their lifetimes. For instance, denying any degree of human rights over one's own body would undermine the legal and jurisprudential rationale for organ donation, both during one's lifetime and through stipulations for after death.<sup>10</sup>

Individuals may designate non-vital organs—those not essential for sustaining life—under specific conditions, thereby permitting their involvement in transactions such as sales or gifts.

Ayatollah Sayyid Yusuf Sanei, in his book on medical inquiries, observes:

"A living person can donate any organ of their choice for transplantation to another person or a center, or transfer it in exchange for a monetary amount, provided that the loss of this organ does not cause their death, nor is it deemed reprehensible or prohibited by rational consensus."<sup>15</sup>

Furthermore, the transfer of human organs can be explicitly designated through a will, allowing individuals to specify during their lifetime that an organ from their body may be bequeathed to a living individual in need. This significant aspect will be further explored in the subsequent section.

### The Rights of Guardians and Heirs of the Deceased Concerning Human Body Parts

The question of whether heirs, acting as representatives of the deceased, inherit the entirety of the deceased's rights and obligations in relation to both assets and liabilities has sparked considerable debate. This controversy is fundamentally rooted in the classification of human body parts as property, and whether they may be treated and transferred posthumously in a manner akin to other forms of assets.

The proposition that human body parts qualify as property is supported by some while vehemently contested by others. An exhaustive analysis of the arguments for and against this classification would necessitate a dedicated discussion; however, it is imperative to summarize the essential points regarding the property status of human body parts. Body parts share attributes characteristic of property: they serve various

needs, confer inherent benefits, and may be exchanged for monetary compensation, potentially even to the extent of preserving another individual's life. Nonetheless, it is critical to recognize that their status as property remains prospective while they are attached to the human body; under such circumstances, they possess merely a potential property status and are rendered incapable of being subjected to transactions. Once detached, this potential status becomes actualized, making them eligible for contractual arrangements such as sales, gifts, or bequests.

A fundamental condition for the formation of such contracts includes the property status, transferability, and the existence of rational and legitimate benefits associated with the property in question—elements that have been scrutinized in relation to human body parts.

As articulated by Dr. Shahidi, transactions involving substances derived from the human body—such as blood, hair, or human milk—are deemed valid, provided that their extraction does not result in disability or adverse health effects. This validation is predicated on the recognized economic value and property status of these substances, in conjunction with the absence of legal or religious restrictions against their trade and transfer. From a jurisprudential perspective, transactions involving specific biological components, such as human milk, are acknowledged as lawful.<sup>16</sup>

Accordingly, when these items provide rational and legitimate benefits, they become eligible for transactional activities.<sup>12</sup>

Despite strong religious doctrines and legal precedents opposing the recognition of the deceased's body parts as property—alongside the accompanying stipulations concerning corpses—it is essential to acknowledge the intrinsic worth of the deceased's body parts that may be eligible for removal and transplantation, particularly in the context of their capacity to save human lives. Consequently, the removal and transplantation of organs from deceased individuals, or from those who have been confirmed brain-dead, have received

legislative approval.<sup>17</sup> In the year 2000 (1379 in the Iranian calendar), the Iranian legal framework addressed this matter through the enactment of relevant legislation, which will be discussed in subsequent sections.

There exists a general consensus regarding the prohibition of transactions and transfers concerning non-transplantable body parts of the deceased, wherein the regulations pertaining to violations of a corpse are applicable. Heirs do not possess the authority to subject these non-transplantable body parts to transactions.<sup>8</sup>

As previously noted, the transfer of body parts may be facilitated through a will that specifies intentions for such actions posthumously. However, a point of contention arises as to whether the mere expression of a deceased individual's wish to have their body parts harvested and transplanted suffices, or whether the consent of the heirs is also requisite. Some jurists contend that, even in the presence of the deceased's consent, the approval of the heirs remains necessary.<sup>13</sup>

Furthermore, when an individual has not bequeathed a will regarding the harvesting and transplantation of their body parts during their lifetime, two primary perspectives emerge:

#### A: The Requirement of Heirs' Consent in the Absence of a Will

Proponents of this viewpoint argue that if the deceased did not establish a will pertaining to the transfer of their body parts, the consent of the heirs is essential for the harvesting and transplantation of those parts to another individual in need.

This perspective asserts that, in the absence of a will, heirs retain the right to either grant or deny permission for the harvesting of the deceased's body parts and their subsequent transplantation. Thus, without such consent, the act of harvesting and transplantation cannot be conducted lawfully. Furthermore, supporters of this viewpoint maintain that this right extends to the Islamic guardian in situations where the deceased is unidentified and no heirs are known.<sup>14</sup>

It appears that Iranian legislators have considered this perspective when enacting the single-article law regarding the transplantation of organs from deceased individuals or those confirmed to be brain dead in 2000 (1379 in the Iranian calendar), accompanied by the executive bylaws enacted in 2002 (1381). This legislation expressly stipulates that the consent of the heirs is required for the harvesting and transplantation of organs in the absence of a will from the deceased.<sup>18</sup>

**B: The Non-Requirement of Heirs' Consent in the Absence of a Will Conversely,**  
Some jurists assert that in the absence of a will from the deceased, the consent of the heirs is not necessary for the harvesting and transplantation of body parts.

Ayatollah Fazel Lankarani, for instance, posits that the approval or disapproval of the heirs does not influence the transplantation process if such action is essential for preserving the life of a Muslim, particularly if the requisite organs cannot be acquired from non-Muslim sources. In these instances, it is permissible to harvest organs from the body of a deceased Muslim. These differing viewpoints highlight the complex legal and ethical considerations that surround the rights of heirs in relation to the body parts of the deceased.

Under the perspective that regards the consent of heirs, or its absence, as generally ineffective in matters of transplantation, it is permissible to harvest and transplant an organ even in instances where some heirs oppose the action while others endorse it, particularly when the procedure is essential for saving the life of a Muslim.

Ayatollah Safi Golpaygani has further addressed this matter in response to pertinent inquiries:

**Question 1:** If an individual bequeaths their transplantable organs for donation to patients after their death, is this permissible?

**Answer:** Such an act is justifiable if it is contingent upon preserving a respected life; otherwise, the individual's will does not permit it.

**Question 2:** If a person wills that their organs be transplanted after death but their guardian subsequently disagrees, can the

procedure proceed without the guardian's permission?

**Answer:** This is only permissible if it is essential for preserving a respected life.<sup>11</sup>

An analysis of the perspectives held by jurists and legal scholars reveals three primary viewpoints regarding an individual's legal relationship with their body parts post-mortem, predicated upon the acceptance of individuals' ownership and control over their bodily components within the framework of Islamic law and legal statutes:

**1- Severance of Rights:** Upon death, the relationship between an individual and their financial and non-financial rights is entirely severed, rendering all connections to such possessions invalid.

**2- Continuation of Rights:** The relationship concerning financial and non-financial rights remains unchanged from the individual's lifetime into their afterlife.

**3- Limited Continuation of Rights:** The legal relationship concerning an individual's assets and rights does not terminate upon death, but continues in a limited capacity through the individual's will, allowing for lawful engagements to proceed.

The third perspective is the most compelling, as it provides justification for the rights of heirs concerning the harvesting and transplantation of organs within this context.

### **Examination of Current Laws: The Law on Transplanting Organs from Deceased Individuals**

After extensive discussion and debate, a legislative bill titled "Permission for the Transplantation of Organs from Deceased Individuals in Specific Cases" was introduced to the Iranian Parliament on May 17, 1994 (27/2/1373 in the Iranian calendar).

The bill referenced the fatwas of Imam Khomeini and Ayatollah Khamenei regarding the permissibility of organ transplantation in certain circumstances, emphasizing that the preservation of life is sometimes achievable only through organ transplantation.

However, the bill encountered numerous ambiguities and objections in the Fourth Parliament, resulting in its disapproval.

Subsequently, the legislation governing organ transplantation from deceased individuals and those confirmed to be brain dead was enacted on April 6, 2000 (17/1/1379). This law comprises a single article and three notes, with its executive bylaw receiving approval on September 1, 2002 (10/7/1381).

This legislation explicitly permits medical teams and heirs to engage in the harvesting and transplantation of organs under stipulated conditions.

An analysis of this law indicates that harvesting and transplantation are permissible if they are necessary for saving a Muslim's life. The jurisprudential foundation for this law appears to be fortified by the fatwas of contemporary jurists, including those of Imam Khomeini and Ayatollah Khamenei, as previously referenced.<sup>11</sup>

Although the current law and its executive regulations have addressed certain ambiguities and questions related to organ harvesting and transplantation, the legal status concerning these procedures during an individual's lifetime remains unclear.

It appears that the laws also recognize the rights of heirs regarding the harvesting and transplantation of organs. The single article of the relevant law regarding organ transplantation from deceased individuals or those confirmed to be brain dead explicitly states that, under specific circumstances, heirs possess the authority to engage in organ harvesting and transplantation, as well as grant permission for these actions.

It is crucial to clarify that the right of heirs to permit organ harvesting is intended solely for transplantation purposes aimed at saving the life of an individual in need. Heirs do not hold the right to engage in activities that involve trading or profiting from the body parts of the deceased. While organ and tissue donation is not only permissible but also regarded as a commendable act—especially in the context of preserving another person's life—organ harvesting post-mortem (whether due to brain death or cardiac death) is legally permissible only in scenarios of necessity or with the explicit consent of the heirs. Furthermore, organ harvesting cannot be conducted for purposes

such as dissection or research without appropriate legal authorization.

## Discussion and Conclusion

In conclusion, an analysis of the perspectives of jurists, legal doctrine, and the pertinent laws indicates that the rights conferred upon heirs, as established by the legislation on organ transplantation from deceased individuals or those confirmed to be brain dead (enacted in 2000), are not predicated on the heirs' ownership or control over the organs, particularly in relation to inheritance and the associated governing principles. Prominent authorities, including the Supreme Leader, have confirmed, in response to relevant inquiries, that if saving a Muslim's life is contingent upon organ transplantation and the heirs are unreachable, it is permissible to proceed with the harvesting and transplantation of organs in cases of necessity, without requiring the consent of the heirs. Had the heirs possessed genuine ownership or complete control over the deceased's organs and body parts, such actions would not be permissible without their explicit consent.

This conclusion is further supported by Article 7 of the executive regulations of the organ transplantation law, which stipulates that guardianship over the deceased is limited exclusively to legally recognized adult heirs, suggesting that only their consent is necessary for the harvesting and transplantation of organs. If heirs possessed authority comparable to that over other estate assets, all heirs would hold such rights, rather than solely the legal adult heirs.

While the law governing organ transplantation from deceased individuals or those confirmed to be brain dead requires the consent of legal adult heirs, recent responses to inquiries that permit organ harvesting and transplantation in cases of necessity without obtaining the heirs' permission challenge the extent of heirs' authority. It appears that the rights of heirs concerning the organs of the deceased, particularly in relation to harvesting and transplantation, are not fundamentally anchored in notions of ownership and authority. Rather, these rights emerge from legal respect and precedence, reflecting a complex interplay of ethical and legal considerations.

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