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978-0-521-86792-4 - Property in the Body: Feminist Perspectives

Donna L. Dickenson

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Property in the Body: Feminist Perspectives

New developments in biotechnology radically alter our relationship with our bodies. Body tissues can now be used for commercial purposes, while external objects, such as pacemakers, can become part of the body. *Property in the Body: Feminist Perspectives* transcends the everyday responses to such developments, suggesting that what we most fear is the feminisation of the body. We fear our bodies are becoming objects of property, turning us into things rather than persons. This book evaluates how well-grounded this fear is, and suggests innovative models of regulating what has been called ‘the new Gold Rush’ in human tissue. This is an up-to-date and wide-ranging synthesis of market developments in body tissue, bringing together bioethics, feminist theory and lessons from countries that have resisted commercialisation of the body, in a theoretically sophisticated and practically significant approach.

DONNA DICKENSON is Emeritus Professor of Medical Ethics and Law at the University of London. She received the 2006 international Spinoza Lens Award for contribution to public debate on ethics, becoming the first woman to receive the award.

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This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law's complex and troubled relationship with medicine across both the developed and the developing worlds. In the past twenty years, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community over the past two decades have involved a strong medical law dimension. Organ retention, embryonic stem cell research, physician-assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

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Acknowledgements

Grateful acknowledgement is made to the *Journal of Bioethical Inquiry* for permission to reprint sections of my article ‘The lady vanishes: what’s missing in the stem cell debate’ in chapter 3, and to *Medical Law International* for permission to reprint sections of an article which appeared in (2005) 7(1), as part of chapter 7. Shorter sections of chapter 8 also appeared in (2005) 1(1) *Genomics, Society and Policy*. Parts of chapter 2 appear in several chapters of my earlier *Property, Women and Politics* (Cambridge, Polity Press, 1997), but without the links to modern-day biotechnology.

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Preface

In the two years since I started writing this book, property in the body has become the most topical of topics. Two recent scandals, in particular, have elevated it to a dubious pre-eminence: the theft of the late broadcaster Alistair Cooke's bones by a criminal ring which sold them for US\$7,000 to a dental implants company, and the revelation that the supposed stem cell breakthroughs by Prof. Hwang Woo Suk used 2,200 ova in the course of research that turned out to be entirely fraudulent. From its earlier low obscurity, property in the body has risen to such heights of interest that the reader could be excused for asking, 'What more could I possibly want to know about this topic?'

Luckily, or unluckily, there is still a great deal to bring to light, and a particular kind of illumination required. The rise of private umbilical cord blood banking, for example, has not yet made the media headlines. What coverage it has received in the popular and scholarly literature has been based on false assumptions, including what I present in chapter 4 as the mistaken presumption that the cord blood is the baby's and not the mother's, even though she puts effort into its extraction. Why that assumption has taken root has to do, along with other large misconceptions and abuses such as those perpetrated by Hwang, with particular blind spots: gendered ways of thinking about property in the body. As I argued in my earlier *Property, Women and Politics*, the common law, liberal and Marxist political theory, and even many second-wave feminists have presented women as having no relation to property except as its objects. Here, in this new book, I build on that insight, and on the counter-attempt I made in *Property, Women and Politics* to lay the foundations for a theory of property that would count women in. Property in the body was not my sole concern there; here it is, but the practical questions about ethics, law and politics of human tissue raised in this book are analysed using the philosophical and jurisprudential model I developed earlier.

But my theoretical thinking did not come to a premature halt ten years ago. This book takes both the theory and the practice further, with the applied questions compelling further refinement and rethinking of

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the model towards which I was groping then. That sort of symbiosis between theoretical and applied ethics is what I always aim to do: call it phenomenology, narrative ethics, feminist ethics, casuistry, Aristotelian *phronesis*, or what you will. I have never accepted that theory can flourish apart from practice, or the reverse.

The theoretical foundations which I laid almost ten years ago are now urgently required to deal with the welter of practical issues that have arisen in recent biotechnology. With its novel and solid feminist theoretical position, I hope that this book will transcend two dominant but ill-thought-out responses to the private enclosure of the genetic commons and tissue in the body. These are, first, the cynical shrug: ‘we live in a capitalist society, so what do you expect?’; secondly, its neo-liberal counterpart: ‘we live in a capitalist society, which will bring us great medical and scientific progress if we just leave well enough alone’. Both responses are far too simple and in fact pernicious. The rest of this book will show why.

I have benefited throughout the writing of this book from the generosity of many colleagues, who have manifested the altruistic qualities of a genuine ‘gift relationship’ in making their expertise, advice and kindness freely available to me. During my stay in 2004 at the Columbia University Institute for Scholars at Reid Hall, Paris, where this book was begun, I was given a great deal of support by Danielle Haase-Dubosc and Mihaela Bacou. Former and current members of the French CCNE (Comité Consultatif National d’Ethique) were equally generous with their time: among them, Nicole Questiaux, Simone Bateman and Anne Fagot-Largeault, to whom I am also grateful for her invitation to present a seminar on my work in progress at the Collège de France. Jean-Paul Amann, her deputy, was enormously helpful in setting up and chairing the session. At the CCNE library near the Invalides, I was warmly welcomed by staff and benefited from their excellent collection of bioethics literature, as well as from the specialised search facilities which they graciously make available to foreign scholars. Jennifer Merchant, professor at the Université de Paris II Panthéon-Assas, gave me a very great number of valuable ‘leads’ into the French bioethics and biolaw literature, which is still too little known outside France.

Chapter 8 could never have been written without the remarkable opportunity graciously afforded me by Nga Pae o te Maramatanga, the New Zealand National Institute for Research Excellence in Maori Development and Advancement. Their conference on ‘Research ethics, tikanga Maori/indigenous and protocols for working with communities’, held in Wellington in June 2004, was not just a scholarly gathering, but rather a collaborative venture with Maori communities all over Aotearoa/New Zealand. Invited speakers were sent into local groups to work together

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in identifying the most pressing research ethics questions, then brought back to the plenary conference together with their hosts for an open discussion. I have never before given a conference paper which was followed not by the attack-and-defence style of questioning all too common among philosophers, but rather by a song from my hosts on the platform. It was one of the most moving experiences of my academic life, because it was much more than just academic. My deepest thanks to my hosts at the Bluff *marae*, Te Runanga o Awarua, particularly Sumaria Beaton, and to Mera Penehira, Sharon Hawke and Paul Reynolds of Nga Pae o te Maramatanga for their good company and excellent organisational skills. My deepest thanks also to Lopeti Senituli for presenting me with a copy of his paper on Tonga at this conference and for his helpful answers to my questions. I am grateful as well to John Pennington, Executive Officer of Toi Te Taiao/the Bioethics Council, who was hospitable and helpful in providing me with materials and explanations concerning the human gene transplantation consultation exercise. Most of all, I am very deeply honoured to have been ritually welcomed into the Bastion Point and Bluff *marae* by my hosts, the *tangata whenua*: *karanga mai, mihi mai*.

Rightly or wrongly, I like to think that my slant on bioethics issues is unusually global, but I could never have transcended the narrow bounds of liberal Anglo-Saxon thought without help from many friends abroad. Besides my Maori and French colleagues, I would particularly like to thank the organisers of several European Commission projects in which I have been involved, particularly Heather Widdows, Caroline Mullen, Helen Harris, Itziar Alkorta Idiakez, Aitziber Emaldi Cirion, Urban Wiesing, Christian Byk and Ruth Chadwick. It was thanks to my dear friend Ron Berghmans of the University of Maastricht that I first made these Europe-wide acquaintances. Other Dutch and Belgian colleagues also deserve a mention, particularly Ruud ter Meulen, Geertrui van Overwalle and Guy Widdershoven, all of whom have been, as the saying goes, a great pleasure to work with. I would also like to express my deepest thanks to the jury and organisers of the international Spinoza Lens award, particularly Marli Huijter and Rene Foqué, for the way in which they have helped me to see continuities in my work, of which I myself had been unaware, and to venture further into the Forbidden Forest of phenomenology.

I owe a very great deal to Dr Susan Bewley, chair of the Royal College of Obstetricians and Gynaecologists Ethics Committee, without whose assistance I would never have had access to the clinical evidence base about cord blood, used in chapter 4. I respect a great many clinicians for their commitment to serious ethical debate, but perhaps Susan most of all. My thanks should also go to the librarians at the Royal College,

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to my colleagues on the Ethics Committee, and to my former student Saskia Tromp for first alerting me to the issue of cord blood during our supervisions.

I am also very grateful to Onesimus Kipchuma, associate editor of the *University of Nairobi Law Journal*, for providing me with a copy of the journal containing an article on ‘The tragic African commons’ by Prof. H. W. O. Okoth-Ogendo, which I found invaluable in writing chapter 8. Among many other colleagues whose comments have helped me to refine my ideas, I would particularly like to thank Catherine Waldby, Lori Andrews, Susan Dodds, Francoise Baylis, Carolyn McLeod, Catriona MacKenzie, Jane Kaye, Mary Mahowald, Carole Pateman, Alan Ryan, Jennifer Hornsby, Diana Coole, Susan James, Ingrid Schneider and Sarah Sexton. Thanks should also go to anonymous referees at Cambridge University Press, as well as to Margaret Brazier, Finola O’Sullivan and Brenda Burke.

And finally, once more with feeling, *con brio, affettuosamente*: to Chris, Anders and Pip.

DONNA DICKENSON

Beckley, Oxford

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